THE
PARLIAMENTARY DEBATES
(Part II—Proceedings other than Questions and Answers)
OFFICIAL REPORT

HOUSE OF THE PEOPLE

Wednesday, 12th August, 1953

The House met at a Quarter Past Eight of the Clock

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

QUESTIONS AND ANSWERS

(See Part I)

9-15 A.M.

LEAVE OF ABSENCE

Mr. Deputy-Speaker: I have to inform hon. Members that I have received the following note from Shri U. Srinivasa Malliah:—

"As I am undergoing medical treatment in Switzerland, I request that I may be granted leave of absence from the sittings of the House till the end of August, 1953."

Is it the pleasure of the House that leave be granted.

Leave was granted.

PAPERS LAID ON THE TABLE

NOTIFICATIONS UNDER DELHI ROAD TRANSPORT AUTHORITY ACT

The Deputy Minister of Railways and Transport (Shri Alagesan): I beg to lay on the Table a copy of each of the following notifications under sub-section (3) of Section 52 of the Delhi Road Transport Authority Act, 1950:—

(i) Ministry of Transport Notification No. 18-TAG(5)/53, dated the 13th June, 1953; and

(ii) Ministry of Transport Notification No. 18-TAG(6)/52, dated the 23rd June, 1953.

[*Placed in Library. See* No. S-99/53.]

ESTATE DUTY BILL—*Contd.*

Mr. Deputy-Speaker: The House will now proceed with the further consideration of the motion moved by Shri C. D. Deshmukh on the 13th May 1953.

Before I call upon Mr. More, who was in possession of the House yesterday, I would like to inform hon. Members that I propose calling the hon. Minister, to reply at 12.15. That means hon. Members will have three hours. In the meanwhile a number of hon. Members have informed me that they wish to participate in the debate. Having regard to the elaborate discussions that have already taken place, if each one were to restrict himself to fifteen minutes, many will have an opportunity to speak.

An Hon. Member: Fifteen minutes?

Mr. Deputy-Speaker: Fifteen minutes means five minutes more in special cases.

Shri S. S. More (Sholapur): Sir, when the House dispersed yesterday I was offering some comments on clause 7—*Interests ceasing on death.* I take

[Shri S. S. More]

very serious objection to this particular clause. This clause, according to me,.....

Mr. Deputy-Speaker: I would like to make a suggestion at this stage. Clause after clause need not be gone into at this stage. Of course, general observations regarding the manner in which the Select Committee dealt with important points arising out of the clauses and the Bill as a whole may be made. When we come to clause by clause consideration, more elaborate arguments on individual clauses may be advanced. That will leave time for more hon. Members to take part in the discussion at this stage.

Shri S. S. More: I accept the directions that you have been pleased to give. But my objection to this clause 7 is more of a fundamental nature which you will allow me to develop.

This clause is discriminatory. I do not see any reason why people who are governed by *Dayabhaga* or other schools not mentioned in this particular clause should be dealt with severely. Now so many hon. Members have given illustrations how this clause will operate inequitably in the case of persons belonging to schools not mentioned in this clause. A sort of favouritism appears to have been shown to people who are governed by *Mitakshara* and the other two small schools of thought which are in operation in some limited areas. My fear is that this clause will militate against the fundamental principles that have been enunciated in the Constitution. I will bring to your notice Article 14 of the Constitution.

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India"

These laws have been defined in Article 13, sub-clause (3) (b). If a man is governed by the *Dayabhaga* school—I might take the figure which has been taken by so many Members—and he owns property worth about Rs. 2,50,000 and he has got four sons, he will be supposed to be the sole proprietor of this property and on his death he will have to pay, at least his successors will have to pay, a levy on the corpus of Rs. 2,50,000. If a person who is governed by *Mitakshara* having the same amount of property and the same number of sons dies, then, only Rs. 50,000 will be the corpus of the property which will be subjected to the levy.

Mr. Deputy-Speaker: Every time a son dies his property will be taxed.

Shri S. S. More: I will try to meet that argument. Under *Dayabhaga* if a father dies, Rs. 2,50,000 as a higher slab level will have to be the subject of estate duty. If a man under *Mitakshara* dies the position is different. This law is going to be applicable not to every man and woman in this country. As a matter of fact this Act will be in operation against certain sections, the higher or upper middle classes and the still higher sections the rate of mortality among whom is not so high. Of course, in some of the minutes of dissent when they dealt with clause 30 there are references to the mortality rate being very high in our country. But my submission is that the mortality rate is not even in all the sections of the population. The rich section of the people, due to the money that they possess, have a balanced diet; they can immediately go to the doctors, they can purchase costly medicines and they can thus avoid the wolf of death coming at their door. (*Interruption*).

The *Ayurvedic* system will be at their disposal with Shri Dhulekar on the top. But my submission is that the rate of mortality in the case of people living in the slums of Bombay and Calcutta will be different from the rate among the sections of people who live in big palaces, like my hon. friend Mr. Tulsidas Kilachand. The latter will enjoy greater longivity of life. So my argument against the argument that in the case of persons governed by *Mitakshara* when the sons die their property will be subjected to the tax,

is that there may be a greater lapse, a longer interregnum between the death of the father and that of the son and possibly the prices might go up or go down. That is not so in the case of *Dayabhaga*. The moment the father dies his Rs. 2,50,000 will be subjected to the tax.

It is said that glory is the torch of noble minds. Possibly I can adopt the same and say possibly gold is the torch of financial minds. As gold is their objective this *Dayabhaga* school will give them better yield. The moment the father dies, the whole corpus will come under this levy, but as far as *Mitakshara* is concerned, the paying of taxes will be spread over a longer period of time and it will come in smaller driblets. This is discriminatory.

"Then, what is the remedy?" Mr. Deshmukh would ask me. Of course, there are personal laws in this country. Now before the Britisher left this country he used to say that he is a foreigner and he cannot interfere with the religious or personal laws of the people. In spite of that declaration he was courageous enough to modify the inequalities of our personal laws by resorting to so many measures. Mr. Gadgil yesterday asked very pertinently why a dead man should be allowed to influence the lives of the living. I would ask the same question: "Why should Manu who lived more than two thousand years back, be allowed to influence the lives of the modern generation?" Why should Jimootvahan, who is supposed to be the founder of the *Dayabhaga* school and who flourished in the 15th century, be made to influence a large section of the people? Our National Government is in power today. If they want to introduce a sort of uniformity in this country, which is very essential, let them take courage in their hands and introduce it. I do not know why they are still shaking in their shoes like the Britisher. The Britisher felt that if he touched the religious customs of the people, possibly there might be a rebellion on the pattern of 1857. Well, now there is no question like that. This Jimootvahan, founder of the *Dayabhaga* school, was supposed to be the minister of some Bengal king. My friend Mr. Biswas is the law-giver and when I see him I am reminded of the law-givers of former ages from Manu to Jimootvahan who all seem to be rolled into one. I think he should be more courageous. He should look to the needs of the time and the urgent crying necessity of evolving some uniform system of law. Perhaps it is not possible. I am not prepared to say that the passing of this particular measure should be made contingent on the passing of the Hindu Code Bill which is a uniform law of inheritance. I wish to make a suggestion regarding Clause 7. In this clause, an option should be given or else a legal fiction should be created under the law. Mr. Biswas will corroborate me. Take, for instance, the notion of civil death. It is a fiction. The man does not die but the fiction is created. He has died as far as the law is concerned. Even in this particular clause it is possible to state: "every person shall be supposed, for the purpose of this enactment, to be governed by the *Mitakshara* school" or if the Finance Minister has a particular liking for the *Dayabhaga* school let us state: "every person shall be supposed to be governed by the *Dayabhaga* school." That will create a sort of uniformity.

Then there is one more thing. I want to take Pandit Nehruji at his words.

Acharya Kripalani (Bhagalpur *cum* Purnea): You are unnecessarily quoting him.

Shri S. S. More: Acharya Kripalani says that I am unnecessarily quoting his latest pronouncement. I am not quoting Pandit Nehruji when he was fighting the national liberation struggle and was expressing progressive views. I am quoting his latest utterances at Agra:

[Shri S. S. More]

"I am amazed at the speech I heard from my old colleague and to find how he has slept through the ages not realizing what the world is going through and what the Congress has stood for for the past few years."

Pandit Nehruji has stated that we have slept through the ages. Possibly under his very nose the Finance Minister, and particularly the Law Minister, seem to have slept for ages. They still feel that the law propounded by Manu and Jimootvahan is still applicable; that the law given by one minister of a feudal type serving under a feudal king should still prevail under this modern democratic Government. I do not understand the reason for that. I feel that the sages of the antiquity were legislating for feudal lords and feudal kings. They were creating a feudal mentality under the feudal frame of mind. If democracy is to succeed in this country, if democratic feelings are to strike roots deeper in the soil, we must create a uniform system based on equality as promised by this Constitution. Feudal minds and equality never go together. Therefore, the law which was very suitable for the feudal age, the medieval period, cannot be said to be the proper law for the democratic age. We are living in modern times; we are living in a scientific age.....

Shri Dhulekar (Jhansi Distt.—South): No, no. They were made for all ages

Shri S. S. More: My friend Mr. Dhulekar says that these laws are laws for all ages. Then I ask, why were the Married Women's Claim to Property Act etc. passed? It does not mean that we cannot modify these laws. Are the old sages going to extend their dead hands over the future generations till eternity? It is flouting the growing conscience, the growing modern spirit of the present times. Therefore, I would say that if you want to base our democracy on permanent foundations then there is no go for the Government but to evolve a uniform system of law. Let a man be a Hindu for his temple, let a man be a Muslim for his mosque or let him be a Christian for his church, but as far as property laws and other social customs are concerned, let this Government of India evolve a sort of uniform system of law. Therefore, I very seriously object to this *mitakshara* and other references in this particular Act.

There is an exemption limit for a minor belonging to the *Mitakshara* school and dying before he has attained the eighteenth year. I very stoutly oppose this particular measure. This is again discriminatory and giving some more extended favouritism to people of the *Mitakshara* school. If a minor boy of five years dies in the *Dayabhaga* system after his father's death, then immediately his share will be taxable for the estate duty. But under the *Mitakshara* school, when a boy dies before he reaches the 18th year, possibly his heirs will get exemption. What is the reason for that? The reason is given in the.....

Mr. Deputy-Speaker: But not if he is separate.

Shri S. S. More: But if he is a member of a subsisting joint family from his very birth he gets a right and the moment he dies, though not in a distinct form, his share goes to the survivors. I am referring to page 31 of the old Bill which was referred to the Select Committee. "This provision is necessary for a *mitakshara* family because in that family each child acquires interest in the property and it would be administratively impossible to determine the quantum of interest on the death or birth of a child in the family." I fail to understand why it should be administratively impossible particularly when this rich section of people will not be very prolific in their procreation. I speak very scientifically. In the upper class of people the birth rate is very low and mortality rate too is very low. My submission is that this "administrative difficulty" is something which I cannot under-

stand. It puts a premium on the inefficiency of the Government machine Administrative reasons do not justify this sort of discrimination. I would, therefore, urge that this particular part should be removed from this particular section.

Then, in obedience to your direction, Sir, I immediately pass on to clause 9 which mentions a period of "two years". My submission is that even this clause will be utilised by the rich people to defy and flout Government. My suggestion for the consideration of the Finance Minister is that if a father leaves some property even by gift to his sons, who are according to law his next heirs, then that sort of gift should not be exempted from estate duty; otherwise this clause will be used as a legal instrument to flout the Government and evade the estate duty. If the gift is made to some other person who is not in the line of inheritance, or a daughter or to some distant relation, possibly that may be permitted; but if a father is allowed to execute gift deeds in the name of his son or sons, then it will be very difficult for Government to pursue the property in their hands and get estate duty from them. These are the gifts which ought not to be exempted. I have serious objection to 'public charitable purposes'. I think the only agency in this country from which charity should flow should be the Government. This is going to be a welfare State. And it is going to look after all the physical wants of the country. I therefore think that no charity should be allowed. I hate even the word 'charity'. A rich and greedy man, by resorting to all sorts of foul practices, acquires wealth. Acquiring wealth by exploitation and by dubious methods is a sort of robbery. And then he becomes charitable! I do not think he has any right to be charitable. (*An Hon. Member*: To wash away his sins.) Just as the Catholics used to give bulls in the former days, he will pass some property to charity. He will exploit people to their very bones and, to make penance, will give something as charity.

Then I would very hastily refer to clause 31. Clause 31 refers to the exemption of interest of a Hindu widow dying within seven years of her husband's death. My fears are that the Finance Minister or the Law Minister has not taken into consideration the fact that many Members may have more than one widow. I know some Members in the House who belong to that category. What would happen...

Mr. Deputy-Speaker: How can they be here and have widows?

Shri S. S. More: I am talking about potential widows, Sir.

Mr. Deputy-Speaker: Let there be no reference to any Member of the House.

Shri S. S. More: I am trying to concretize the whole thing.

Mr. Deputy-Speaker: Barring the 500 people here there are 360 million minus 500 outside. Why should we again and again refer to Members here?

Shri S. S. More: I refer to the majority outside the House, Sir.

So if a man dies—and when he has more than one wife he is bound to die earlier than the wives—leaving two widows, what happens? That is a question to which some answer will have to be given. Acharya Kripalani says that they will re-marry. I would welcome that.

I am very hastily going through these provisions. In regard to clause 32 some Members of the Select Committee have made a strong sentimental excuse that the dwelling house should be exempted. I want to refer to the minute of dissent by Dr. Lanka Sundaram. He says that a dwelling house is the focal point and it should be exempted. He further says that this house should not be permitted to be rented for the purpose of fetching some income. I do not know why Dr. Lanka Sundaram with such a modern education should be so antiquated in his sentiments. Probably the contrary is the case! I do not accept his suggestion that such a big palace should be exempted, because persons

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who will be liable to a levy under this duty will be having large houses. We are suffering from shortage of living space. There are many persons in the country having no roof over their heads. If the man leaves such a large house, if the sentimental approach is to be extended, I would say that the members of his family should be permitted to live in their dwelling house but Government should apportion the living space in the light of their requirements and the remaining portion should be taken for such use as Government deems proper. That would meet the plea of sentiment as well as satisfy your fiscal requirements.

Dr. Lanka Sundaram (Visakhapatnam): On a point of personal explanation, Sir. I have added there "with a ceiling to the value of one dwelling house" and that it should not be rented even in part for purposes of securing this exemption.

Shri S. S. More: I would rather require one hour to go through all the points if I had to.

One more point and I will finish. I entirely agree with those who have urged that as far as the appeals are concerned they should be entrusted to a judicial tribunal. I will not refer to the particular clauses, but this enactment gives autocratic powers to the Board for legislating on so many points. This is a question of delegated legislation and this House should be very chary to permit such a strong measure of delegation. What will be the mental attitude of this Board? It is out for more money. There will be only bureaucratic justice. It will be not only the prosecutor, it will also be the judge. At least in the initial stages when the different phrases and terminologies used in this enactment have not become the subject of impartial judicial decisions, the pronouncements of this tribunal will hardly be of a quality to inspire confidence in the people. I want this Government to tax the rich. But at the same time they must create a sort of impression in the mind of the rich that Government is proceeding in an impartial manner and is prepared to give them a fair deal as far as possible within the four corners of this particular measure. So I would support the suggestion which has been made, and I am very happy to say that at least on this point I go in the company of Mr. Tulsidas Kilachand—with the greatest reluctance possibly—that all these matters should be entrusted to a sort of judicial tribunal. I know that the executive is encroaching upon the fundamental rights of individuals. They will be encroaching now upon the fundamental rights of property holders. I want to fight for the fundamental rights of the rich. I will take their rights away by legislation, but not in a bureaucratic, autocratic manner. At least for some time, till we have acquired a rich store of judicial decisions giving a clear idea about the different provisions, all these matters should be entrusted to a judicial tribunal and not to the Board as has been proposed in this particular measure.

Finally, before I conclude, I should like to express my entire agreement with the sentiments which Kakaji has expressed. My wonder is all the greater how he can be progressive when he belongs to the Congress.

Mr. Deputy-Speaker: Mr. Tulsidas Kilachand.

Shri U. M. Trivedi (Chittor): Sir, may I submit that those who have been in the Select Committee may not be given a chance and that others may be asked to speak?

Mr. Deputy-Speaker: The difficulty is this. Those gentlemen were not allowed to speak earlier because their names had been suggested for the Select Committee. If they are not allowed to speak now, when are they to speak—after the passing of the Bill?

Shri U. M. Trivedi: We were at the same time not allowed.....

Mr. Deputy-Speaker: Those who were not in the Select Committee were entitled to be heard—though, of course, all the five hundred could not be called earlier.

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Shri Tulsidas (Mehsana West): I rise to make a few observations, particularly on the question of administration and on the economic aspects of this measure. I do not feel that it is worth while discussing and replying to some of the arguments to which I have listened for the last two or three days, because they are more on a doctrinaire basis than anything else. I do not think they realise what this legislation is when they talk in terms as if this legislation is going to affect the bigger or the richer classes of people only. They forget that more hardship will fall, as my friend Mr. More has said, on the poorer or middle class people. Because, I would like to explain frankly that in any country the richer class has the aid and help of the lawyer class; and therefore no matter what law you make, they will see to it that they properly go through it. Therefore, please do not worry about the richer class. What I am trying to say is that this legislation is very complicated. I do not think there is any law in the world which is such a hotch-potch measure as this legislation. It is a complete hotch-potch. This has included different Acts from U.K. with all sorts of things from Indian traditions including *Dayabhaga, Mitakshara* and so on and so forth. This should have been a very simple legislation. I am not against the basic principle of this legislation. I am glad that Government has brought forward this legislation but in bringing this they have made it a hotch potch. I would like to make it clear and I would like to point out particularly how difficult it will be for the administration to work this law because there is going to be tremendous confusion in the country. Now I would like to refer, first of all, to clause 33—Aggregation. Sir, you will realise that by putting in this clause regarding aggregation, which is not there in U.K., they have created further problems. Even holder of estates which would be below the exemption limit will have to go to the Controller for the certificate of discharge. That means that he will have to do the valuation, whether it is Rs. 2,000/- or Rs. 5,000/-. The Controller will go into the valuation of the estate to determine whether the person has indicated the value of the estate correctly or not. Therefore, in every case,—whether a man has an estate worth Rs. 2,000/- or two crores he will have to go to the Controller.

Now please realise what difficulties it will create and the amount of work the administration will have to go through. They do not realise that such a legislation is not in the interest of the country. The other day I was reading in a paper that in the All India Congress Committee at Agra there was a feeling that we want a simple legislation. Here we are creating something which is really a headache, which will create confusion in the country—so much confusion that, we do not know what will happen. What is the benefit that the poor class will get by taking away something from the richer classes? What is the estimate of Mr. Gadgil. He says it is Rs. 12 to 14 crores. Are you going to take this amount from the richer class and use it for the social benefit of the poor? This is such a complicated matter that I have in my minute of dissent—in the last paragraph—stated my views clearly. I realise full well what it means. I would like to read this paragraph and I crave your indulgence for a minute:

> "I do venture to say that the wordings, the qualifying clauses and the long sentences in the different clauses of the Bill are too complicated, if not clumsy, for the understanding of the ordinary man. Clauses 23 and 25 may be particularly instanced in this connection. It is true that the language of law cannot be expected to be a sample of simple expression. But at least a lay man like me also feels that it need not be an essay

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in what amounts to calculated confusion and verbal complexities. I am afraid that apart from the substance and subject matter of the provisions, the very language in which they are couched will give rise to endless litigation and a bewildering variety of interpretation."

That is the point I wanted to make. I wanted to bring out certain points from which you will see how difficult it will be to put.

We have copied almost all the Sections of the U.K. Act. Clause 17 of this Bill defines controlled company, but it does not give the rules relating to controlled company. We have taken this definition from Section 46 of the U.K. Act. There, under Section 55 the rules are embodied in the Act itself. That Section runs to six pages and the rules are given. Similarly, in this Bill, the rules should be embodied. The rule making power is given to the Government and this House has no authority to change or amend them. It will be the officials who will make the rules and enforce them. Besides, I am afraid that without a counterpart of Section 55 of the U.K. Act, the rules that may be made will be considered faulty. They may be considered as beyond the implications of this Act. In this connection, I would like to say how this Act, even today is considered in England a complicated piece of legislation. I would like to quote a judgement which was recently published in England.

In the case of St. Aubyn & ors and Attorney General decided by the House of Lords in England and in appeal cases at p. 15, Lord Radcliffe, one of the Law Lords stated at page 45 of the report that "17 sections (this has reference again to some complicated sections 17) which constitute part IV of the Finance Act (which included section 46, onwards) are expressed with, what proves on investigation to be a vagueness so diffused and so ambiguous that they may well produce in practice the second alternative while adopting in form requirements of the first." The two alternatives which Law Lord referred to are set out by him at p. 44 and 45 of the report, "the tax payer is entitled to be told with some reasonable certainty under what circumstances and under what conditions liability to tax is incurred and is also to be told explicitly the circumstances and conditions of liability are those which Commissioners of Inland Revenue in their administrative discretion may consider appropriate".

Then I would further like to mention that there is a book called the elements of estate Duty by Beattie which is a very simple book. I am not a lawyer, but—I would like to explain this point by giving one more quotation with regard to section 46 of the Finance Act 1940 from page 96 of the above referred book. "The section is drawn in wider terms as to apply to cases which were never within the mischief which the Statute intended to cure. The Commissioners of Inland Revenue have intimated that they intend to apply the statutory provision in a reasonable manner, and in fact it is relatively rare to find Section 46 invoked at all. But it can only be regarded as highly unsatisfactory that the statutory provision should be so drawn as to give the Commissioners excessive powers of taxation, leaving the subject to rely on the benevolent interpretation of State officials." This is what the British book says. Sir, I am sure we all know that in any legislation we are giving more and more powers in the hands of bureaucracy and to the Government officials. We know how every Act is administered. When it comes to the positive question, I am sure everybody realises that the officials become shy. They do not utilise those powers but when it comes to harassment, when it comes to giving some trouble, then they utilise those powers. Then what happens? The judiciary is completely removed slowly and slowly. You cannot go to the court in these cases because the official is above everything. If we want to have this legislation, let it be

in a very simplified form. After all, this is the first time that it is being introduced in this country. Let the people understand the law, and its basis. You can always tighten it up when you find any loopholes. Neither the people, nor the administrators understand this law. It is not Delhi alone which will administer it. People down below in the South or small villages and cities, will not understand the law. Even lawyers have not been able to understand the law. Mr. More said he cannot understand it. Then, how are you going to administer it? Is it just for creating trouble in the country? I do not know how far the Finance Minister who has been always a person who realizes equity and fairness, will understand the importance of having a simplification of the law. Whatever fiscal measure he proposes, I would request him to see that the law is as simple as possible.

Mr. More and Mr. Gadgil have all the time been speaking about the Directive Principles of the Constitution. I am not here to say that I object to the principle of the Bill. I have said at the very beginning that I am a supporter of the Bill on principle. But there is a certain amount of misunderstanding. What are the Directive Principles of the Constitution? I will read them:

> "The State shall, in particular, direct its policy towards securing—
>
> (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
>
> (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
>
> (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

I would like you to mark those words also "to the common detriment". Now, what is "common detriment"?

Shri S. S. More: Who is to decide?

Shri Tulsidas: I am just telling you. Is it good to do anything which is going to reduce the productivity of the country? If you think that this sort of legislation which is so complex is good, then I leave it to you. But, I would like to point out that in this sort of legislation, the first thing to bear in mind is that the production of the country does not suffer, that the people who have been given a certain amount of responsibility in this connection do not have to worry about anything else.

I had raised at the conference called by the hon. Finance Minister of persons who had given amendments the question of this Bill, when passed into law, having retrospective effect. I am not a lawyer, but I feel that it would be unconstitutional to give it retrospective effect.

10 A.M.

Another important point I would like to urge upon this House is that in the Five Year Plan we have given a certain amount of responsibility to the private sector. Every time I hear people saying that the private sector is not doing its part, and not carrying out its responsibilities. But any one who understands at least something of what is happening in the private sector knows that the conditions are not favourable to help the private sector carry out its responsibilities. Even in the Income-tax law the principle has been accepted that when a new venture is started, special treatment should be given to it. Supposing a person starts a new industry with a large amount of money invested in it. It will take at least two or three years for the industry to start paying. Even if you build a house, it takes a couple of years before people can live in it; otherwise, it is mere brick and mortar. Suppose within six months of starting the industry the person dies. What happens to that estate? Do you mean to say with this sort of law, people will have any incentive to start new ventures? Even in Pakistan, an

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under-developed country, they have now introduced a measure specifying new industries investment in which will be exempted for estate duty purposes. I urge upon the Finance Minister to look at this problem in a very dispassionate manner.

I have nothing to say on the question of exemption. I do not worry about Rs. 50,000 or Rs. 75,000 but I strongly feel that it should be more than Rs. 1 lakh, because Rs. 1 lakh now is equal to Rs. 25,000 pre-war. I feel that it will at least give a middle class man a certain amount of estate for carrying out his responsibilities to his children or anybody else until the Government can provide them the facilities. And Government is not in a position to provide them today. Anyway, that is a point on which Mr. More and Mr. Gadgil may argue.

Shri S. S. More: If the present value of the rupee is to be taken into consideration, he said that Rs. 1 lakh of today is only Rs. 25,000/- of pre-war as far as money value is concerned. Is he prepared to say that the rates chargeable which are being contemplated by Government should be increased to four times in the light of money value?

Shri Tulsidas: I would draw the attention of the hon. Minister to the fact that in England there is no question of aggregation, and the principle is:

> "Since property is aggregable only if estate duty is leviable, it follows that the property on which duty is not chargeable or which is exempt from duty is also exempt from aggregation." (Beattie p. 119.)

That is the principle in England; they have also a certain Clause that if a person is to commute his estate duty in his life time, that is not aggregation. If you want to have the law as it is in England, let us have the beneficial clauses which they have, and not only take those clauses which are not beneficial and put them in a manner that will create more difficulties in this country.

I have nothing more to say, and shall offer my remarks when the Clauses come up for consideration.

Shri Patasnar: (Jalgaon): I rise to offer a few remarks as to the manner in which the Bill has been framed and the powers for carrying out the provisions of this Bill, which are given to the Central Board of Revenue and certain other authorities.

I find that the discussion on this Bill has taken place in a more or less unreal manner. Yesterday when I heard my hon. friend Mr. Gadgil, I thought that in his opinion this was a measure which was going to be of great help for the States. I do not know what justification there is for such a hope, because even according to his calculations, it is likely to yield about Rs. 14 crores or so as additional revenue to Government, and if a hundred crore of rupees or so of income-tax has not been able to effect that equality and levelling of wealth, I fail to understand how by the mere imposition of this additional taxation, they can effect that equal distribution of wealth.

Similarly there are others who have spoken as if this measure was going to strike at the very foundation of Indian society. They thought that Hindu law was something which had never changed, and which will never change.

Both these views, to my mind, appear to be unreal, because if we properly want to look at this question and in the right perspective, we should look at it as a pure and simple taxation measure, designed to augment the revenues of the States to a limited extent. I do not know whether the yield will be Rs. 10 or 15 crores, because there are many things which are still left undecided; we do not know what the rates will be, and so on. Therefore it would be difficult for anyone to say how much income this measure will bring in. I feel that we should look at this measure from a practical point of view and see what its result will be.

The main question to which we should address ourselves at this stage is whether this legislation has been properly framed. Will it achieve the object and purpose for which it has been introduced, without being unjust to those to whom it is going to be made applicable, and without causing unnecessary harassment?

The next question that we have to consider, as I said earlier, is whether this Bill which has been introduced as a new measure for the first time in our country, will lead to endless disputes, or will be a simple measure, capable of being implemented in a simple manner.

I said earlier—and I still maintain it—that the Statement of Objects and Reasons itself has led to a lot of misunderstanding. It is stated:

> "Though the levy and collection of income-tax at high rates since the War and the investigations undertaken by the Income-tax Investigation Commission in a number of important cases of tax evasion, have, no doubt, prevented to some extent the further concentration of wealth in the hands of those who are already wealthy, yet these do not amount to positive steps in the direction of reducing the existing inequalities in the distribution of wealth. It is hoped that by the imposition of an estate duty such unequal distributions may be rectified to a large extent."

This is not a thing which has been achieved anywhere else in the world. As the hon. Finance Minister himself said there are many other countries in the world where such a measure has been in operation for a number of years, but we have got some statistics to show that this is not the result that has been produced in those countries. For instance, in the United Kingdom, in 1911-12, 5 per cent. of the people owned 85 per cent. of wealth, in 1926-27, 5 per cent. owned 80 per cent. and in 1940—47, 5 per cent. owned 70 per cent. That means, in a period of thirty years, 5 per cent. of the people, instead of owning 85 per cent. of the wealth, are owning only 70 per cent. and there might as well be other causes which have contributed to this result. Therefore, the claim that is made is rather too tall. A lot of misunderstanding has been created on the one side, by raising hopes which are not likely to be fulfilled, and on the other, by creating apprehensions in the minds of some to regard this Bill as if it was going to strike at the very foundation of the economic structure of society. After all, as Mr. Gadgil has said, —and I agree with him—this Bill is going to affect only a few, in fact, a very small percentage of our population, and therefore no such wonderful results are to be expected.

My next point is, whether, now that the Bill has been taken into consideration, it is uniformly applicable to all sections of the population. For instance, there is the difference between the *Mitakshara* and the *Dayabhaga* schools, which has been debated upon already in this House by several hon. Members. So far as I have been able to follow their speeches, I find that no definite suggestion has been made by any one. But to my mind it appears that it would not be difficult for us to remove this anomaly. If at all we want to pass a measure of this kind, then I agree with my hon. friend Mr. More in saying that there is no justification for this difference. We can make adequate and suitable provisions by which the measure can be made applicable equally to all, whether they belong to the *Mitakshara* or the *Dayabhaga* school of thought. To that extent, there will naturally be an objection that we are affecting the Hindu Law. But as has already been pointed out, the Hindu law is not a thing which is so sacrosanct that it has not changed in the past or that it will not change in the future. I think therefore it should not have been beyond the powers of the framers of this legislation, to introduce provisions which would have made the measure applicable uniformly to all sections of the population, thereby preventing any feelings of partiality to any one particular school. Unfortunately that has not been done, and the

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only reason to my mind for not doing so is that perhaps there is a fear that some sections of our population who oppose the Hindu Code Bill might probably have tried to oppose this Bill also. But if there is a desire to carry out a certain thing, and if there is a desire to wound, then there must not be any hesitation to strike. So, if it was found desirable to make it uniform, I think it could have been possible to do so.

The next point to which I would like to address myself is with regard to Clause 9. That clause has been discussed threadbare already. I do not know why the words *'bona fide'* are necessary at all, and how they are going to be advantageous. If the transactions are not *bona fide*, then these gifts cease to be gifts. Supposing a man makes a gift two years before his death, unless it is a *bona fide* gift, it will not be accepted as a gift at all. By inserting the words *'bona fide'*, they have made it more difficult for the assessee, who would be required to prove that it was a *bona fide* gift. Besides, large powers are vested in the executive authorities, under the provisions of this Bill. Now these authorities are, as mentioned in Clause 4, the Board, the Controllers of Estate Duty, and the Valuers.

So far as the drafting of the Bill is concerned, the framers of the Bill have taken bodily the provisions of the U.K. Act, and embodied them in this Bill. We find in the Notes on Clauses, that

> "In the drafting of the Bill including the definition and interpretation clauses (clauses 2 and 3) the U.K. Acts on the subject have been followed as closely as possible so that the assistance of the U.K. decisions may be available."

That is exactly the mistake which has led to the contention of several eminent people who are practising law, that some of the provisions are such that even the lawyers would find it difficult to interpret them properly or in the same manner at any rate. There will be a number of different interpretations. So, when we wanted to frame this legislation, we could have relied upon the experience of the English courts, and made suitable provisions in the light of such experience, which will fit in with Indian conditions. If simply with a view to having the advantage of the decisions of the English courts, we bodily lift the wording of the English Act, and embody it here, naturally this is the result that will follow, because several of the laws, as regards passing and transfer of property, inheritance, succession etc. are entirely distinct from those that prevail in India. I am afraid that if we rely too much upon the wording of the English Act, there will be a lot of confusion. Yesterday, I found one hon. Member Dr. Krishnaswami throwing out a challenge, let three or four lawyers sit together, and give the same interpretation on the different clauses of this Bill, or at least correctly interpret it. There might be a slight amount of exaggeration in it, but the fact is that many of the clauses are really such as could have been made simpler, instead of being clumsy. It would have been better to have borrowed the idea, the basis, the principle, rather than the wording itself.

Well the next point is with respect to the manner in which the Act is going to be enforced. I will draw the attention of the House to clause 35, for instance:

> "The principal value of any property shall be estimated to be the price which, in the opinion of the Controller it would fetch if sold in the open market at the time of the deceased's death."

The words "in the opinion of the Controller" are liable to be interpreted in a manner which will be harsh on those who have to pay this tax. One can understand that the price will be the market price and therefore, it could have been easy to say that the principal value of any property shall be estimated to be the market price, whatever it is. But the words "in the opinion of the Controller, it would fetch in the open market" is liable to

make the opinion unchallenged. It is something like the words which we had in the old Defence of India Act when they said: 'If in the opinion of a certain officer, there is likely to be a breach of the peace, then...' If once it is to be determined only by the opinion of the Controller, then nothing more could be done. Therefore, it is strange why in a measure like this, these words 'in the opinion of the Controller' are put in. That would make his opinion practically arbitrary. If once he decides and it is his opinion, there is an end of the matter. It may not be the market price, but if in his opinion it is the market price, that is the end of the matter. This is what is stated here.

Similarly I find the same thing with regard to clause 49: method of collection of duty. As a matter of fact, when we are imposing a duty of this nature, it is the method to which we must give more attention rather than to rates or to other matters which may change. Clause 49 says:

> "Estate duty may be collected by such means and in such manner as the Board may prescribe."

Can anything be more vague than this? All these powers are left to the Board.

Pandit K. C. Sharma (Meerut Distt. —South): The Board will make the rules. What is the difficulty?

Shri Pataskar: After all, it is a body which is more interested in the collection of revenue. I would, therefore, like that estate duty may be collected by such means as we prescribe. Here everything is left to the Board. We, as a matter of fact, while legislating could have prescribed the manner, for example, 'In the manner prescribed in the Civil Procedure Code for recovery of debts and so on'.

Strangely enough, there is also another clause, 71. It says:

> "Any estate duty or deficit duty and any interest or penalty payable under this Act may, on the Certificate of the Controller, be recovered from the person liable thereto as if it were an arrear of land revenue by any Collector in any State."

I know there are many other enactments in which similar provisions exist. But then how are you to correlate the two? Under clause 49, powers are given to the Board. Therefore, there is hardly any precision about this matter.

Then there is clause 73.

When I started my political career, long ago in the old regime, we were all clamouring that whenever there was any matter in dispute between the executive and the subject, it should be left to be decided by any independent judiciary. Now, we are always trying to see that the jurisdiction of the judiciary is always excluded. In a matter like this when it is the Board and the subordinates of the Board who are going to carry out the provisions of this Act and determine the interpretation of almost everything given under this Act, is it not desirable that there should be something left to be decided by the judicial authorities? I do not mean to say that the Board or the officers will always go wrong, but to inspire confidence it would have been much better if we could have made some provision by which the aggrieved party can go to a court of law and get it decided there or, if not a regular ordinary court, at least a Judicial tribunal. For this, provision could have been made in the Bill. That is one of the suggestions which I would like to make in order that the Bill may be more acceptable to all sections of society; in order that confidence may be created in the public that this matter is not to be treated on the administrative level, I think it is much better that some such provision should be made.

Then there is another thing to which I would like to draw your attention, Sir. That is in regard to clause 81:

> "Subject to the condition of previous publication, the Board may make rules not inconsistent with this Act prescribing all matters which by this Act are required or

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permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out the purposes of or giving effect to this Act."

So far as I find in all enactments it is the Government which make the rules, not any other authority under the Government, while here the rule-making power is given over to the Board. Whenever we say in a legislation that the Government shall frame rules, what we mean is the Government which is responsible to the legislature. That delegation is usual and common. But I at least have not come across any enactment in which this power is given not to the Government but to an authority created by Government. It may be responsible to the Government, but this delegation of power is not to the Government to make rules, but to somebody else—to the Board. I am not sure whether this is constitutionally right or proper and whether this delegation is justified. The Government could consult the Board, but where was the necessity of leaving all this to be decided by the Board itself?

Therefore in all these clauses, 59, 49, 81 and other provisions, what I find is that all these matters are left to be decided by the Board.

Then I heard during the course of the discussion of this Bill that it is going to be a lawyer's paradise. Of course, this Act is going to be a paradise, but not for lawyers. Because what is going to happen is this. Probably the Controller will be some Income-tax Officer. So it may not be so much the lawyer as the so-called income-tax experts, the intermediaries, who hardly know anything about interpretation of law, who will prosper.

Mr. Deputy-Speaker: It may be a paradise to the dead man.

Shri Pataskar: Paradise to the intermediaries who approach the Income-tax Officer. And people prefer to engage the services of these intermediaries. I do not mean to condemn any class wholesale.....

Shri U. M. Trivedi: You need not be afraid. The condemnation is correct.

Shri Pataskar: Now, everybody who has paid a visit to Income-tax offices knows what part is played by these so-called income-tax experts. A lawyer, whatever may be the prejudice against him, is subject to some discipline. But these income-tax experts are subject to nothing. Many of them do not even know interpretation of law and I am sure that if this complicated piece of legislation is going to be interpreted by these so-called income-tax experts rather than by the actual lawyers, it is going to be a paradise for the former. Therefore, this has to be seriously taken notice of.

I would like to say, that the idea underlying the measure is laudable. It is not uncommon, it is not unusual. There are similar enactments in other countries as well. But we are not satisfied so far as the actual framing of this Bill is concerned. Therefore, my final submission to the hon. the Finance Minister will be that we should try to see that whatever clumsiness has entered into this piece of legislation should, as far as possible, be removed. I would also request him to consider whether, instead of leaving all these powers in the hands of the Board and its executive officers or their subordinates, some sort of judicial machinery cannot be introduced by which at some stage a person can go to that authority and get matters decided. I know there are some provisions with respect to going to High Courts, but that is not enough. Therefore, to my mind this is a measure with a very laudable purpose but it does not take into account the defects in the system of income-tax. I for one would think that as a matter of fact if many of the defects which exist in the present income-tax administration were to be removed, we will get far more than what we can get by this sort of legislation. And,

if we have failed there—as stated in the Statement of Objects and Reasons, for certain reasons, at least we have not succeeded—then by the same machinery, by the same method and the same procedure, I do not know whether we will succeed in this matter either. As I said this is also a matter for the consideration of the Finance Minister. He will kindly take into consideration whether it is really proper and within our competence to delegate the rule-making power not to Government as we usually do but to some other authority.

After having said this much I wish all success to this innovation. At the same time, while we are discussing the Bill clause by clause, I think we should not stick to whatever is there in a spirit of partisanship but we should try to make it as simple as possible in order that this first experiment in the levying of this tax will go down in the history as a success and may be followed subsequently by similar enactments in future. If we approach the subject not in a spirit of condemnation that it is going to level down the status of a few and that it is likely to ruin the foundations of Indian society—these are matters which ought not to be stressed too much—but we approach it constructively, then we can succeed. When we want to introduce a piece of legislation of this type, we must all take care to see that by our co-operative efforts it is uniformly applied, that it is just to those to whom it is applicable and all avoidable harassment is avoided and we create among them a sense of fairplay and justice. Probably the Board of Revenue and its officers may be very fair but in order that we may inspire confidence in the public, it is better to have the matter decided by some authority of a judicial nature.

With these few words I commend this Bill to the consideration of this House.

Shri Morarka (Ganganagar-Jhunjhunu): From the several minutes of dissent which are appended to the Select Committee Report and from the various amendments which are tabled on this Bill, it is apparent that there are two extreme views which are advanced in this House. One view is voiced by those hon. Members who think that this Bill is a lenient one and that it is not going to serve any purpose and that the Government, particularly the Finance Minister has been soft towards the property owners in this country. The other view is voiced by those hon. Members who think that this Bill is a very harsh Bill and that the provisions regarding exemptions etc. are very inadequate and meagre, and that this measure is going to disturb the economic pattern of this country by discouraging savings etc.

Now taking first the first group who think that this Bill is a very lenient Bill, they must realise that this is the first time that we are introducing death duty in our country and since that is so we cannot, with any accuracy, forecast all the reactions that this Bill will have on our savings and other things of that nature. Therefore, it is but natural and desirable that like all beginnings this beginning should also be made on a moderate scale and in a cautious manner. If later on we find that this Bill is not achieving its purpose, we would always be at liberty to change the provisions of this Bill or alter the rate of duty. But right from the beginning it is no use making this Bill too drastic or rigid as some want it to be.

As I suggested previously also, the main purpose of this Bill is not the collection of revenue for the State or the financing of the Five Year Plan, but, the main purpose is to reduce the economic inequalities in our society. These inequalities cannot be reduced overnight or in a year. For this purpose, we have to have a definite plan and a positive programme according to which we have to move. Now in our anxiety to demolish these great estates we should not be careless to see that no greater social injury is done than these great estates can ever do.

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Apart from all this, there is another reason also. There is a positive danger that if these provisions are made too drastic, or radical then that is bound to have some effect on our savings. Since there is a danger that the tendency to save may disappear or the tendency to invest may be curbed or replaced by a tendency to hoard, we must be very careful to see that we do not make the provisions so drastic as to encourage these tendencies. It is not possible for any progressive country to tolerate—and much less for a country like India which has before it a gigantic Plan to execute—to allow these tendencies to grow. We must not forget that the heirs of today will be the deceased of tomorrow and what tax they pay today is bound to influence their conduct—as savers. Therefore, I appeal to the Finance Minister once again not to make the provisions of this Bill any more drastic than what they are at the present moment.

Some of the hon. Members of the Communist Party feel that the Finance Minister is very soft towards the microscopic minority of the prosperous citizens. This, in my humble opinion, they say only because like them our Finance Minister is not accustomed to talk in dogmatic, dialectic or dramatic fashion which is glorified by them as something very progressive. Mr. Nayar a Member of the Communist Party writes in his minute of dissent that this Bill as it is, will not and cannot contribute towards the ushering of a new egalitarian society. I think Mr. Nayar is right. The egalitarian society of Mr. Nayar's conception can never come into existence in India with its democratic traditions and spiritual heritage. The sooner Mr. Nayar realises this the better it is for himself and his party so that they can step down from the romantic utopia to the hard facts of Indian life.

Now about the other view, namely, that this Bill is a very harsh Bill and the provisions regarding exemptions etc. are inadequate and meagre, I would like to say that the exemptions recommended by the Select Committee are not only fair and reasonable but they are very adequate. These minimum exemptions have to be fixed by each country according to its own needs, that is to say, according to the social conditions in that country, the *per capita* income of the country, the national wealth of the country, and according to the standard of living of the people. It is no use our trying to copy the provisions of America, the richest country in the world, for India, almost the poorest country in the world.

In this connection, I may also mention that in India we have a peculiar institution, the institution of the Hindu joint family. Now, this system does not prevail in any other country, nor is there any system parallel to this. The result is that even in this country when we have an exemption of Rs. 50,000 only, it is not that the entire property of the family over and above this Rs. 50,000 that is going to be taxed, but it is only the share of the deceased, which would be first determined, and then out of that share the minimum exemption of Rs. 50,000 would be deducted and only on the residue, the death duty would be charged, while in other countries, even where the minimum exemption is two or three lakhs the entire fortune of the family over and above these two or three lakhs is subjected to the death duty. Then, Sir, some hon. Members have compared some provisions of this Bill with the provision in a foreign country but in all fairness I must say that any such piecemeal comparison with other countries is not only deceptive, but it leads us to erroneous conclusions. If we want to compare the provisions of this Bill with the provisions in other countries, we must compare all the provisions of this Bill with all the corresponding provisions of other Bills in other countries. Then and then only can we have a proper idea.

[SHRIMATI AMMU SWAMINADHAN *in the Chair*]

It is no use comparing the provisions of minimum exemptions of U.S.A. or the provisions regarding quick succession in Chile and Japan or the provisions of public charities in Australia, or aggregation of the U.K. These can only be misleading, but if we want to be fair, we must compare all the provisions of the Bill as a whole with all the existing provisions in other countries.

I was very much surprised to read from the Select Committee report the views of one hon. Member who says that till such time as all the States have passed the resolution regarding the agricultural lands, the agricultural property should not be subjected to this death duty. But the hon. Member conveniently forgets that if the agricultural property is exempted from the death duty then all those big landlords, zamindars and feudal lords who have become fabulously rich would be exempted from this tax. The contention of the hon. Member is that if the property is not exempted then there would be some type of discrimination between one State and another. But he again forgets that if the entire agricultural property is exempted and only non-agricultural property is subjected to tax, then there would be a more violent type of discrimination between agriculturists and non-agriculturists. Besides I feel that the fear of the hon Member is only imaginary, because the force of public opinion behind this Bill is so great that no State can live out and sooner or later they will have to fall in line and pass the necessary resolution. Even if they do not pass the resolution, the non-taxability of agricultural property will be taken into consideration at the time of fixing and determining the rates of duty. Therefore, I do not feel that there is any justification in his asking for exemption for the agricultural property.

Some other hon. Members have suggested that the Army and the Police Force should be exempted from the provisions of this Bill. This seems to me to be one of the clearest instances of how sentiment falsely applied will lead to real injustice. There is only one way by which the State can discharge its just obligations towards these dependents and that is by making proper and adequate provision for pension. If these hon. Members are very serious about these dependents, they must only try to persuade the State to make adequate provision for them, rather than make any class distinction for the army and the police force. Besides my second objection which is hardly less important than the first is that after all how many soldiers and police constables are going to be affected by this measure? You know that there are very few soldiers and constables who have got property worth more than Rs. 75,000 and if one has not got property more than Rs. 75,000 the question of paying a death duty does not arise. It is not, therefore, fair to say that in the name of the army or police force this exemption should be made.

One of the most controversial clauses of this Bill is clause 9. Clause 9 deals with gifts within a certain period before death. The Bill provides two years for general gifts and six months for charitable gifts. Most of the dissenters in their minutes of dissent want that this period of two years should be reduced to one and that this period for charity should be completely abolished. Now, speaking first about charities. I must say there is considerable force in the argument for leaving out this period of six months. After all the main purpose of this Bill is to disintegrate the big estates or to prevent the accumulation of big estates. If you make charity and if that charity is genuine and for public purpose then to that extent their big estates are disintegrated. In my humble opinion it is immaterial whether you make the charity six months before your death, or three months before death, or any other time. As long as these charities are

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made and as long as they are genuinely made, for public, the purpose of the Bill is served. The only hon. Member, in the House, who seems to disagree with this proposition is Kaka Saheb. But he also is not against the basic principle of charity; but he wants the nature of the charity to be determined by the Government rather than by private individuals. Yesterday, while speaking, Kaka Saheb gave the example of a certain gentleman in Rajasthan. I am very sorry that since Kaka Saheb's acquaintance with Rajasthan is a very recent one, he could not appreciate the importance of that charity in Rajasthan. If I may say so, that type of charity is the finest charity ever known to anybody in the world. Thousands and thousands of people benefit in that backward State every year in those institutions. I cannot understand Kaka Saheb's possible objection against that type of charity. If that type of charity had existed only on a wider scale perhaps the very necessity of estate duty would not have arisen. It is only because such charities do not exist that the Estate Duty Bill has to come up.

So far as the provision for general gifts is concerned, I think the period of two years is more than reasonable. I say so because like all other provisions this provision is also copied from the English Act. In England the period is five years: here it is only two years. In England the habits of the people, the family ties and the relationships are quite different than what they are here in India. In England as soon as a son attains the age of majority he begins to stay separately from his parents: he starts doing independent business and the relationship between the son and his family is reduced merely to a matter of technical formality. Here in India that is not so. The relationship between the father and the son are so cordial that the father would never hesitate to make gifts even several years before his death. So, in my humble opinion, the period of two years is more than reasonable and any more leniency in this respect would be misplaced.

Then one general criticism that is made against this Bill is that it may discourage savings and that it would disturb the economic equilibrium in the country. While I agree that one of the finest motives in human life is to make proper provision for one's dependents, but at the same time I am reminded of a characteristic dilemma propounded by Prof. Sidgwick the substance of which is that any restriction on the right of bequest tends to reduce work and savings, by testators while the absence of such restrictions tend to reduce work and saving by investors. So from that point of view also this taxation may exist.

Finally I would like to say that in England the banking habit of the people is so developed that the entire property of a person is within the knowledge of his bankers or his attorney. And that makes it very easy for the Estate Duty officers there to lay their hands on the property. But most of the people in India invest their savings in jewellery and bullion and that also they keep outside the knowledge even of the family members. It is therefore very doubtful how far the Estate Duty officers would be able to assess the real worth of the deceased. This difficulty is made more complicated by the existence of the Joint Hindu Family system where Estate Duty officers would never be able to decide whether a particular piece of jewellery belongs to the deceased husband or to his surviving wife.

Before I sit down I would only make one appeal to the hon. the Finance Minister and that is whether he can see his way to accept three amendments: one concerning independent tribunals, the other concerning the aggregation of property already exempted under clause 32 and the third about the period of charity which I have just mentioned.

Shrimati Tarkeshwari Sinha (Patna East): Taxes, they say, are as inevitable, and, for that matter, as inescapable, as death itself. But from time immemorial, we in India, have been accustomed to expect their visits, not to fall on the same date. They have been used to hunting singly, and not in company.

But in a few days' time those halcyon days of taxless death will become things of the past. The report of the Select Committee is before us and I think it as our good fortune that the honour of presenting a modernised and equitable tax structure to the country has fallen on our shoulders.

It is stated in the Statement of Objects and Reasons of the original Bill that

> "The object of the Bill is to impose an estate duty on property, passing or deemed to pass on the death of a person..... It is hoped that by the imposition of an estate duty such unequal distributions may be rectified to a large extent. Such a measure would also assist the States towards financing development schemes."

It is very natural that such an important fiscal measure as the Estate Duty Bill must arouse a certain amount of vigorous strong criticism, and also differences of opinion. Though there is a certain volume of opinion, which in the general course of circumstances, is against the principle of the Bill, I think that their voices and their shouts have become glamourless. The country has received the Bill with an open smile and cherished blessing. Politically and economically this Bill is regarded as a Bill of pose and poise, an attitude pleasing to the poor, and a balance easing the uneven proportion between wealth and poverty for the better health of the country's economy.

Yet before I garland the plan with my good wishes, I would like to say a few words about certain points of the present Bill. There are still a few salient points which require reconsideration on the part of the Finance Minister who claims to be much more intellectual than we are but still we do feel that there are one or more points that do require reconsideration and I hope he will open his ears and listen to all the points that have been raised in the House and consider when he makes his own speech.

It is easier to make a person or nation more unhappy than to make more happy and this Bill, if nurtured in haste and nourished on imitation ideologies, will do more harm than good.

To weaken the country's newly built economy by imposing haphazard control in order to wage war with poverty, will be to act like the story of an Arab Chief who poisoned the wells in order to do away with his enemies while forgetful of the fact that he and his tribesmen had no other sources of water.

Take the case of life insurance which is just in an infant stage in our country. The Select Committee has fixed the exemption limit in respect of money payable on insurance policies effected on the deceased's life as Rs. 5,000. We know that insurance enterprise in our country is just in an infant stage, and insurance habit is still to be cultivated in this country. The report of the Select Committee or the attitude of the Select Committee is bound to give a severe blow to the development of the Insurance habit in India. There is great need for carefully fostering insurance-consciousness among the public because the development of life insurance is of great importance to the country, as it is the chief source of savings necessary for the formation of the country's capital. Then also, its importance is all the more great because provision for one's old age and for the family in the event of death of the bread-winner, has, in India, to be provided by the individual himself, in the absence of a State-sponsored comprehensive scheme. Suppose the bread-winner dies, or he becomes old

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he retires from the service, there is no chance of getting any type of social security or economic security from the State. Unless and until the State provides at least for the minimum of a security the State should not touch the little saving that is made through life insurance policy, because it is going to affect only the middle-class and the lower class. It is not going to affect the higher class of people who are big businessmen and capital magnates. It is only because the middle-class persons have ultimately to fall back upon this earning only for their families as well as for their old age that they invest in their life policies. So to put the exemption limit at Rs. 5,000/- is too low and I hope the Finance Minister will reconsider the whole aspect of the case.

Thirdly it can convincingly be argued that the provisions of the Insurance Act, 1938, as the Finance Minister must be well aware, with respect to nominations and conditional assignments are very useful to the policy. Nominations and conditional assignments now account for 90 per cent. of the total transfers of life insurance policies. Nothing, therefore, should be done to deprive the policy holders of the advantage conferred by the Insurance Act. But the benefits of the Act are neutralised by certain provisions of the Bill. For example take Clause 9 which provides that *bona fide* gifts of property by a deceased person at least two years prior to death are exempt from Estate Duty. Now some persons have doubted whether this exemption can be applied to gifts of moneys payable under life insurance policies. But my opinion is that gifts under life policies are not quite different from gifts of any other types of property. So I would like to suggest to the Finance Minister that Clause 9 of the Bill be amended so as to make it clear that exemption provided therein applies also to gifts of life insurance policies made *bona fide*. If the policies are given to the donees two years before the death it must be certainly exempted. In the U.K., there is a similar exemption in respect of *bona fide* gifts made three years before the death of a person and such exemption applies to gifts of life insurance policies also.

Then I come to clause 10 of the Bill which provides that the donee immediately assumes possession and enjoyment of the property and thenceforward retains it to the entire exclusion of the donor. It is a very embarrassing clause for the donor. Is it proper to lay down this onerous condition which insists on the donor to divest himself of all interest in the policy? This restriction, I am afraid, will undo the entire benefit that is provided by the Insurance Act of 1938. The disadvantages which will flow from these restrictions, would outweigh the advantages provided by the exemption of the estate from the insurance policy.

I then come to clause 14 which lays down that money received under a policy of insurance effected by a person where the policy is kept up by him for the benefit of the donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him where the policy is partially kept up by him for such benefit, shall be subject to Estate Duty. This clause, it seems, has been bodily lifted from the English Act, but the framers of the Bill have overlooked the vast difference between the conditions obtaining in the two countries. Therefore, everything which is provided in the English Act cannot be smoothly provided in our Bill. In this country policies are made for the benefit of the wife of the policy-holder. The premiums are also paid by the policy-holder and not by the beneficiary whereas in England it is fairly common for the wife to have a separate income, wherewith, she would be in a position to pay the premiums on a policy gifted to her by her husband. In India, only in a very small number of cases the wives will have an income of their own to pay premiums on policies gifted to them

by their husbands. Only 5 per cent. of the women may be having income of their own. They have no right of that sort. So it is very embarrassing to put all the Acts and all the provisions of the English law on our head knowing what embarrassing situation they will create in the future.

Again, even in cases where nominations and assignments are made, the premiums are actively paid by the policy-holders with the result that the benefit of clause 9 exempting the policy from estate duty will not be available. Consequently clauses 9, 10 and 14 together will render illusory the relief in respect of life insurance policies envisaged in these sections.

So, in my opinion a specific provision should be incorporated in the Bill itself for granting exemption from estate duty in respect of life insurance policies upto the minimum of Rs. 30,000 where the policy moneys are payable to the named beneficiaries.

Secondly, proceeds of life insurance policies payable to the deceased person himself, where the policy was taken out for the specific purpose of paying estate duty, should be exempt upto the extent of the estate duty itself.

Thirdly, it should be made clear that clause 9 of the Bill applies to gifts of life insurance policies. I would like to say a few words regarding clause 4, which enumerates the authorities for the purpose of estate duty and their functions. Many of the speakers, I have heard this morning, have touched this point and I cannot check my temptation to refer to it also because it is one of the fundamental defects of this Estate Duty Bill.

I agree with Shri Tulsidas Kilachand totally and wholly who in his dissenting minute holds that as the Controller of Estate Duty would be the first authority to make assessments, and as an appeal against them lies to the Central Board of Revenue, both being the same revenue clearing machinery of the Government, the appeal cannot be of much practical value. I certainly agree with him because this militates against the objective of an impartial and unbiassed decision being taken by an independent tribunal, entirely divorced from the considerations of the revenue accruing to Government which is the interest of the revenue collecting authorities. It is necessary that the assessee must feel that justice is being done to him and that in the execution of the law the scales have been held even as between himself and the revenue imposing authority. There ought to be an independent appellate tribunal because not only should justice be done but justice should also appear to be done.

Shri R. K. Chaudhury (Gauhati): On a point of information, Madam.....

Mr. Chairman: Order, order. Let me see if the hon. Member is giving way.

Shri R. K. Chaudhury: I think she has given way, Madam. Is not the hon. Member tearing into pieces the Bill which she had in the beginning of her speech praised so much?

Shri S. S. More: She has every right to be inconsistent.

Mr. Chairman: The hon. Member may go on with her speech.

Shrimati Tarkeshwari Sinha: I am not questioning the authority or the value of the Bill. I do not say that it should not be passed. I am only suggesting that such and such things should be done in the Bill. I am not questioning for a moment the authority of the Bill itself.

I come to the last point. The Bill is so complicated and requires so many points to be dealt with. But the Deputy-Speaker has suggested that we should confine ourselves to some of the points. So I would come to my last, but very important point indeed. It may not be relevant to this particular moment but it may be of some

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relevance to the coming events in the future. It has been argued by almost all the big economists of the world, including Prof. Pigou and Dr. Dalton, that death duties are no deterrent to small-scale business and savings. But alarming reports as to how death duties are strangling a high proportion of small business have come from Britain, and they have been brought forward by the Economist Intelligence Unit, which was invited by the National Union of Manufacturers to examine the evidence available concerning the effect of death duties on the structure of industry. They held therein that death duties are causing a progressive concentration of industries in a few hands and making it difficult or impossible for many small firms to modernise their plants and equipments. They were panicky about the fact that if the high rate of death taxation on personal fortunes and estates continues the erosion of one of the most important sectors of the economy will continue, and the industry will go to all the big managerial corporations and small scale industries will in the long run vanish, and they are vanishing to a great extent.

It will be a major tragedy for the future if such a tendency creeps in our economic system, because we know that our economic system is just in the infant stage, and the importance of small-scale business in our economy cannot be questioned. So I would suggest that the small business must never be allowed to be shadowed by the impact of the estate Duty, because a healthy competitive economy is very desirable and it is only possible if small-scale industries are allowed to run with large scale industries. They are like the young trees in the forest which must be allowed to grow so as to replace the older trees that may be decaying. The young trees must not be allowed to be shadowed by the impact of older trees. This aspect of estate duty is already creating great interest in England and in the very near future they are going to appoint a Committee of Enquiry to go into this aspect of the matter. I hope our Government will also give due and detailed consideration to this aspect of the question and then decide upon the ways and means of the future.

11 A.M.

Timing is as important in politics as in cricket. I do not think it is the time to embarrass the business class and give them a dose of fruit salt, because they are already panicky and shaky. I hope the Finance Minister will try his best to smooth the rough corners of the Bill and mellow the constraint of their octopus grip to suit these difficulties and those which have been mentioned by other Members and give, in his characteristic way, all smiles and no heart-burning to the nation

Shri H. N. Mukerjee (Calcutta North-East): I rise to speak on the Bill before us, this morning, with mixed feelings. I wish I could unreservedly congratulate the Finance Minister on the Bill which he has placed before us. And actually we had, at an earlier stage of the proceedings, welcomed this measure. But I am sorry that the form in which this measure has come before us leaves a very great deal to be desired. It is a measure which limps its way, not only because of the peculiar complexity of its technical formulations in regard to the clauses, not only because it uses the crutches of an administration which has unfortunately been found too often to be rather inefficient and, I am sorry to have to add, occasionally corrupt, but also because it does not deal with the reality of the problem with that courage and comprehensiveness which at any rate we on our side would desire to be shown by the administration of our country. That is why I give my support to the Bill—of course, I wish that this gets into the statute book as soon as ever it is possible,—but I am sorry that

there are many lacunae which should have been removed.

I say this specially because last November, when this Bill was discussed by this House, I had said that this Bill does not go as far as it should. And in reply the Finance Minister, who does not always vouchsafe to us replies to points which we try to make in our own limited fashion, told us at any rate on that occasion that he wants the Select Committee to go forward and "to go as far as you wish". I said 'it does not go far enough, I wish it had gone further.' And he mentioned me by name in his reply and said "Go forward as far as you wish".

[SHRI PATASKAR *in the Chair*]

Unfortunately the Finance Minister has not chosen to go as far as he gave an impression at that time that he wanted us to go.

I should like to say at the outset, however, that an impression is being sought to be created from time to time that it is a socialist measure, and that gives a handle to some of my hon. friends like Mr. Kilachand to point out how this is going to kill the goose which lays the golden eggs and that sort of thing. But we all know very well that it is not a socialist measure at all. As a matter of fact a little while earlier I was listening to the speech made by my hon. friend Mr. Morarka. I was listening to that speech with some amusement. But he said something which was rather significant. He said that the democratic traditions of this country are such that we do not propose to have an egalitarian society. After all, the Constitution we have got is a very limited document but quite apart from what my hon. friend, Mr. Gadgil, said yesterday so eloquently and sometimes movingly, actually I happened to go dipping into the pages of the Mahabharata the other day and I found that there was a sage called Sambara, who was making certain comments which showed that he had had a very lively realisation of not only the agonies of poverty but the degradation which poverty brings. He stated that poverty is death, death by degrees, "पर्यायमरणं" agonising death. He has said that there is no sin which is more grave and which is more to be shunned than the sin of being in a position where you can have your food today, but you are not sure of your food tomorrow and do not know what is going to happen tomorrow. This is a thing I have found in Mahabharata. I read the other day some reference to the *upakhyayana* Dhruva. Dhruva was doing *tapasya* and Indra, king of heaven, trembled for his throne. Shiva, Brahma, and Vishnu—or someone of the trinity—came down from heaven before him and said, "You stop your *tapas*. What is the boon you desire?" because they were apprehensive of what he might want. And Dhruva said:

"स्वस्त्यस्तु विश्वस्य वरं न याचे"

"Swastyastu Viswasya, varam no yache" "Let there be well-being on earth. I do not want a boon". That is the tradition of our country. That is the tradition which Gautama Buddha has left for us. He cast off all the paraphernalia of regalia and went out into the world in search of the Eight fold Path for the elimination of all suffering. That is the democratic tradition of our country. It is a shame; it is a pity that we are not living up to the finest traditions of our country. I say that in spite of all that is said about us, we communists stand for the real utilisation of all that is best and greatest in the traditions of our country and that is why I say that this measure is inadequate. It does not go as far as it might very well have gone. The apprehensions of people like my hon. friend, Mr. Kilachand are to my mind, absolutely incomprehensible. After all, the estate duty has been in operation in countries like the U.K. and the USA. There you will find that colossal monopolies are continuing. They are still in existence. There in spite of death duties, you find the relative position of crude disparity between the rich and

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the poor, which we cannot consider an ideal state of things. There we find periodical recurrence of economic crisis which is reflected in our country also. All the inevitable concomitants of the capitalist system are continuing in spite of estate duty, death duty, etc. in the United Kingdom and the U.S.A. If that is so what is your grouse? What is your fear? Why on earth, if capital formation was not affected in those countries, it should be affected here? Is it because we are an old country with sometimes peculiar customs? My answer is that we have to do some thing at the source. The Income-tax Investigation Commission said for example that there was enormous wealth which was hoarded to evade taxation and this wealth was not ploughed back into industries; there is also the wealth of the princes, of the medievalists, fuedalists, industrialists, semi-industrialists etc. for we have got here a sort of bastard capitalism which is not able to stand up to the full stature of its being. We know how our hon. friend Mr. Tyagi at one time happened to unearth about Rs. 103 crores and he admitted that there were still many crores of rupees which were hidden underground. We had also heard in this House during the November session from an hon. Member that gold transactions in this country show a daily turnover of Rs. 25 crores. I do not know whether this is a fact but if something like this goes on, something has got to be done. I know it for a fact that in the Safe Deposit vaults in Calcutta and Bombay and other places, there is a mechanism for hoarding away wealth which is being stowed away from being affected by our income-tax legislation. I have had so many reports from so many people that these so called industrialists have a huge amount of money in these Safe Deposit vaults and that is the very reason why our Five Year Plan is such a limping instrument. Similarly, when we are told by the Deputy Minister for Food that there is a lot of food in the country, there is famine raging all over India. This is the situation in our country because our Government has not got the guts, has not the imagination has not the sincerity of purpose, has not the idealism to go forward enthusiastically to mobilise the eagerness of the people for economic and social change and thereby bring about equalisation of opportunity in our land.

Therefore, this is no measure of expropriation. This does not take us any nearer the goal of socialism. This is one of the mechanisms of capitalist administration which so far we have not adopted because we were content with our feudal-medievalist apparatus.

Now with regard to the specific provisions of the Bill, I will make a few observations more or less in general terms. As far as the exemption limits are concerned, I do not object to the limits. Even though in the Select Committee certain alternative suggestions have been made by us, I do not press for a change but I do wish to point out one thing and that is that Government's chronic weakness comes out very sharply in regard to the actual computation of the exemption figures. The difference between the *Mitakshara* and *Dayabhaga* figures, for example, was arrived at at a certain stage in the Select Committee. When the Government first put forward their proposals they made no mention of these figures. These figures were first propounded in the Select Committee and I am sure that there was no real scientific effort to work out what the exemption should be, what the difference should be if there should be a difference between the *Mitakshara* and *Dayabhaga* system. I say this because it is only the other day we were discussing the Collection of Statistics Bill and actually we saw how in a very primitive position we still are in regard to statistical collection. We find now a controversy over the exemption figures and

it is all due to Government's incapacity to place the facts before the country and before this House.

In regard to gifts referred to in clause 9, I suggest that the period fixed should not be two years but should be five years and we have given our reasons in one of the minutes of dissent in the Select Committee. After all the people of this country were given a fairly long notice about the intention of Government in regard to the Estate Duty Bill and there is no reason why they should fight shy of a limit of 5 years, which is after all not too high. In England we find the 5 year limit. I wish to quote in this connection from a book *Economics of Inheritance* written by Col. Wedgwood who was a Labour Member of Parliament, and was fairly well-known in this country. He has stated in this book that "it is highly probable that on the average persons with large estates of say the value of £ 50,000/- and more give away to heirs and others during their life time not less than a quarter of their property". Yesterday, Mr. Gadgil was telling us about the happenings in Bombay, Calcutta and other places. It is further stated in *Economics of Inheritance*: "Many solicitors will probably consider this an under statement, since the evasion of duty seems to be one of their principal functions". The evasion of the death duty seems to be one of the principal functions of the legal profession, that charmed circle from which I somehow have happened to more or less come out.

Shri Gadgil (Poona Central): All the better for you!

Shri H. N. Mukerjee: Now, if this is the position, I do not see why the exemption limit should be so low, why the period fixed for *bona fide* disposition of property to be out of the reach of this law has to be two years. It ought to be at least five years.

In regard to gifts, in general I wish to support what my hon. friend Mr. Gadgil had said yesterday, and I wish to say that this dependence on charity, whether in the guise of public trusts or private charitable trusts, or whatever it might be, is something which is rather degrading; this kind of dependence on charity is something which we should shake off. I read in an American novel which was written about 16 years ago, *Grapes of Wrath* by John Steinbeck where an American workman talks in terms of his own working life. When we express our suspicions of America, we do not refer to the American common man. This common man in the novel said: "Charity hurts. It is a burn which never goes out of your body. Once you accept it, it sears your soul and never goes out."

This dependence on charity, whether *Bhoodan Yagnya* or something of that sort, whatever the acrobatics might be, whatever the philanthropic variations of the same miserable theme might be, this is something against which we ought to raise our voice, and therefore, there should not be this dependence on charity.

I would refer then to the indulgence shown in the posture of the Bill as it has come before us now, towards the foreign interests about which a good deal was said in the earlier stages of the proceedings. I know what the Finance Minister has said, that dark suspicions entertained by some hon. Members as to the intentions behind certain clauses where Government appears to have the power to exempt certain classes of persons from the operation of this law, when it is to be on the statute book. I feel that in regard to these foreign interests, something drastic ought to be done. This is a matter which has been repeated *ad nauseam* in this House, but there are cases of these foreign companies like, for example, Andrew & Co., in Calcutta which is a firm incorporated in England and which has its entire assets in this country. It is a managing agency firm running plantations, tea and rubber and coffee, mines and

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so on and so forth. And these people are going to have a chance, are going to have opportunity of keeping out of the clutches of the law. I know that reference might be made to the fact that there are certain international conventions, that there must be certain guarantees given to other countries so that double taxation might be avoided. But, I would say that whatever might be the international conventions regarding the avoidance of double taxation, the position of foreign capital in India is such that specific provisions ought to be adopted to see that these foreign interests are not allowed to get away with it because we are rather soft as far as their interests are concerned.

I would refer then to the case of the Princes. These Princes were referred to at an earlier stage of the proceedings, and also by my friend Mr. More when he spoke yesterday and today. We know that under the Constitution there are certain safeguards allowed to these Princes. In Article 362 it is said:

> ".....due regard shall be had to the guarantee or assurance given under any such covenant or agreement.....with respect to the personal rights, privileges and dignities of the Ruler of an Indian State."

These personal rights, privileges and dignities do not, I submit, refer to their properties. They might refer to titles, to the use of red plates in their cars etc., but not to their properties. And that is why an effort was made on our part to find out what exactly is the position as far as princely property is concerned. Last time I remember there were certain figures mentioned. The Nizam of Hyderabad, for example, was alleged to have had property worth some Rs. 500 crores or even more. Then, one hon. Member said that the best thing to do if you are going to have money for purposes of your Plan, is to seal off, cordon off, an area in Marwar and go on digging like archaeological excavators, and you will find a lot of treasure will be there. We tried to find out what exactly are the details of the private property settlements with individual rulers and Rajpramukhs, and we were told—this is the letter written to one of our Members of Parliament by one of the Secretaries, I expect, of the Government of India in the Ministry of States—that: "Government has consistently refused to answer questions in Parliament on this subject. You will appreciate it will not be possible for us to give the details of the settlements reached with the Rulers and Rajpramukhs." And then we are referred to the White Paper on Indian States. Now, this White Paper on Indian States does not tell us very much, but it is, I think, a matter of concern to this House that we do not know what exactly are the private property settlements made with these Princes and Rajpramukhs, when actually there are reports, very credibly circulated, that if a part of the property of these Princes can be expropriated for purposes of national development, it would help us to go a very long way towards the objectives which we all have in view. Now, in this White Paper on Indian States it is said that what happened when these settlements were arrived at was:

> "After certain inventories made by the Princes had been received and scrutinised by the Provincial or the Union Government concerned, and after the accounts of the States taken over had been examined, the inventories were discussed across the table, and settled in a spirit of give and take."

Who gave and who took we do not know. The result was something which is so much in the public interest to conceal from our gaze, that we do not know where we stand. Now, this is something about which I wish particularly to draw the attention of the Finance Minister, because, believe

it or not, I really got the impression last November, when he answered the debate, that he wanted to go as far as he can consistently with the provisions of our Constitution.

Shri Gadgil: We will not go all that length.

Shri H. N. Mukerjee: Article 362 mentions the words "due regard". Due regard should be paid to certain rights which we have decided to give to the Princes for the time being. Due regard does not mean, on any computation, utter inviolability of whatever rights we have chosen to give temporarily, and for very tentative reasons, to these Princes. So, I wish some kind of real, authoritative statement is made on this point so that we know where we stand. If we are not in a position to touch the hoarded wealth of these feudalists, if we are not in a position to get hold of the tax thieves who run away with it, surely nothing very much would happen.

I would refer, in this connection, also to a passage in a book by a foreign journalist called Harry Hopkins. This book is called *New World Arising*, and he refers to the publication of the book called *The Mystery of Birla House*, the second volume of which has come out lately. In it, Harry Hopkins says: "The book told in much detail with photographs and vital documents how Birla companies had fraudulently avoided large sums of taxation. It told furthermore how a tax-gatherer who had detected this and pursued it had been first compelled to halt his investigations, then suspend them. When questions were asked in the West Bengal Assembly, a responsible Minister had made no effective reply." Mark these words! "In England, either the Birlas would have had to sue for libel or the Government would have had to take action. In India nothing happened. In India, this sort of thing would be accepted as part of the natural order of things. And this was serious." This is the comment of a foreign journalist who was here, who has produced a book called *New World Arising*.

If we want a new world to arise in our country, we have got to tackle these people, these tax thieves, sharks, feudalists, who have no longer any right to the kind of existence in which they wallowed luxuriously for so long. We do not wish to throw them out altogether. There is no doubt about it that some of the representatives of the feudal houses are the finest types of gentlemen. They have certain qualities, but we do not want them to claim retention of those special powers and privileges and privy purses which belong to antiquity, which should be relegated to a museum of undesirable objects. We want a new world to arise in this country, and that is why I would give the Finance Minister a piece of advice by quoting a doggerel which was written in England some time ago by Heaven knows who. He said:

> "If we had a duty on hypocrisy,
> If we had a tax on humbug,
> If we had an excise on solemn plausibilities,
> Perhaps we can go ahead towards those goals which we have already set before us in view."

Shri Achuthan (Crangannur): For the last two days we have been hearing many speeches on the Estate Duty Bill, which according to some of us, was long long overdue in our country. Even in 1946, soon before the achievement of independence, the then Government thought of introducing a measure of this nature, to see that as far as possible our country does not run into bloody revolutions. But even now in this House, where the Members have been elected on the basis of adult franchise, we find some hon. Members saying that this Bill will result in less production, less incentive, less capital, less development etc. I am referring here to the speech of Mr. Somani.

[Shri Achuthan]

When I read the minute of dissent submitted by Mr. Tulsidas Kilachand, I thought it would have been wiser on the part of the Government to change the title of the Bill into 'Estate Enrichment Bill', and incorporate in it provisions to the effect that when a rich man dies, something more will be given to his heirs so that they will have the satisfaction that they have got something more. If a man is worth Rs. 75,000, as soon as he dies, the taxing authority must go to his house and say, according to the Estate Enrichment Bill, you are entitled to receive Rs. 25,000 more from the Treasury, so that you may be in possession of one lakh of rupees. That is what perhaps my hon. friend wants. I am really sorry that in India when we want to see a bloodless revolution in the social and economic plane, in as short a time as possible, opinions of this nature should still be expressed in this very House. I am really pained to note such a thing.

When I was going through the speech of Mr. C. C. Shah, whom I do not know personally, I felt along with him that this Bill was after all a simple and modest measure by which the Government expect to get about Rs. 15 crores or so per year, just to satisfy our illiterate and poor people nominally in the socio-economic sphere. It is only for the sake of satisfaction and not for changing the country overnight, that this measure has been introduced. Our Congress Governments really want to do something for our people, and they want to see that the so-called zamindars, business magnates and others are not allowed to grow fat any more. I shall read out what Mr. C. C. Shah said in this connection:

> "The payment of estate duty by men of property is the last settlement of accounts by them in the society of which they were a part, and from which they have collected their wealth. It is the last settlement of account for all their acts of omission and commission during their life."

I have nothing more to add to that, except to say that this is very simple measure which is only one of its kind, there being many others of similar nature which ought to be introduced in our country, and a note has been struck that succession duty Bills, inheritance duty Bills etc. must all follow this Estate Duty Bill, in this very House itself, so that within the next few years, we will see that there will be no more disproportionate inequality of wealth.

As far as the provisions of the Bill are concerned, as they have emerged from the Select Committee, I welcome them. There was a lot of discussion with regard to gifts and public charities. During the last so many years, religious-minded people, Hindus and Brahmins, were giving their property in charity. My hon. friend Mr. Gadgil was referring to the pure Brahminism of this country. There were a number of Brahmins and rich people in this country who were giving properties and estates in charity. But I ask, what amount of charity was there with regard to the poor men in our country, because in my part of the country, I have really seen rich Brahmins giving charities, simply for the gluttony of Brahmins alone, and not for the tillers of the soil, or the other poor people there. I do not grudge charity being given for philanthropic purposes, but charity in India, in the case of most rich persons, is simply for fattening and idling a few persons, so as to waste and curb their spirit of enterprise, and the feeling that one must earn one's bread, by sincere work, and see that the country develops thereby. A number of charities have come into existence, merely for the purpose of curbing that spirit of enterprise among the people. I follow Mr. Gadgil and say that hereafter in this country, there must be proper charities, and

the Government must clearly state by means of suitable amendments, which are the charities which they would welcome, and which are the charities that can have no place in our country.

I next come to the clause relating to quick succession relief on second and successive deaths. In the course of the discussion in the House, suggestions have been made to suitably amend the clause, so that deaths in quick succession may not have any adverse effect. But such quick deaths are not the order of the day We cannot under any circumstances imagine cases where there have been frequent and successive deaths within a few months or even a year or two. Ordinarily such quick deaths may occur in one out of a lakh of families. But when we have to deal with 36 crores of people in our country, I feel that no more relief should be given than is contemplated in the Bill, and I completely agree with what has been incorporated in clause 30.

Next I come to exemptions. In my part of the country, there is a particular community called the *thiyyas* and I belong to that section. They were following previously the *Mitakshara* system, but now as a result of a certain legislation in our State, they are following a separate system of law, which is almost akin to Christian or the *Dayabhaga* system of law, as was enunciated with illustrations by my hon. friend Mr. Iyyunni yesterday. Unless some more relieving measures are forthcoming for those who follow the *Dayabhaga* system of law, there will be a lot of difficulties created for this section of people. I hope the hon. Finance Minister will think about this matter, and see that as far as possible the inequities are lessened. So far as I am concerned, I do not know how much complication there will be, if we could put in some amendment which will have the effect of seeing to it that for the purpose of this estate duty legislation, throughout the country, either the *Dayabhaga* or the *Mitakshara* system of law, will be followed. It may have its own complications, but if only our legal men could assemble together and devise a provision whereby for the purpose of this measure alone, we could follow either the *Dayabhaga* or the *Mitakshara* system, I am sure we shall be able to avoid any heartburning in either the one or the other section of the community.

The hon. Finance Minister had stated last time that the total amount of exemptions will roughly come to about Rs. 16,000. But there is one important point to be borne in mind. As far as the middle-classes are concerned, according to my estimation, they will be large in numbers. According to my estimation, Rs 50,000 and above will refer to the category which is above the middle-classes. In my own State, if a man is worth Rs 50,000 or even Rs. 45,000, then according to the common man's estimation, he is a rich man. Rs. 50,000 is not a middle-class man's ordinary possession of wealth. There is no point therefore in grumbling, when a person with a property worth more than Rs. 50,000 has to pay something by way of estate duty to Government. There is no ground for saying that more exemptions should be given, something for his daughters, something for insurance, something for this, and something for that, and so on. At present, at this stage of the country's development, a provision of this nature is all that we can have. After some 30 or 40 years, when we are in a position to say that this country has got evidence of wealth, production etc., and that the distinctions have been lessened, we may even go to the extent of saying that there is no necessity for an estate duty, since the objective in view has been realised. But at this stage, we must be careful to see that the interests of the poor are kept in the forefront by the Government. They must be made to feel that they are moving, even at the risk of sacrificing some of

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their strong sentiments and feelings. They must see that the country is rejuvenated, for their advantage and for that of their progeny. I have nothing more to say with regard to the exemptions that have been listed in this clause.

Now one point which has struck me is with regard to the Appellate Tribunal. The Chairman also referred to that. I do not know what objection there can be to that. When people are prepared to pay something, when they are prepared to abide by the provisions of the law, they must have faith that something which has been done by the department concerned has been done in a proper manner. I have thought over this matter and I do not see why there should be objection by Government to accepting this principle and adopting the necessary measures for that justice to be done. That is an important matter, to my mind.

Then I come to another point. Generally, according to me, this measure will have a very good psychological social effect. Hereafter rich people will think that there is no safety in their earning much. Moreover, the progeny, the coming generation, will also think that they need not depend much upon their ancestors or ancestral property. They will see that as soon as they become majors or their education is completed, they have to fashion their life by themselves alone and not with the help of their ancestral property. So that in future, according to me, in this country there will be a sort of rejuvenating spirit. I think that the joint family system has, so to say, given a lot of trouble and led to the indolent attitude among the junior members of the *Tharavad*. In the case of the Christians who were following a certain system of law, where the head of the family was alone the full owner of the property, there was a spirit of adventure and chivalry among the juniors. Travancore-Cochin Christians can be cited as an example for other States. Because of this particular system prevailing there, the juniors in Christian families went out to different parts and places and set up their own businesses. But in the Hindu families, where one is sure of at least one square meal, this spirit of adventure has been lacking. So that the old joint family system, the coparcenary system and all those things must now find a place towards the grave. Then only will there be a proper development of the future society. Then only will we able to rejuvenate ourselves and there will be a proper individual spirit of development of oneself. And then only can this country hope in the future to be saved from a bloody revolution, of which there has been indications in different parts of the country. As far as this country is concerned, this disparity has to be rectified by gradual steps. The so-called big people must be made to realise that their 'bigness' does not lie there and Government will not allow them to go on as they like. So that they must form part and parcel of the society for the development of which they have also to contribute their share.

Shri N. Rachiah (Mysore—Reserved —Sch. Castes): I rise to welcome this important piece of legislation and to support it in the best interest of the country. I have been listening to the speeches for the last three days. All the parties—every Member of the Opposition—have supported this Bill because this is a step taken by Government, particularly a bold step, to see that the infant democracy is tended and made to progress.

After the Air Corporations Bill was passed, I think this is the best Bill to level down the inequalities in the interest of the poor masses whom we represent in this great House. Before the advent of freedom, our poor masses in the country had been subjected to a lot of difficulties, taxation and what not. Because, during the British

regime, it were the poor people who were taxed more and more and it were the rich people who were given all encouragement to prosper, to have all power and to have all property It was at the cost of the poor people of this country that the Britishers were able to rule the country, because there was a restricted franchise and not adult franchise and the poor people had no voice in the administration of the country. Today our Congress Government, with the blessings of Gandhiji, has ushered in democracy which seeks to provide equal justice, equality of opportunity and fraternity to the poor people. Today the poor people are always looking to the Central and State Governments; every moment they expect equal justice and equal opportunity which the Constitution guarantees to them. But I am very sorry to say that many of the State Governments have not followed the Constitutional provisions and the Directive Principles. This is a deliberate violation of the Constitution. To put an end to that, I urge upon the Central Government to issue directions immediately, as three years have already passed since the commencement of the Constitution.

At the same time, the Constitution of India aims at a welfare State, democracy and also a secular State. In this secular State, it is the duty of the rich people to see to it that they contribute to the exchequer of India so that the poor people should get their rightful and proper place in society, so that every human being in the country should live like a human being and not like an animal. I may say in the rural parts the poor masses have been subjected to all sorts of torture and misery. They have no sites to build their houses; even if they have got sites, they cannot economically afford to construct houses. So many people do not find even work during these days to earn their daily living. When such is the plight of our country and society, it is the duty of the Government to see that such important Bills as this should be immediately passed and justice done quickly, because justice delayed is justice denied. The poor people are expecting justice every moment. This is a step, a bold step, that the Government has taken to see that such justice is meted out and the poor people protected.

Great economists like Ranade have said that we "Indians" are more spiritual than material. With regard to the provision about gifts, I may say that there are so many charitable institutions in the country, particularly in Mysore State. Mr. Achuthan referred to charitable institutions maintained by Brahmins which have not been giving any help to non-Brahmins. But I ask Mr. Achuthan, ' Are there any non-Brahmin charitable institutions giving any help or encouragement to the Harijans in the country?' I am a lawyer and I know the position. I do not think even Muslim Wakfs which have charitable institutions encourage non-Muslims. Such is the unfortunate situation in our country. So with regard to charitable institutions, I am of the opinion, as Mr. More, Kaka Sahib Gadgil and Mr. Chatterjee pointed out, that these must be maintained only by the State and not by the private sector; otherwise, this Bill will give an opportunity to the rich people, capitalists, as Mr. Tulsidas said, to avoid taxation. I know rich people are going to use this as an opportunity not with the intention of giving charity or getting a good name, but to avoid taxation and to give benefit to their own relatives and to their own community. Even by that, the society, particularly the poor people, will be subjected to all sorts of inconvenience and the Government will lose the tax. Some people have urged for extension of time and some for limiting the time, but, I am of opinion, Sir, that the rich should not be given any exemptions because they try to evade taxes and their intention will not be to serve the interests of society but of vested interests. So, I urge upon the Government to see that this

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provision is actually eliminated or deleted.

One hon. Member has said that our country is the poorest country. Even according to him the limits should have been 30,000 and 50,000, because by having the limits of 50,000 and 75,000 very few people can be taxed. By reducing the limits to 30,000 and 50,000 the Government may get more revenue and their intention to get more for development and other schemes will be realised.

Then the former rules. They have exploited the poor people. They always taxed the poor people and they spent the entire revenue to vested interests, particularly to institutions which were more communal than general. I am very happy that this Bill is not giving any exemption to these rulers. Even today the rulers have got large property and that is made use of only by the vested interests. Poor people have no access to these properties and those institutions maintained by the Rajapramukhs in the country. The exemption should not be given to these Rajapramukhs because they are also human beings and they are also citizens of this country. If this legislation is passed we can have big revenue. This is the first and foremost important legislation which will bring greater revenue to our exchequer.

While discussing this Bill during the last session, Mr. Raghuramaiah said that the prohibition scheme should be scrapped and our hon. Member Mr. Agarwal said that prohibition should be introduced. This piece of legislation is very important in the interests of the country, even to achieve the secular State or to achieve the objective of the welfare state; and to give encouragement to people who have been subject to immoral habits, who have been spending their earnings on drink this prohibition should be extended. I think it is better and desirable for the Central Government to take up legislation and to see that total prohibition is introduced throughout the country. Because, in my State, the interim Congress Government introduced prohibition and the present Government have not been able or courageous enough to extend this scheme for want of funds.

I want to say another important thing. To achieve the welfare State—and the Indian Constitution provides for it—we have to introduce such important legislation as land reform. The whole economic and social progress of our country depends upon our land reforms. Even in our State some legislators own thousands of acres of land and the common man, the poor man does not get even bare subsistence out of this. So, Land reform should be introduced.

I very strongly support this piece of legislation and I congratulate the Finance Minister for having introduced this Bill which should have been introduced a long ago.

Shri U. M. Trivedi: Unfortunately most of the Members who have taken part in this debate have been obsessed with one idea and that idea is the idea of *mala fides*. All and sundry have merely spoken that this measure is natural to reduce the rich to poverty. Those who are rich, their money must be taken. Nobody is trying to move or seems to be moved with the idea that the poor must be made rich. If the object is this *mala fide* intention, then I should say that we ought to have very well scrapped this Bill. It is true that every one of us should support ..... (*Interruption.*) Kaka Saheb Gadgil will excuse me and not interrupt.

If we are moved with this desire, then we are not acting as legislators. The actual desire must be, if there is anything, to raise revenue. It is a *bona fide* desire on the part of any government to raise or increase its revenue. If that is the desire then the

measure is good. We have to support this Bill. Unfortunately, the desire is the other way about—take away the money from the rich people. Are you taking away the money from individuals to merely reduce the richest, or are you going to take away the money from those corporations who will be coming into existence and will not die? They will still have money, they will still be holders of money and they will continue to hold money until and unless you are going to nationalise all your industries and end everything which smacks of private property. You are not going to do much by way of taking away all this money from the rich. That desire must not be there—the wrong desire that we must increase our revenue by some sort of tapping of those who have got riches. The desire must be the other way about. If we are speaking of inequality the desire must also be there that those who are poor must be brought to a higher level where they may also live like the rich. If that desire is there it is an admirable desire on your part.

Now since we have accepted this principle of estate duty, I am not going to dwell very much upon the very basic principles of it but what I find is this. We have been aping too much, aping in this sense that if we study the *Mitakshara* law in correlation with the laws of inheritance of other countries, we will be surprised to find that the *Mitakshara* law is the only law in the whole world which serves social security wholly and completely. It is this law alone which says that young or old, those who are not able to support themselves are supported under the *Mitakshara* law. There is no other system in the world where this provision of social security is made. In all other countries you have social securities provided by Unemployment Exchanges or Old Age Pensions. You have got these provided by the poor houses. But this *Mitakshara* law provides that the moment you are born you have to be brought up; the moment you are born you have got a share in the family in which you are born; the moment a lady from an outside house comes into your house she has to be maintained. There is no other country in the world where such a law obtains. But what have you done? You have been attacking here the *Mitakshara* law without trying to provide for that social security which is obtainable in other countries. There is one sentence in para. 3 of the preliminary report of the Select Committee on the Estate Duty Bill of 1948. The reason why at that time this Bill was not considered was that the levy of any duty on the death of a member of a Hindu coparcenary is foreign to the fundamental principle of coparcenary under the law. What has happened since then, since this sentence was written, which has changed the position of Government, that today this Estate Duty Bill is being brought? What are you going to work thereby? You want to disrupt the very fundamentals of the *Mitakshara* law. People have said that *Dayabhaga* law has been very much affected. But let us examine the clauses which provide for the levying of this duty.

If a young man of 18 years dies in a *Mitakshara* family his parents will be crying. If he is married, his widow would be crying; his brothers and sisters would be crying. At the same time the Government machinery would be pouncing upon them saying: "Come on, give us a list of everything: we want to find out what property is there." The boy had never expressed any desire to separate from his family. The very fundamental of *Mitakshara* law is that unless and until a man has expressed a desire to separate he will continue to be a member of the joint Hindu Family. He will have no right to point out a particular portion of his property as his. Now you are suggesting that because he belongs to *Mitakshara* you can deprive his family of the right to hold property and give the Government from his share.

What happens in *Dayabhaga*? Let the young man die. His parents can

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cry; his widow can cry; and nobody bothers. He has no share. His father is alive.

Pandit K. C. Sharma: He has a share.

Shri U. M. Trivedi: I suggest you go and read you law again. He has got no share; take it from me.

Shri Gadgil: Nobody will take the share from you.

Shri U. M. Trivedi: If a Mohammadan youngman of 18 years dies his widow can cry; his father can cry; his mother can cry. But the Government will not pounce on his family, because he has no share. The same thing will happen with a Christian; the same thing will happen with a Jew.

Why again have you provided that if he wants to make a charity he must look into some mirror, a mirror provided somewhere which will be able to tell him that he will die one year, eleven months and twenty-nine days later? How is he going to do it? From what particular mirror will he know that he is going to die two years later? Then again you are working injustice on the youngman of eighteen, or nineteen, because unless and until he becomes *sui juris* he will not be able to make a gift and then if he makes a gift there also the law will apply. If he has made no gift within two years preceding, this gift of his will not be taken into consideration. So, if there is a young man who has separated from his family and if it is a *Mitakshara* family, he cannot make any gift whatsoever. Why this inequality in the case of *Mitakshara* youngmen?

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Then there is this question. Some friend was suggesting that gift to be made should be controlled for *bona fide* purposes. There would be two definitions of *bona fide*. One will be the ordinary definition understood by lawyers, of particular act of a particular man being *bona fide* and the other the definition of Kaka Sahib Gadgil, whether he was actuated by any desire to evade the law. The fundamental principle of interpretation of a fiscal law is that if a man has done a particular thing whereby a particular fiscal provision may not apply to him, then the law should be interpreted in his favour. Here what is being suggested is this: that the man must satisfy, the dead man must come and satisfy, that he had no desire to escape from the death duty.

It was suggested that charity must not be in favour of Brahmins. I completely agree that charity should not be for Brahmins. I think it should be for the poor. But why should this question of Brahmin and non-Brahmin arise at all? It is as a result of some sort of obsession that this question of Brahmin charity arises? I remember an instance. Ahmedabad is a very big city. In days gone by there was a Brahmin. That Brahmin has given most munificent charities that Ahmedabad has got. A college has been built by him; a science institute has been built by him; a high school has been built by him; cricket ground, botanical gardens, libraries, etc. all have been donated by him. That Brahmin went on making charities for every poor man in the town of Ahmedabad full of rich persons, rich *banias*. Not a single rich *bania* came forward to make any charity like the one that Brahmin made.

Therefore, it is not fair to make a sweeping statement on charities as a whole. By all means lay down the principles on which you will recognise them as charities. Let those charities be for university education, let those charities be for purpose of hospitals, let those charities be for the education of the poor, let those charities be for the feeding of the poor, but if those charities are there do not go and

pounce upon them and demand a share of them. If a man is actuated by a desire to do good to the community at large let him do it: do not say it is not *bona fide*. In any case the *bona fide* question arises only beyond the period of two years. What about gifts within the period of two years? Why challenge it? A gift is a gift. According to ordinary notions of law once a thing is given up by a man it is given up. You can attach some conditions. But simply because a gift has been made and you want to levy a certain tax, do not say that within this particular period such gifts will be considered not as gifts, but gifts liable to taxation. I remember the case of one man, Mr. Achrat Lal of Ahmedabad. He made a gift of all that he possessed for the sake of the poor. What will happen in such a case now. As soon as he dies you just pounce upon him.....(*Interruption*). You do not even allow a man to make a gift according to his desire.

My hon. friend Mr. More was saying: why should we allow a dead person to control our destinies? He does not like the dead man. Manu, who died about 5,000 years ago to control our destinies. Unfortunately these people happened to be Indians. We honour Euclid, Emil Fischer and Newton though they are dead because they are foreigners. We do not want that anything which is Indian must be followed. We must value only those who are foreigners. We are prepared to believe in everything that has been done by the law-givers of the West. We are prepared to believe in Mohammed; we are prepared to believe in Jesus but we are not prepared to believe in our own law-givers

Mitakshara has been placed before us which gives us good principles of social security which are not available in any other part of the world. Instead of providing *Mitakshara* for everybody, irrespective of religion, for Hindus, Mohammaddans and Christians, we are fighting shy of it because we are afraid that some people not belonging to our religion will criticise us and then there will be a lot of tom-tomming all over the world and we will not have the certificate of international reputation. It is this which we must fight shy of. We should try to spread our own culture which demands that we should not fight shy of the principles that are there. Our principles are also good. It is not necessary for us to borrow all those principles of law which have been laid down in England and United Kingdom. If you really want revenue why not tax salt. From salt tax we can get 21 crores of Rupees. The present price of salt is not what it used to be in the days gone by.

Shri Algu Rai Shastri (Azamgarh Distt.—East *cum* Ballia Distt.—West): It will be a tax on the poor.

Shri U. M. Trivedi: It will not be a tax on the poor; it will be a tax on you and me. My hon. friend Algu Rai Shastri forgets that in Delhi market we are getting 2 lbs. of salt for 9 annas and if this sum of 2 nice is added to this 9 annas you are not going to become poor; I am not going to become poor. I, therefore, say that if by means of that tax you can make yourself rich do have it but stop this bankruptcy. You should always have a balance. I will request the Finance Minister that there should always be a *Bania* type of budget where you should always have something in hand. You should not be bankrupt; ordinarily the law of insolvency will apply to you if you were before a court of law when your income is less and your expenditure is more.

Nobody in this House has shown his willingness to say one word against this Estate Duty Bill, and now there is nothing and it is very difficult for me to go section by section into all those amendments which I and other gentlemen have tabled. I would only say that through the avoidance of these proposed amendments the very things in which we have been believing for so long should not be set at

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nought. We should not copy others simply because a particular measure is being followed in a particular manner and according to principles obtainable in United Kingdom or United States. There also people can be dishonest. Let us now assume that our people are honest. Do not, therefore, stop them from their fundamental principles of making charities. We should do away with the idea that a man is trying to hoodwink us even when he is making a statement from his death-bed. At that time he will rather try to please his conscience. It is only because of this principle that a man on death-bed tells the truth that dying depositions are of particular value and gifts which are made at the time of death must be taken to be with *bona fide* intentions.

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

The Minister of Finance (Shri C. D. Deshmukh): Sir, during the course of the last nearly five days' discussion I have been wondering what precisely is all this discussion on the consideration motion. As I understand it the object is to find out if the report of the Select Committee is such that it has omitted to take notice of important points concerning this legislation and if there is any case for not proceeding with its consideration and for referring it back to the Select Committee. Although there is an amendment to that effect, it has not been moved at this stage and I take it that if it is moved later it will probably be ruled out of order.

In the course of the discussion yesterday, Sir, you pointed out that it was not necessary to go into the principles of the Bill. But some ingenuous Members raised the issue whether you could speak against the principles as well as for the principles. I think that to a certain extent a reference to the principles of the Bill becomes necessary in order to reveal one's attitude to the directions in which the Bill should be amended. If, for instance, one takes the view that the Bill goes too far then one would have one set of amendments to move in order to moderate it. If, on the other hand, one takes the view—as the Members opposite have taken,—that the Bill does not go far enough, then I would expect them to have an other set of amendments in order to ensure that the Bill goes far enough.

Well at a later stage, we shall have ample opportunity of finding out how the minds of Members are working precisely in this behalf. So far, we have received notice of 358 amendments which comes to one amendment per million of the population, and I have no doubt that to keep pace with the growth in population, by the time we take up the actual consideration of the amendments we might have received a few more.

Shri N. C. Chatterjee (Hooghly): We have received some more. The total is now 369.

Mr. Deputy-Speaker: Is it the desire of the hon. Minister that there must be some planning in this matter also?

Shri C. D. Deshmukh: I am very glad, Sir, that the spirit of planning unconsciously is pervading the whole country now!

I am very glad that hon. Members have given a valuable indication of the direction in which they think the Bill ought to be amended. In the ordinary course I would expect them to move those amendments, but I would not be so unreasonable as to say that it is not my business to give deep thought to what they have said. Therefore I shall make a study of their observations, but it may not be possible for me to deal here and now with all the observations that they have made. I make this point because I caught a tone of grievance in the speech of the hon. Member opposite who said that "it is not always that the Finance Minister condescends to deal with what has been said on the other side". It may be that occasionally I have not made any particular reference to what they have said. But

that might have been one of the few occasions when they have said something very sensible, but where we have joined issue with them I have tried consciously to make an attempt to meet them. I repeat that he should not judge me or my attitude towards their criticisms, which I take very seriously, by my possible failure to meet every point that he has made in the course of this speech—although I do hope that I shall have an opportunity of meeting all the points that he has made at one stage or another. And to this I must add this, that there are some points which are in the nature of a matter already adjudicated, in that they do go to the principle of the Bill.

He referred, in particular, to a statement that I made in one of my former speeches that the Bill will go as far as they wish. Well, this shows the risk of taking a statement out of its context. If you will permit, Sir, I would like to read out what precisely I said. I said:

> "And that leads me also to the disposal of the criticism of my friend opposite there, Shri Hiren Mukerjee, that he approves of the Bill because it is good as far as it goes. I say that it will go as far as you wish and that the matter does not arise today. It will arise in the next Budget session". Unfortunately of course that did not come off then. "It would be at that time for the House to consider—not for any party to consider —how far they desire it to go."

So when I said "as far as you wish" I did not really mean as far as Shri Hiren Mukerjee wished. I left the verdict to the House as a whole, and I still leave it, as I must, to the House as a whole. I added that—

> "In saying this I do not wish to imply that I wish to adopt the philosophic socialism of my hon. friend. Indeed, I think it is premature to indulge in speculation as to how much this first step portends, what exactly it is intended to mean. It certainly is not meant as a homage to any party or any 'ism'. If at all, it is intended to be a homage to the Constitution."

Sir, I still stand by these remarks.

Now I think it will be best if I deal with the various observations in the order of the clauses. But before that there are a few odd points which I ought to dispose of. One is in regard to the drafting of this measure. Various speakers have referred to the pattern which we have adopted for this legislation, namely the legislation in the United Kingdom. One speaker has described it as a hotch-potch. Another has referred to the drafting as nurtured in haste, and still others have referred to the impossibility of collating the provisions of some forty-three or forty-five pieces of legislation in order to evolve something which we can call our own. Like the hon. Member who referred to this Bill as a hotch-potch I am not a lawyer although I have studied law. I do not know whether he has. And I do know enough law to know the value of the contribution that has been made to the drafting of the Bill by one of the most eminent judicial authorities and legal experts that this country has produced, namely Sir B. N. Rau. It was he who drafted the first edition, shall we say, of this Bill. Then two Select Committees have devoted their attention to it, and it has emerged in the form in which we see it today. To describe this result as a hotch-potch. I think, appears to be somewhat rash on the part of the hon. Member. However, he has and will have plenty of opportunities of mending this state of affairs. He has given notice of a large number of amendments and I hope either he will think out himself or take counsel with somebody and give notice of a few more amendments in order to ensure that this hotch-potch clears up into a very clear liquid which can be imbibed by everyone, rich and poor.

The other point, although it is a point of principle, is important, and that was that this duty might be a disincentive to savings and might affect production. All I wish to say on this

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is I have already expressed my views on this very point at some length in reply to the debate on the motion for reference to the Select Committee, and I see no reason to alter this view.

I am inclined to agree with Shri Gadgil that estate duty by itself is not a dis-incentive to capital formation and savings; and its actual economic effect must depend very largely on the exemption limits which we now see in the Bill,—which was not the case in the original Bill—and of course the rates. Therefore it would be premature to say today dogmatically that the Bill is going to have this and that effect on capital formation and savings.

I would also be inclined to agree with Shrimati Kamalendu Mati Shah that this should to a certain extent be determined by the facilities provided by a welfare State. That is to say, one has to take note of the point, when one brings in the Bill to impose the necessary rates, that the tolerance of the public to this measure will be controlled by the fact that India has not yet become a welfare State. In other words, one must not indulge in too facile a comparison between what is done in regard to the actual quantum of taxation in other countries and in this country. One is apt to be misguided by false analogies in this respect. A careful watch will have to be kept by us therefore on the actual effects of any scale of taxation that the House might agree to. I think it would always be regarded as tentative for the first few years and that one would watch it for any possible adjustments to be made in future. There was some reference to the possible yield of duty. Now, unlike Shri Gadgil I refuse to make any guesses or to give any estimate although I should be glad if the amount that he has mentioned is reached but I feel there are very many unpredictable factors, such as the number of deaths including any accelerated deaths that might take place as a result of the device suggested by my hon. friend and the quantum of property left by them. So, as I said when I introduced this Bill, it is my expectation that the yield will not form a negligible addition to the resources of the State.

Now coming back to the matter of drafting again, because it requires a little more attention, the complaint was made that the language is extremely difficult. Well, as I have conceded, the Bill is based on the U.K. Act, *i.e.* in its form and drafting, and therefore, in view of the fact that there are a series of judicial rulings arising out of the verbiage of that Act the language has been kept as close as possible to that of the British Act in order that while interpreting the legislation the courts can take advantage of the U.K. decisions. I do not also agree that the language of the Bill is uniformly difficult in all sections. In so far as the ordinary person is concerned, in regard to gifts, quick succession, etc. the provisions of the Bill are, I believe, expressed in comparatively intelligible language. The language really becomes difficult only in regard to the provisions relating to settlements, annuities, trusts and various methods employed for the evasion of duty. Now persons who create trusts or employ methods of evasion, in any case, have to consult lawyers, because many of the methods that are designed are very circumlocutory methods and the ways of accomplishing their ends are not always smooth. Therefore, the language which is designed to prevent evasion has necessarily to be somewhat complicated. In other words, the terms of this legislation cannot be expressed in mono-syllables.

Now all the terms, I agree, are not very familiar, for example, interest in expectancy. I would like to point out that it is defined in clause 2 of the Bill itself. From that definition you can know what it precisely means. It is really a convenient method of describing the matters referred to in section 6(a) of the Transfer of Property Act. I may, however, explain this term 'Interest in expectancy'. 'Interest in expectancy' is generally of two sorts: one created by the act of

the party called remainder and the other by act of law called reversion. Now reversion is very well-known, particularly in Hindu Law. Similarly, remainder is also quite well known. So, there is no need to explain them. In any case I agree with the spirit of the complaint that it is necessary to make this law as intelligible as possible for the people who are going to pay tax and those who are going to receive those estates. Reference was made to some book by the hon. Member opposite. We shall see how we can assist the public by publishing a pamphlet on the Estate Duty law for their own benefit.

Now I refer to clause 4 and some criticisms in regard to valuation machinery. I think every one would agree that the correct valuation is certainly the very life-blood, so to speak, of this measure. Now in regard to valuation of Government security or shares in public limited companies there should be no difficulty as the prices of gold, Government securities, shares in public limited companies, etc. are generally quoted publicly and there are means of ascertaining the value of those which are not quoted.

Clause 36:—For the method of valuation of shares in the private company special rules are to be issued for the valuation of shares in controlled companies. The only difficulty we feel will be about the valuation of immovable property. But we must remember that even now valuation of immovable property is to be made for the purpose of granting probate or letters of administration and one may assume that the methods followed in such valuation will be generally adopted for the purpose of assessing estate duty. Given the cooperation of the accountable persons, it will be the endeavour of the administration to make correct valuations and this, I say, in spite of aspersions that have been directly or indirectly cast against the administration. In any case the Bill provides for valuers in case of dispute. Also, I must point out that we are likely to have here—it will be clear from the legislation that I shall introduce—a slab system and not a step system. There will, therefore, be no wide variation in duty on account of small differences in valuation.

Now, coming to clause 5 *i.e.* in regard to the inclusion of the States, the point was that all States must authorise the Centre to levy the estate duty on agricultural land. The facts of the situation are these. Since the introduction of the Bill two more States, *viz.*, the Punjab, Madhya Bharat have passed necessary resolutions and these will be included in the schedule by means of an amendment. Then with regard to others, the position is as follows:—

Assam promises to take steps to pass the resolution early. Bihar proposes to pass the resolution after the Bill becomes law. Madras is pending the formation of the Andhra State. In PEPSU the matter can be taken up only after the legislature is formed. West Bengal and Travancore, as I said before, have not agreed to authorise the inclusion for reasons to which I have already made a reference. Mysore has not sent any reply.

Therefore, I believe, that bulk of the States will be included in the schedule either now or shortly thereafter and as they see the machinery of the Act in gear and working well then we may hope that they would also wish to join in. In other words it is a question of establishing confidence for everybody for the assessee as well as for the States for whom we are now proposing to collect revenue in this form. But this is a matter which must be left entirely to the wishes of the States. We can use only our persuasion and certainly we have no power to force the States to join.

Now I come to clause 9. First I shall deal with the question of time limit. Now I think every one would agree that gifts shortly before death are likely to be a means of evading the duty and therefore, it is provided that such gifts by way of transfer, delivery, declaration of trusts, settlement or otherwise should be immediate and be in the possession of the

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donee to the entire exclusion of the donor and to prove that there has been such a possession by the donee to the entire exclusion of donor, a certain amount of time limit must lapse before any kind of *bona fides* can be established by circumstantial evidence.

I agree with Shri Gadgil and many other speakers that there is no reason why this time limit should be extended or reduced as the questions may be, depending upon the attitude from which people look at it at the time of death. It is generally not possible to express one's wishes precisely or correctly at the time of death. That is people's experience. Nobody can predict the time of his own death and there is no reason why gifts should be postponed till the last minute, *i.e.*, people want the best of both worlds in more than one sense. It has been asked what conditions should be satisfied in addition to those mentioned in the clause to make a gift *bona fide* gift or *bona fide* made. There is slight distinction between *bona fide* gifts and gifts *bona fide* made. This is answered in the ruling in Attorney-General *vs.* Richmond which is quoted at page 84 of Anson's book which says:

> "A *bona fide* transaction is a real and genuine transaction intended to have full and real operation without any secret arrangement or reservation."

In other words, a deed of gift will not by itself make a gift *bona fide*. It must be actually operated and there must be no secret arrangements or reservations. According to the rulings —and there are many under the British law—the four conditions which must be satisfied for gifts to be excluded are:

(1) The donee must take immediate possession,

(2) The donor must be excluded from possession,

(3) The donor must not retain any benefit, either by contract or otherwise, and

(4) There must be no secret arrangements or reservation to the benefit of the donor.

That is they must be *bona fide*, which is again saying the same thing in short. I cannot see any way out of this difficulty. It is possible to say that the word "*bona fide*" does not serve any particular purpose because it has to be established that a gift has been made; and if a gift has been made with all this incidence, then obviously it has been made *bona fide* but I think the Select Committee have thought it advisable to retain this word which, I think, occurs also in the U.K. Act, by way of abundant caution, and it certainly does not alter or shift the onus of proof. What would happen is, according to circumstances, on the production of the documents, a gift will be presumed to be *bona fide* unless some circumstances appear—usually they would be fortuitous—when a question would arise as to their *bona fide* nature. And if such a question is raised by the assessing authority, then it will be for the person concerned to prove that that presumption is wrong, and that, in spite of appearances, the gift was *bona fide* made.

I agree with Shri Chatterjee that in considering the exemption of gifts, the motives of the donor need not be gone into. Now, it is a practical matter. It will not be possible for any one to go into the motives of the donor or the donee. And that difficulty will be aggravated as one passed away from the period of two years into the dim limbo of the past when there would be no witnesses to prove whether there was anything indicating the motive. So I concede that it is not possible for the revenue officers to go into the question of motive which cannot in any event be established after the donor is dead except by reference to Chitragupta, that is to say, the Accountant in the other world.

Shri Gadgil: Do you have a liaison officer?

Shri C. D. Deshmukh: But, by the same reasoning it is not possible, I think, to include a provision to the opposite effect as has been suggested by Shri Chatterjee. So far as we are concerned, we propose to ignore this question of motive altogether, and we hope that in these matters also our judicial interpretation will derive some guidance from the practice and rulings in the United Kingdom.

Reverting to this question of time-limit, which, as I pointed out, is connected with the question of *bona fide* in a sense considering that we refuse to look at *bona fides* at all if the gifts are within two years,—we assume that they could not possibly be *bona fide*—it is true that in certain countries like the U.S.A., Australia or Japan, there are no time-limits, but it has to be remembered that in these countries there are taxes on gifts which are imposed even when made within the time-limits allowed in our Bill. And that is a device which we have not yet adopted.

Shri Gadgil: We will have to come to that.

Shri C. D. Deshmukh: Now, I come to this question of charities. On the whole, again, I share the views to which expression has been given by Shri Gadgil, and others who supported his view. Public charitable purposes are not defined in the Bill, but they have the same meaning as in the Charitable Endowments Act, or in the Income-tax Act, *viz.* they include relief to the poor, education, medical relief and the advancement of any other object of general public utility, but do not include a purpose which relates exclusively to religious teaching or worship. I am prepared to consider if an explanation to this effect could be added by way of an amendment at the right place in the Bill itself. Therefore, the charities we are dealing with are public charities, whereas I believe—I have read the *Grapes of Wrath*, but I cannot recall this particular context—that the charity to which Shri Mukerjee made a reference was private charity which burns. I cannot see why any public charity should burn, because it is for a section of the community from an individual.

There is one little point of drafting. I am inclined to agree, after giving full thought to this matter, that the words "or more" after "two" are really redundant. And I think that even without these words, it is permissible to go into the question of the *bona fides* of a gift made before two years—maybe five years, ten years, 15 years, any time. These words do not occur in the U. K. legislation. I am examining this question still in consultation with the Law Ministry, but I have given my views now for what they are worth, that I myself cannot see that any purpose is served by the insertion of these words, and the danger of inserting words which are not there in the pattern law is that someone suspects that the Legislature, in its wisdom, must have meant something else than what the other words meant. There is one last point with regard to this. I am prepared to agree that the Bill as it stands makes charitable certain items in the nature of expenditure incurred two years before death, as for instance, dowries, remittances to relatives etc., and I do intend to move an appropriate amendment to remove this defect.

I now come to clause 10. The point made was—again by Shri Chatterjee—about gifts made to widowed daughters or daughters-in-law. The effect of the existing British ruling is that where a father, having gifted a house to his widowed daughter or daughter-in-law stays in that house for certain periods, the *bona fides* of the gifts will have to be examined. If such a stay was a condition of the gift or a part of a secret arrangement, then the value of the house will attract a duty. If, however, the father was staying merely as a paying guest.....

An Hon. Member: Paying guest?

Shri C. D. Deshmukh: That is what the ruling says, and that is what the British practice is apparently—and did not have any enforceable rights of staying in the house, then it will

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not. I have examined the rulings under this particular clause, in order to see, if I can incorporate a gist of them in any explanation or otherwise, but I am advised that such an attempt might lead to other complications, and I am therefore considering that it might be preferable to leave things as they are to rely to some extent on the rulings in the United Kingdom, and at the same time, to issue administrative instructions, to ensure that too many occasions do not arise for going to the court, on points on which we seem to be agreed in spirit.

Now I come to the incomprehensible clause, *viz.* clause 11. I do not know if Dr. Krishnaswami would refer to this, besides other speakers. He read the notes on clauses appended to the Bill presented in November 1952, where we did make an attempt to explain the purport of the clause and gave illustrations. By and large, this is a provision to check evasion. A person who has a life interest or a limited interest in property might attempt to escape duty, by transferring that interest to certain other persons before his death, or before the expiry of the period of its tenure. This clause brings such dispositions within the charge of estate duty, unless that disposition had been made six months before the death, in the case of a public charitable purpose, and two years in the case of others. In such a case, the disposition should satisfy the conditions in clauses 9 and 10, if it is to be treated as a gift. Duty is attracted in the case of such dispositions, even if such a disposition was for a consideration.

Again, the language is difficult, because the disposition may be by a single transaction or by a series of associated operations, and also because the disposition may be by one of various methods, such as surrender, transfer etc. In short, the clause deals with the determination of life interest, whether wholly or partially.

Again, I have to quote the experts. I quote from Diamond—page 92:

> "An interest limited to cease on a death includes an interest which may cease alternatively on the death or on the occurrence of some event, or the expiration of some period before the death, but where it was limited only to expire at the end of a fixed period, and does so expire, it is excepted from the operation of the section thus:—
>
> If a property is settled upon A for life, or until he marries or becomes bankrupt, and he marries or fails within five years of his death, that would be a determination"—it was five years, because of the period there—"within the meaning of the section. But a gift or property on trust to pay the income of B for ten years, should he so long live, where the ten year period expires within the five years preceding B's death, would come within the exception."

So I think, while the object is clear, the language is necessarily complicated. Let us take the example of a case, where it is dutiable. If a life tenant surrenders a part of his interest in return for part of the reversion of equivalent value, then the whole property will become dutiable. I am sure that there will be a series of rulings on this clause, as the legislation is put into operation.

Then, the same speaker referred to joint investments and suggested that they should be treated as gifts. I think it is clear from the clause that this applies to cases where joint investments are made, and the person to whom the property belongs still retains a right of disposal. If such a right of disposal is retained, I cannot see how and on what logic, and on what equity, we can agree to treat it as a gift.

Then, some reference was made to clause 21. It was suggested that the period in this case should remain the

same as in the case of other gifts under clause 9. I should like to explain the position. This clause is intended to cover cases in which the author of the trust is himself the sole trustee. The Select Committee felt that in a trust of this nature, there is a greater possibility of evasion, and therefore deliberately increased the period from two to five years. I am inclined to think, however that the language is not very happy, and I am examining whether it can be improved, and if I do find an improved version, then I propose to bring an amendment.

Then there is clause 30, which aroused a considerable degree of interest, and that was in regard to quick succession. Suggestions were made that the quick succession relief should be liberalised. The Select Committee have already liberalised the original provisions, and that is in two respects:

(i) The relief is now in respect of property, and not only for land and business; and

(ii) There is 100 per cent. relief, if the second death occurs within three months.

This should ordinarily take care of deaths due to accidents, epidemics and so on.

Reference was made to the law in other countries. One can quote in both directions, but I think the weight of evidence is in our favour. There is no such relief in Australia or New Zealand, and relief on the same scale, but confined to land and business only is given in the United Kingdom, Pakistan and Ceylon. It is true that in the United States of America, there is no duty, if the second death occurs within five years, but there are two facts to be remembered:

(i) that it is not available for consecutive deaths, but only if an intervening estate tax at full rates is paid; and

(ii) it is not available to the surviving spouse.

Now, as regards the spouse, under our clause 31, we provide relief for a certain number of years. I feel that comparison with the United States of America is not justified. Also, there is another reason. And that is because there is not only the federal estate duty but also the death duties of the component States. That leaves only Chile and Japan, I think, which are so far away that we might ignore the provisions in their corresponding legislation.

Then arising out of the same clause, there was a suggestion that relief should be extended to widows of the *Dayabhaga* school of law. I believe, it was the intention of the Select Committee to extend the benefits to all Hindu widows on whom a life interest in any property devolved on the death of the husband. The wording of the clause, I am free to admit, probably leaves a doubt as to its applicability to widows of *Dayabhaga* Hindus.

Shri N. C. Chatterjee: You are thinking of clause 31.

Shri C. D. Deshmukh: Clause 31. I shall have the matter examined and, if necessary, bring in an amendment to clarify the position.

Mr. Deputy-Speaker: There is no benefit to the widow.

Shri C. D. Deshmukh: It is to the reversioner, to be more accurate.

Mr. Deputy-Speaker: There is no concession to any widow. Only to the coparcener or remote reversioner. That is the only point.

Shri C. D. Deshmukh: Now, the question was raised as to what happens to Mr. More's 'potential widows'. He referred to a plurality of widows. Under section 3 of the Hindu Women's Rights to Property Act, 1937, when a Hindu governed by any school of

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Hindu law dies, leaving separate property in the case of persons governed by *Mitakshara* law and any property in the case of persons governed by the *Dayabhaga* law, the widow, or if there is more than one widow, all the widows together are entitled, in respect of property in respect of which the deceased had died intestate, to the same share as the sons. I have got a reference here. Mulla, in his book on Hindu Law (page 39) says that where two or more widows succeed as co-heirs to the estate of the deceased husband, they take as joint tenants with rights of survivorship and equal beneficial enjoyment *inter se*. Though they take as joint tenants, no one of them has a right to enforce absolute partition so as to destroy the rights of survivorship, but they may obtain a partition of separate parts of the property so that each may enjoy her equal share of the income, each can deal with her own life interest, that is to say, widow's interest, as she pleases. But she cannot act in such a way as to prejudice the rights of the survivor or a future reversioner. So the estate of such co-widows will go to future reversioners only if all of them cease to exist. So the period of 7 years in clause 31 refers to the last widow on whose death the property goes to the future reversioners. That is the position

Shri S. V. Ramaswamy (Salem): There is only one widow.

Shri C. D. Deshmukh: We do not want it to go to the reversioner of one widow. We are dealing with a plurality of widows.

Now, I come to clause 32. There were points raised in regard to exemption of the residential house and increasing the limit of exemption in other cases. Now, the demand for the exemption of a small residential house—and many hon. Members made a point of that, they suggested a ceiling—ignores the fact that the exemption is already Rs. 75,000, not for the house but for the whole estate. This will be inclusive of the value of a small residential house of the nature contemplated. I think the limit given was Rs. 25,000. Therefore, I see no justification for the exemption of a dwelling house if, in addition, the deceased leaves Rs. 75,000 in cash. That is what the suggestion amounts to. Now, the demand for increase of the other exemptions ignores the fact that such exemptions are the special feature of our Bill and do not exist in other countries where the exemption limits are even lower. For instance it is £2,000 in the United Kingdom and Rs. 25,000 in Ceylon. Therefore I do not think there is a case for making any alteration in this clause.

1 P. M.

Then I come to clause 33. There was a point that the exempted items should not be aggregated for purposes of the rate. Now one has to remember here that the method we propose to adopt for the actual taxation is the slab system and not the step system and, therefore, aggregation is necessary. Unless aggregated, the benefit of the same quantum of exemption is greater to the rich man than to the poorer man. This is the practice in income tax also for quite a number of exemptions. I agree, however, that items which are not to be valued at all—and that was a point raised by Shri Chatterjee—books not for sale, wearing apparel and household utensils ought not to be aggregated because our reason for excluding them was to avoid the administrative inconvenience. So it is no use avoiding the administrative inconvenience by the left hand and undertaking it with the right hand. If you know the value, then there is no reason why you should exempt; if you do not easily know the value, then we should not attempt to aggregate. Therefore, I take the point of the hon. Member, and I shall move the necessary amendment.

Now, if the value of the agricultural land situated in those States which have not authorised the Centre to levy the duty on their behalf is not aggregated, then the residents of those States will have an unintended advantage by the mere reason of the fact that the estate duty on agricultural land is levied not by the Centre on behalf of the State but by the State itself. That is why we have included that.

Now, I am sorry I cannot accept Shri Chatterjee's other point that insurance for payment of estate duty should not be aggregated. If insurance premia had not been paid, the corresponding assets would have formed part of the estate and would have attracted estate duty.

Shri N. C. Chatterjee: Not necessarily.

Shri C. D. Deshmukh: Well, in most cases; and the advantage of exemption is a sufficient inducement, I feel, for insurance and the further advantage resulting in tax relief at the highest slab will be an unjustifiable discrimination against a person who chooses to leave cash rather than insure. In India insurances are generally not available above the age of 50. That is another difficulty which not many Members have pointed out. But, I think something will have to be done, therefore, to meet the case of people who would have wished to insure but could not pay the estate duty, and I am wondering what kind of relief could be given to those who prior to death are prepared to set aside the estimated amount of estate duty.

Shri S. S. More: Can they pay in advance?

Shri C. D. Deshmukh: I cannot go further than what I have said. I am thinking of some way by which a person could be enabled to set aside a certain sum because he cannot be insured.

Now, on the question whether aggregation of the value of agricultural land in non-Scheduled States is constitutional, we have obtained legal opinion and we find that a similar practice obtains for purposes of income-tax in the case of persons resident but not ordinarily resident and whose foreign income is aggregated.

Then we come to this vexed question of different limits for *Dayabhaga* and *Mitakshara* property, clause 34. I think it is wrong in the first place to look upon this section as one of discrimination in favour of the one or the other system. It is really a question of relief in order to abate the forces of some inequality somewhere by the operation of a uniform system to two non-uniform systems of inheritance. Now, statistically the bulk of the assessees, we feel, will be those who will not be co-parceners interested in Hindu undivided families and that the latter will form only a small fraction of the total number of assessees.

Now, let us take the number of income-tax payers where also we have a similar distinction. Among income-tax assessees, the total number of Hindu undivided families assessed as such was 70,872 in 1940-41 as against, 65,750 in 1951-52, whereas the total number of assessees assessed on an individual basis has risen. That is to say, in 1940-41, it was 2,68,597 and in 1951-52 the number had risen to 5,47,539. Therefore, we have to take the proportion of 71,000 and 2,68,000 and in the other case of 66,000 and 5,47,000. Now, out of the total number of Hindu undivided families, the number with an income of more than Rs. 7,200, those who are likely to pay estate duty is only 35,000. Therefore, I think, in the first place it would be incorrect to regard the members of this sector as representing the norm.

They really are the exception. The norm is the others, *Dayabhaga*, Muslims, Parsis and Christians, and so on.

Shri S. V. Ramaswamy: Are there figures to show how many assessees

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are under the *Dayabhaga* system and how many under the *Mitakshara*—not individuals?

Shri C. D. Deshmukh: The source of my information is, of course, income-tax statistics, which refer to Hindu undivided families. I have no separate figures about *Dayabhaga*, Muslims, Parsis, Christians etc.

Shri S. S. More: Have you got province-wise figures?

Shri C. D. Deshmukh: I have no time for that kind of research. I have been able to collect these figures now as arising out of the debate. I think it is possible to have circle-wise figures. But, I am not able to give them out now.

The proper way, it seems to me, of looking at these matters is to regard the exemption limit of Rs. 75,000 as the normal limit and to consider if any special treatment is required in respect of the coparcenary interest of a person belonging to a Hindu undivided family.

As I have said, under the Income-tax Act a certain amount of differentiation and not discrimination is existing in the income of Hindu undivided families and other income. Therefore, I do not think that this matter raises any constitutional question of discrimination. It is possible to spend a good lot of time in working out the hypothetical cases intended to show how in the given cases the incidence of the tax will be more on the Hindu undivided family while in the other case it might be more in the *Dayabhaga*, according to one's standards, in this matter. The Hindu coparcenary is such a unique institution that I have felt it impossible to work out the rates and exemption limits which would be guaranteed exactly to equate the incidence in every given case. Therefore, broadly speaking, we have suggested certain limits. The death duties will have to be imposed more often in the case of a Hindu undivided family as more deaths are likely to occur in a large family. In the case of others the duty will be payable only when death occurs of the head of the family but in the case of the Hindu undivided family the duty becomes payable on the death of the major children also. On the other hand, there is also a point made by various hon. Members that it would have to be a very large estate before any duty is payable at all in view of the exemption limit. And it may be possible to hold the view that the Rs. 50,000 limit is not low enough. But, these are matters which I feel would have to be corrected after a little experience has been gained and a certain amount of statistical information has been collected. For the present, I think, we must be content to take note of the fact that a certain system or variety of systems exists and to take account of the special features for the purposes of our tax. Whether the law should be changed in order to abolish the systems of inheritance or to what extent the differentiation between the *Mitakshara* and the *Dayabhaga* should be abolished are matters which, I think, we ought to consider in another context and not for the purposes of this legislation. That is to say, we ought to accept facts as they are today under the existing law and custom.

I am now referring to the inclusion of the rates in the Bill itself or by declaring today that the rates now fixed will remain unchanged for five years. The will of the Parliament is supreme in these matters and if the Parliament so wills the rates can remain unchanged for five years without our expressing so now, or they can be changed in a shorter period if the Parliament, or Government as guided by the Parliament were to come to the conclusion that a change is required.

I understand the difficulty of a large number of speakers in criticising this legislation in the absence of

any indication as to the rates because every one tries to work out in concrete terms what the final result will be and for that purpose we are concerned not only with the exemption limits and aggregation and so on but also with the rates. Therefore after giving some thought to the matter I have decided to carry out my assurance—as I was bound to in any case—of introducing the Bill containing the rates before the next reading of this Bill. That, I think, will enable the Members to argue their amendments or to drop them, as the case may be, in the light of what I and the Government propose to do in regard to the rates.

Now, there is one other point and that is Dr. Lanka Sundaram's point that the recommendations of the Taxation Inquiry Commission have a bearing on this. Certainly, they have, as on any other existing piece of legislations. And, if the recommendations of the Commission indicate the need for taking any step to amend the law then certainly we shall bring in the necessary amendments.

Sir, shall I continue now or shall I continue tomorrow?

Mr. Deputy-Speaker: I have no objection if the hon. Minister wants to continue. How long is he likely to take?

Shri C. D. Deshmukh: About ten minutes, Sir.

Mr. Deputy-Speaker: Then why not we sit a little longer? Otherwise, the trend of it disappears and the impression that has been created also disappears. Hon. Members will bear patiently for some fifteen minutes more. We shall sit up till 1-30.

Shri C. D. Deshmukh: I shall be grateful if I am allowed to continue. Otherwise the thread of the argument will be snapped.

I come to clause 49: acceptance of payments in kind. We feel that it is administratively not possible and we could not possibly hold property of all kinds spread all over India. Now it is only a kind of wager against the administration to prove that their valuation is right. I do not think one could accept the basis of such a proposal. It is true that in the United Kingdom Government is permitted to take over immovable property at the value determined. But this is done only when the buildings are required for national use and there have been only three such cases till 1952. There is no reason why we could not do it even without any provision in the law.

Then, as regards clause 61, constitution of an appellate tribunal has been suggested. The estate duty, I feel, is very complicated and therefore it is that in other countries like the United Kingdom all assessments are made by the Board and not by any subordinate authority. This was the scheme proposed also in the original Bill of 1946. Now, centralisation of all assessments in the Board would cause great hardship and inconvenience. Therefore it is that the present Bill authorises subordinate officers to make assessments. In the initial stages the subordinate authorities require constant guidance and direction and errors of omission and commission for or against the assessees have to be corrected. We feel that it would lead to lack of uniformity if from the very first stage appeals go to outside authorities who might give different interpretations. And really, the so-called appeal to the Board will not be an appeal in the technical sense, but merely an administrative review. The first appeal, I would like to point out, still lies to outside authorities, namely, to the evaluers on the material question of evaluation and to the High Courts and Supreme Court on matters of law. So at the moment I am not inclined to share the lack of confidence in the administrative authorities that has been expressed by certain Members. In the Income-tax Department appeals to the tribunal

[Shri C. D. Deshmukh]

have gone down from 8,979 in 1950-51 to 8,298 in 1952-53, that is to say, a decrease of 8 per cent.

Shri S. S. More: What does it indicate?

Shri C. D. Deshmukh: More confidence in the administration.

Administrative reviews have increased from 3,325 to 4,714, an increase of 40 per cent. Now the general practice in other countries supports what we have provided for rather than the opposite.

Then, lastly there are only two or three points, about rule-making, the princes and civil deaths. They will be so few and far between that they could be dealt with when they arise. I have not yet come across a *sanyasi*, who has given away all his property or made a proper disposition.

Shri S. V. Ramaswamy: We mean only physical death.

Shri C. D. Deshmukh: Therefore, we have not made any other provision.

In regard to the princes, it is quite clear that the Bill does not provide for any exemption or preferential treatment. They come within the provisions of the ordinary law except to the extent to which safeguards are provided by the Constitution. Therefore, it is not necessary for me to state what exactly the position will be in regard to palaces, properties, privy purses and so on. All that I can say is that it is not our intention to exempt except to the extent to which exemption exists in any form in the Constitution.

Now there is the quesion of rules. Sub-clause 5(e) of clause 17 is only a matter of drafting. The Bill as introduced contained naturally the rule making powers. The Select Committee felt however that the definition of controlled companies should be put in the body of the Bill relegating the rest to the rules. The Law Ministry have advised that so long as there is an express power to make rules on a specific subject, no question of *ultra vires* arises. The fact that clause 17(5)(e) is out of place in its present context is not very material except from the drafting point of view and this particular clause expressly provides for making rules with respect to valuation of shares and debentures of a controlled company. However, the Law Ministry have suggested to us that in order to avoid any criticism from the point of view of drafting merely clause 17(5) should be deleted and in its place a new clause 19A inserted at the end of the Chapter providing for the making of rules generally in respect to all the matters now specified in clause 17(5).

Now it is the intention that the rules to be published will be more or less a copy of the corresponding provisions of the United Kingdom Act which have worked well. The question was raised,—I think by Shri Pataskar—why the rule-making power has been given to the Board and not to the Government. Now, I do not think any question of *ultra vires* is involved. Parliament can delegate power to make rules to any authority. I would like to point out that the Central Board of Revenue is a statutorily recognised body under an Act of 1924 under which it is open to Parliament by law to confer any such power. (Section 2 of the Central Board of Revenue Act, 1924.) Also, all rules made are subject to the condition of previous publication and will also have to be laid before Parliament. In the Income-tax Act (section 59) there is also the rule-making power vested in the Board. But there is an important difference and that is that the power is expressly subjected to the control of the Central Government. We shall consider whether this safeguard should not be introduced in this Bill also. I

am prepared to consider that and if that is going to satisfy the House we shall do it. It will be with the approval of the Central Government.

Now there is rule-making power also in clause 49 which is controlled by the provisions of clause 81 of the Bill.

I think I have dealt with almost all the important points and I hope that this motion will be approved by the House. I do not exactly accept the slogan of Shri Gadgil: Discharge your duty and go to heaven. I would like to vary it and say: Whether you go to heaven or the other place, duty has to be discharged.

Mr. Deputy-Speaker: The question is:

> "That the Bill to provide for the levy and collection of an estate duty, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

The House then adjourned till a Quarter Past Eight of the Clock on Thursday, the 13th August, 1953.