[Shri Satya Narayan Sinha]

(both years inclusive) in place of late Pandit Lakshmi Kanta Maitra in pursuance of the provisions of clause 14(ii) of the Revised Scheme for the Administration and Management of the Properties and Funds of the said Institute and under Regulation 2.5 of the Regulations of the Institute."

Mr. Deputy-Speaker: The question is:

"That this House do proceed to elect, in such manner as the Speaker may direct, one member to serve on the Council of the Indian Institute of Science, Bangalore, for the unexpired period of the triennium 1951-53 (both years inclusive) in place of late Pandit Lakshmi Kanta Maitra in pursuance of the provisions of clause 14(ii) of the Revised Scheme for the Administration and Management of the Properties and Funds of the said Institute and under Regulation 2.5 of the Regulations of the Institute."

The motion was adopted.

Mr. Deputy-Speaker: I have to inform the House that for the purpose of election by means of single transferable vote of one member to the Council of the Indian Institute of Science, Bangalore, in place of late Pandit Lakshmi Kanta Maitra, the programme of dates will be as follows:—

(1) Nomination to be filed in the Parliamentary Notice Office upto 12 Noon on Tuesday, the 15th September, 1953.

(2) Withdrawal of candidatures will be received in the Parliamentary Notice Office upto 12 Noon on Wednesday, the 16th September, 1953.

(3) Election, if necessary, will be held on Friday, the 18th September, 1953 in Committee Room No. 62, First Floor, Parliament House, between the hours 10-30 A.M. and 1 P.M.

INDIAN TARIFF (SECOND AMENDMENT) BILL

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Tariff Act, 1934.

Mr. Deputy-Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Indian Tariff Act, 1934."

The motion was adopted.

Shri T. T. Krishnamachari: I introduce* the Bill.

ESTATE DUTY BILL—*Contd.*

Clause 80.—(*Company to furnish etc.*)

Mr. Deputy-Speaker: The House will now proceed with the further consideration of the Bill to provide for the levy and collection of an estate duty, as reported by the Select Committee.

Clause 61 was held over and clause 80 was under discussion. Shall I take up clause 61 now or come back to it afterwards?

The Minister of Finance (Shri C. D. Deshmukh): Mr. Chatterjee ought to be here.

Mr. Deputy-Speaker: We will proceed with clause 80.

Shri K. K. Basu (Diamond Harbour): The other day when we were discussing clause 80 and the amendment moved by the Finance Minister to substitute certain provisions for sub-clause (2) thereof, Sir, a constitutional point of order was raised. It was stated that this particular subclause will offend against article 19(1)(f) of the Constitution.

Shri A. M. Thomas (Ernakulam): Government has answered that it does not offend the article of the Constitution.

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*Introduced with the recommendation of the President.

Shri K. K. Basu: If you read article 19(1)(f) along with clause (5) of article 19, wherein the words "public interest" are used, the sub-clause as it is drafted does not in any way qualify the words "to acquire, hold and dispose of property". You know, Sir, that even under section 34 of the Companies Act, there is a discretion vested in the Board of Directors not to register the transfer of a particular share. It has been held by the Courts that if the Board of Directors acts *mala fide*, the onus is on the person challenging to prove the *mala fides* of the Board. Normally speaking, the Court will accept the decision if the Board refuses, the presumption is that it acted *bona fide*. What the sub-section wants is this. It does not say that such a transfer will not be considered legal. It only says that if such a transfer is to registered in the books of the company, the company must be satisfied as to two things: whether the transfer is *bona fide* and/or for valuable consideration and if the company has knowledge that the person in whose name the shares originally stood is dead, whether the estate duty payable on this particular share has been paid. I personally feel that there is no substance in the proposition that it is *ultra vires* of the Constitution. Because the sub-section does not say that the transfer should not be registered. It only says that the company must be satisfied that the transfer is for valuable consideration before the names of the transferee is put in the register. If the principal officer of the company has knowledge that the person in whose name the share stood originally is dead, the company must be satisfied that so far as the liability to estate duty on the particular share is concerned, it has been either exempted by the Controller or paid. It is only a duty cast on the company and it has nothing to do with the rights of the transferee.

Mr. Deputy-Speaker: Order, order. Let there be less talk in the House.

Shri K. K. Basu: We know, Sir, sometimes this property devolves by survivorship, and in the case of survivorship, letters of representation are not necessary. In some cases it has been held and if there is also a specific provision that the company may demand letters of representation to be obtained. The only thing that this sub-section seeks to impose is that the company must be satisfied that the transfer is for valuable consideration.

Mr. Deputy-Speaker: Order, order. Mr. Heda is standing there. I do not want to interfere in the proceedings thus. I have repeatedly warned hon. Members.

Shri K. K. Basu: It has been pointed out that shares are goods and if the money is paid and delivery made, the title is complete and there is nothing more to be gone into. Sir, it is quite different from the sale of movable property. In the case of movable property, delivery is the most important criterion. Here, we know that apart from delivery, the transfer form has to be signed. Therefore, there is nothing wrong if the Government makes such a provision whereby the company should be so alert as to know in whose name the share originally stood and the manner in which the share is now proposed to be transferred. I know there may be some difficulty in the Stock exchange because of the system of blank transfers. This point was discussed at length in the recent enquiry on Company law and there was a large volume of opinion who opined whether a time limit should not be put for registration so far as blank transfers are concerned. A large section of people, specially, I am told the investors suggested that blank transfers should not be allowed to go on in the same way as they do today. Of course, I do not remember what exact recommendation has been made on this question. But, so far as I remember, there was a talk that this blank transfer system should, to some extent, be restricted. Therefore, I feel that the amendment that has been proposed will in no way offend article 19(1)(f).

Mr. Deputy-Speaker: Order, order, please. I would like to tell the hon. Members that even the smallest noise is caught by these long microphones. I have four microphones on every side here attached to my seat. I am unable to hear anything. These microphones are intended to enable me to hear even the smallest voice in the House. Therefore, I appeal to the entire House. I thought I could introduce a threat. Threat is useless. So, I am appealing to every hon. Member here kindly to bear with me and if they do not want to hear any hon. Member, they may gently go to the lobby and talk or take coffee that is available there. More than this I cannot say. If, still, in spite of all my efforts to control the House, it is not possible, I will name some hon. Member and make it an object lesson for others to see. I will have to do so. I am really very sorry to make this remark. But, it is unavoidable. I am not able to get along even for a minute. I am unable to see how to control the House and get along with the business. That is my difficulty.

Shri K. K. Basu: The other point that was raised is this: if you read item 87 of List I in the Seventh Schedule along with article 366, the definition article, it may be construed that we are going to levy a tax on property that does not pass on death. I only submit that if we try to give a reasonable interpretation, it could be interpreted otherwise. We do not say that such properties should be taxed. The duty that is cast on that particular company is that it must be satisfied as to the manner in which the transfer was taking place. If it is for valuable consideration, the transfer is accepted or if, the principal officer of the company has knowledge that the original shareholder is dead, he may ask whether he has obtained the certificate from the Controller that the duty has been exempted or paid. Therefore, I feel that this clause as it has been drafted will not in any way offend the articles of the Constitution.

As a matter of fact, the clause as it has been re-amended by the Finance Minister is an improvement so far as the question of negotiability of the share scrips are concerned. But, I would rather suggest that the original provision was better. Here the only duty cast upon the officer of the company is, if he has knowledge of death, to enquire whether the transfer is for valuable consideration and whether he has obtained the required certificate from the relevant authority. But, I feel that in the peculiar context of our country, wherein, as we know, the shares in a large number of concerns are largely in the hands of persons who are not Indians and have stayed out of this land for long, it will be very difficult to get hold of these persons' assets that may be invested in Indian companies. We know that, in our country, this system of blank transfer has been in vogue for quite a number of years and it is therefore very difficult, unless the Government keeps in touch with all the transfers that might take place and possibly deaths in our country and outside, to catch hold of such investors. When a person is ailing, he may sign a blank transfer form and immediately on death some transaction may be entered into, happening in a period before death. However, I do not know if at this late stage the Government will stick to their old position, but I do feel that a special effort should be made in the interest of getting the estate duty on those properties and assets which belong to persons who do not belong to our soil. It is absolutely necessary that such a provision should be there, and Government should see that the officers of the companies are vigilant to know whether the shareholders are dead or alive. In this connection, the Government might, if necessary, amend the new Company Act providing for the particular type of instrument to be executed and seeing to it that the estate duty on such properties does not escape. Therefore, I feel this particular clause should remain as amended by the Finance Minister as it will satisfy to a great extent the objection that the original

position would have very adversely affected the negotiability and transferability of shares etc. I also submit that this particular clause as amended will not conflict with the articles of the Constitution, and it should be accepted by the House.

Pandit Thakur Das Bhargava (Gurgaon): An objection has been raised that these amendments are opposed to article 19(1) of the Constitution and the incidental proviso that is there. I am as anxious as anybody else that when the Estate Duty Act is applicable to any person, speedy realisation of the tax should be possible. But, at the same time, we are now concerned not with those persons only in respect of whose estates this duty will be applicable. This is a very general restriction which is sought to be placed upon every person. Whenever a transfer deed is placed before a Company, it will be the duty of the Company to scrutinise it or to make it a condition that unless and until the certificate is obtained, the transfer will not be made.

Now, reference has been made to article 19 which says that the right to acquire, hold and dispose of property is a fundamental right, to which an exception has also been made in article 19(5). Article 19(5) says:

> "....so far as it imposes,.... reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe".

You will be pleased to see that only the Scheduled Tribes are herein protected or the interests of the general public. Even the Scheduled Castes are not here. The Scheduled Tribes have been included herein because at the time of the making of the Constitution it was suspected that there were persons who would like to go into the protected areas of these Scheduled Tribes and buy property there. So, in the interests of those tribes, restrictions have been placed that no persons will be able to acquire any land in the particular districts of Assam etc., or that they will not be allowed to dispose of their property to those other than the members of the Tribes. But, so far as the general public is concerned—the words are "interests of the general public"—the question arises: "What is the interest of the general public?" I can understand "interest of the public" or "public interest". The expression "public interest" is usually used by the authorities; whenever they do not want to give any information to the public, they say it is in the public interest not to divulge. If they want to give, then they say that it is in the interest of the public to give it. Therefore, "public interest" is a misleading expression, meaning anything the Government likes.

Here, the words are "in the interests of the general public". In some places, the expression "in the interests of the public" is also used, but here we are concerned with "the interests of the general public". "Public" is to be distinguished from the "general public". A portion of the public is public according to the definition given in the Indian Penal Code. A portion of the public may be called public, but here the words are "general public". Now, "general public" must be something different from a portion of the public, because if that were not so there is no use in putting the words "any Scheduled Tribe". A Scheduled Tribe alone will not constitute the "general public". "General public" is something much more than any particular Tribe or any particular portion of the public. I am inclined to think that so far as the question of State is concerned, the State does not include the "general public", or the interests of the general public. "General public" means the totality of the people generally speaking, and therefore, unless and until the restriction is in the interests of the general public and not a sectional interest or the State interest, no restriction can be

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put. It is a very serious matter while a fundamental right is being infringed by the imposition of a restriction like this.

Mr. Deputy-Speaker: Is the State not representative of the public?

Pandit Thakur Das Bhargava: It may be representative of the public, but it is not the public. The words are "in the interests of the general public", not even "in the interests of the public". When we used these words, we had something in our mind. I remember that so far as the question of the Punjab Alienation of Land Act was concerned, we thought that these words should be retained. Otherwise the word "public" could have been there. So, "public" is to be differentiated from "general public".

Now, may I humbly ask the Finance Minister one question? A poor man has got nothing to do with estate duty, and perhaps 80 to 90 per cent. of the people have got nothing to do with estate duty. They will never be taxed. If a poor man living in a far off part of the country has got a share or two and he wants to sell them, or a poor man wants to acquire a share or two, why should any sort of restriction be placed in this way in regard to 80 or 90 per cent. of the public?

Mr. Deputy-Speaker: If there is any provision to avoid fraudulent transfers, is it an interference?

Pandit Thakur Das Bhargava: So far as the question of such transfers as are not for value received is concerned, there is a provision in Section 34 of the Indian Companies Act which we all know. The Company, by virtue of its Articles of Association, as well as otherwise under the provisions of the law, is fully protected. The Company can insist that such and such evidence should be produced before it and then only it will register the transfer. So far as the restriction on transfers is concerned, it is not an absolute right of a person to get it transferred. He cannot say: "My share should be transferred and it will be automatically transferred." The Company has been invested with certain powers by virtue of which it can insist on proof being given before any transfer of shares is registered. Therefore, my humble suggestion is that even today the powers of the Company are sufficient, and I am inclined to think that if any person wants to avoid this payment of duty.....

Mr. Deputy-Speaker: Why should the Government be at the tender mercies of the Company?

Pandit Thakur Das Bhargava: The question is this: Why should the poor man be at the tender mercies of the Government and the Company?

Mr. Deputy-Speaker: It is not the poor man so much. Every man who takes property must know the laws by which he is governed.

Pandit Thakur Das Bhargava: So far as 90 per cent. of the people are concerned, they will not come under the mischief of the Estate Duty Bill. Now, you are putting an unreasonable restriction on the right to acquire or dispose of property of 90 per cent. of the people, because not only is there restriction on such shares as come within the mischief of the Estate Duty Act, but the disposal of all shares is tabooed.

Mr. Deputy-Speaker: Is not this argument something like saying, if a person wants to dispose of his property and evade his creditors....

Pandit Thakur Das Bhargava: I am not against the Government getting any power to deal with a person against whom these proceedings will be taken and who has to pay the estate duty. I do not want that his shares should be transferred with impunity and Government should not get its share. I am not against that. I want in the case of every person against whom Government have got a claim, Government should have the

right to see that that claim is satisfied before transfer is allowed. I am not against such a proposition. But this provision is too wide. In the case of every transfer of shares this restriction is being put. Even a person who has got nothing to do with estate duty will be asked to obtain a certificate and then only will the company transfer the shares. It is a clear restriction upon the right to acquire and dispose of property.

Mr. Deputy-Speaker: The hon. Member evidently feels the moment somebody dies, whether his estate is liable to estate duty or not, the whole procedure of sale, transfer etc., comes to a standstill.

Pandit Thakur Das Bhargava: Exactly. That is exactly my submission.

Mr. Deputy-Speaker: Neither the hon. Member nor Mr. Trivedi has got any objection to imposing restrictions in so far as a particular estate is liable to duty.

Pandit Thakur Das Bhargava: No, Sir. Attempt at evasion may be stopped by any means. I am glad that such an evasion is not allowed.

Mr. Deputy-Speaker: That will be in the interest of the general public. Only against such persons who want to avoid duty, action may be taken.

Pandit Thakur Das Bhargava: So far as the general public is concerned, 90 per cent. of the people have nothing to do with the Estate Duty Bill. So far as they are concerned, transfer of shares should not be restricted in this manner. When the hon. the Finance Minister replied to this part of the argument of Mr. Trivedi he was pleased to rely upon and treat it as a restriction and say that the words 'in the interest of general public' covered it and the State was justified in putting a restriction of this sort. It is to this argument, Sir, that I beg very humbly to take exception. According to me, Sir, the State will not be included in article (19)(5).

I was submitting that so far as those persons who are liable to pay estate duty are concerned, if any restriction is imposed on the transfer of their shares, it may be right or wrong. I am not concerned with it. I will be very happy if such transfers can in any way be checkmated by the Government and they are not allowed to transfer, and the first charge—as we have already decided—should be this and Government can get it. I do not know how it will be done. I will ask the authorities to find out some means. For instance, when the company comes to know that a certain shareholder has died and they also come to know that some proceedings are being taken and incidentally or otherwise it is known that here is a person who is liable to pay estate duty, in that contingency any proper precautions may be taken and any embargo may be put on the transfer of shares. I can understand that. But for the speedy realisation, you go out of your way and make other persons liable to certain restrictions which are very grave restrictions, not from his standpoint alone but from the standpoint of trade and commerce also. Now, transfer of shares takes place in their thousands. Blank papers are signed and they are transferred. My submission is that we will also be really interfering with the even tenor of trade. Then, what about joint shares? A person, his wife and two or three brothers—one rich and one not rich—may have got joint shares. What will happen? What will happen to the shares of those who are joined with those of the deceased who have done nothing wrong? The buyer of the shares of that person has committed no fault. Why should the joint shares be held up? Here that person and the deceased are in the same boat. So far as the share of the deceased is concerned, how can there be an embargo? Moreover, from the point of view of the buyer, the buyer when he buys does so in good faith and pays a valuable consideration. How can he possibly think that he will die in such a time and the shares will not be transferred? Looking at it from that

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standpoint, if the shares are held up for a long time, he loses money on the one hand and the shares are not transferred on the other. Therefore, the poor man, an innocent man who has done nothing, who may have nothing to do with the Estate Duty Bill will also be put to some trouble. Considering it from that standpoint and from the larger standpoint, I humbly submit that restrictions may be put which are fair, which can be related to the speedy realisation of your tax, but such restrictions may not be put upon the public in general, upon every shareholder that he is unable to acquire any shares or to sell any shares. From the constitutional point of view, from the general point of view and from the point of view of trade and commerce, these are restrictions which are not justifiable.

Shri S. S. More (Sholapur): Sir, to the original clause the Finance Minister has been pleased to move an amendment, No. 592. But I find it difficult to understand clearly the meaning of this amendment, Sir, it says:

> "If any member of a company formed and registered under the Indian Companies Act, 1913 (VII of 1913) dies after the commencement of this Act and the company through any of its principal officers as defined in section 18, has knowledge of the death, it shall not be lawful for the company to register the transfer of any shares standing in the name of the deceased member unless there is produced before it a certificate from the Controller that either the estate duty in respect thereof has been paid or will be paid or none is due, as the case may be."

Sir, the doubts that I entertain on this are these. I am trying to interpret this particular amendment. Suppose a transfer is made by the deceased during his own lifetime. The shares will be standing in his name till the transfer is recognised and the register is amended in the name of the transferee. Or the transfer of the shares may be made by the legal representatives or the persons who come into the possession of this particular property. Suppose the deceased himself, within his lifetime, transferred the shares for whatever reason, for whatever consideration or not. He has sole control over his shares and was pleased to transfer them for whatever reason. Why should the Government place an embargo or a sort of ban on the registration?

Mr. Deputy-Speaker: As the hon. member is proceeding, I would like to clear up doubts one after the other. Does the non-registration of transfer in the books of the company stand in the way of further transfers?

Shri S. S. More: No, as far as I understand it.

Mr. Deputy-Speaker: So far as the legality of transfer is concerned, it can pass a number of hands before transfer is effected. That does not stand in the way of the property passing. It is only for the purpose of drawing dividends etc. that it applies. Unless the transfer is recognised, nobody will be able to draw by way of dividends etc.

Shri S. S. More: I am trying to understand the exact meaning. As far as the legal implications are concerned, they have to be discussed and I will come to them later on. But my question to the Finance Minister is: Does he mean to say that any transfer even made by the deceased during his lifetime—and subsequently he dies—would entitle the Government to issue a sort of ban on the company not to recognise the transfer? Or does his amendment mean that a transfer has to be made by the legal representatives? I am trying to understand, Sir. The only qualification is the transfer of the shares standing in the name of the deceased.

Mr. Deputy-Speaker: That applies to both. As the language stands, whether the deceased transfers the shares or the deceased's successor transfers them, the registry shall not be affected when once the officer of the company....

Shri K. K. Basu: If at that time he has knowledge that the person has died.

Mr. Deputy-Speaker: It may be that the deceased, fraudulently, to avoid the duty, may have also done so.

Shri S. S. More: It may come under section 9, another clause which we have passed.

Then, Sir, I want further to bring to the notice of the Finance Minister clause 72. It is said there that the estate duty shall be a first charge on the property of the deceased. Now, even accepting, for the sake of argument, that the deceased fraudulently transferred his shares during his lifetime with the sinister object of evading the duty, then whatever the condition of the passing of the title in the share, the first charge will be there. Not only that. Any private transfer or delivery of such property shall be void. So it means, that this clause 72 gives sufficient protection, even if the company is permitted to recognise the transfer and to register it in their record. As a matter of fact, this clause 72 will pursue the person even in spite of the entry in the books of account.

Sir, the Government have every right to stop registration or recognition of such a transfer. But the point is, whether such a ban on the company will not affect the circulation of the shares and the negotiability and result possibly in slumping of the price. That will affect our trade and industry. We are trying to build up our industries by so many companies even in the private sector and if this private sector is not given some reasonable freedom, subject to the rigorous control by the Government to transfer the shares in the names of different persons, this ban will operate as a sort of clog on the transferability of the shares and it may result in depressing the value of the share. That is my fear.

I believe that in view of clause 72 the enacting of such a clause is absolutely unnecessary. This instrument need not be in the armoury of Government because under clause 72 they can deem the whole transfer void; even if the Company registers, there may be some private complications between the transferor and the transferee. Supposing under this clause a share is transferred and the transfer becomes void, the transferee may get into trouble and may lose his money. But, as far as the Government is concerned, their care and anxiety is for the recovery of the estate duty without any hindrance. This clause 72 makes the transfer absolutely void and therefore whatever transactions, whatever entries are allowed to be made in the books of the company will not affect the recovery of the Company's dues. This is the only thing that I want to submit and I doubt whether Government shall be right in forbidding the transfer of shares made by the deceased without any time limit because this clause does not refer to any time limit. Even if the transfer is made by the deceased some 3 or 4 years back, and, as a matter of fact, if for some reason or other recognition by the Government, or entry in the necessary registers has not been made for a period of three years, what will happen? These are some of my questions, Sir, for which I expect some answer and clarification from the Government side.

Shri Pataskar (Jalgaon): Sir, I entirely agree with the object underlying sub-clause (2) because....

Mr. Deputy-Speaker: Just one word. I was not present when this clause was taken up. Now, I hear arguments for and against this point of order that has been raised. There is no more to be discussed. The rest of the amendments in general and

[Mr. Deputy-Speaker]

other facts have all been discussed, both the amendment and the clause.

Shri C. D. Deshmukh: This particular amendment has to be discussed on merits and much of the discussion is mixed discussion on the point of order as well as on merits. It would have been convenient if the point of order had been disposed of first but since hon. Members have spoken.....

Mr. Deputy-Speaker: I think they have spoken both on merits and on the point of order.

Shri A. M. Thomas: On the merits also speeches were made.

Mr. Deputy-Speaker: I have read the proceedings and I have heard the speeches of hon. Members here. They have not confined themselves merely to the academic issue but also intermixed facts on which these issues have arisen.

Now, on amendment No. 592, such other hon. Members who have not taken part in the debate and who would desire to do so will address themselves to the practical point of view and also on the question of law so that I can dispose of the question of law concerned first.

Shri C. D. Deshmukh: I have to say something, Sir.

Mr. Deputy-Speaker: Mr. Pataskar was speaking.

Shri C. D. Deshmukh: I know he was on his legs.

Mr. Deputy-Speaker: Would the hon. Finance Minister like to intervene now?

10 A.M.

Shri C. D. Deshmukh: I have consulted the Law Ministry on the point of order and I thought that perhaps that might be of assistance to the House. That is all. The other day, towards the end of the day when the point was raised, I had to reply on my own so to speak, but, since then I have consulted them and I was wondering whether the House would not be interested in knowing what the view of the Law Ministry is.

An Hon. Member: Was the Law Minister or the Law Ministry consulted?

Shri C. D. Deshmukh: Both the Ministry and the Law Minister were consulted.

Mr. Deputy-Speaker: If it is a question of reiterating what the hon. Minister has already said.....

Shri C. D. Deshmukh: Yes, Sir, it is reinforcing the argument.

Mr. Deputy-Speaker: Then, I will come to it later on. If, on the other hand by consultation with that Ministry he has arrived at a conclusion that he must meet half way the objections, or something like that, then I can take it now.

Shri C. D. Deshmukh: It is by way of reinforcement, Sir.

Mr. Deputy-Speaker: Then we will wait.

Shri S. S. More: When the hon. Law Minister has been consulted, will it not be proper to have his opinion directly instead of having it from the Finance Minister?

Mr. Deputy-Speaker: We will take it that the Finance Minister will talk deriving his inspiration from the Law Minister.

Shri Pataskar: Now, I would like first of all to make it clear that so far as the object underlying sub-clause (2) is concerned, namely that in the case of those people who own shares and are liable to estate duty, there must be some provision by which transfers could be prevented. Supposing a man who inherits Rs. 3 or 4 lakhs worth of shares and has already effected transfer of them and subsequently it is found that he is liable to estate duty, it cannot be recovered

because the shares have been transferred. That object I can quite understand but the way in which the subclause (2) is worded is rather too wide. After that the hon. Finance Minister has moved an amendment trying to restrict it and there he says:

> "If any member of a company formed and registered under the Indian Companies Act, 1913 dies after the commencement of this Act and the company through any of its principal officers as defined in section 18, has knowledge of the death, it shall not be lawful for the company to register the transfer etc."

This, as has been pointed out by my hon. friend Mr. Thakur Das Bhargava and others might work hardship in the case of 90 per cent. of the shareholders who are not at all liable to pay estate duty. Probably that is not the intention with which the Government is bringing forward either this clause or the amendment. Sir, in view of this amendment power is given to the managers of the companies and if such general power is given to the managers what might happen? As we know, the managers of companies, for reasons best known to themselves, might like to postpone the decision. We know, already, under the provisions of the Companies Act, the managers or managing agents of companies who do not want some shareholders on the companies register, resort to so many devices and this would be an additional device for them. Therefore, to my mind, the best thing would be to find out some way by which this hardship will be avoided and, at the same time, the object is achieved. My own suggestion is that—if it is acceptable to the hon. Finance Minister—there should be some slight change in the amendment. I will first of all explain before I put forward what I propose to say. In the case of companies there is a list of shareholders maintained. Now, the names of those who pay income-tax are already with the income-tax authorities and in the case of others who do not pay income-tax, they have to apply for refund and so their names are also known to the income-tax authorities. These names are known to the income-tax authorities either because they are liable to pay income-tax or because they ask for refund. So, it is not very difficult for the income-tax authorities to find out who are the persons who are liable to pay estate duty. Their number will be very few. Therefore it would not be proper to have a wholesale direction like this. The names of all the shareholders are there on record. It will be easy for the Government, the income-tax authorities, to find out who is liable to pay and who is not liable to pay the estate duty. Therefore, instead of giving this wide power to the manager or managing director of the company I would suggest this.

> "If any member of the company formed and registered under the Indian Companies Act dies after the commencement of this Act and the company through any of its principal officers as defined in section 18 has been informed by any of the estate duty officers..." then the rest follows.

Mr. Deputy-Speaker: I have not been able to follow.

Shri Pataskar: Sir, to my mind Income-Tax Department is in possession of information with respect to the status of all shareholders of all registered companies because in the case of those that pay income-tax they ask for deductions. In the case of those also that do not pay income-tax they have to ask for refund because companies are asked to pay the income-tax and the shareholders—even those that are not liable to pay income-tax—ask for the refund. There is complete information with the Income-Tax Department so far as the Registered companies are concerned. They know the status of the shareholders.

Mr. Deputy-Speaker: Why elaborate that point? Registers of the companies are there.

Shri Pataskar: What I mean to say is, supposing out of one hundred shareholders there are only 5 per cent. shareholders who hold shares which are liable to estate duty tax. Now knowing the financial position of all shareholders which is in the possession of all the income-tax authorities normally, and particularly in the case of shareholders who ask for refund or who have been granted refund certificates by income-tax authorities they can certainly know their financial position.

Shri V. B. Gandhi (Bombay City—North): Not in the case of companies who do not declare dividends. The Income-Tax Department has no information about them. Such shares are valueless. In the case of good companies generally this information is there. Therefore, we have to choose between the two.

Shri Natesan (Tiruvallur): The hon. Member says that those shares are valueless. Supposing a person, who has shares worth two or three lakhs of rupees in a company which does not declare a dividend, dies. Is the Government foregoing estate duty on those shares?

Shri Pataskar: What I mean to say is, normally the Government has got the information about the financial status and the burden of the company But in the case of any particular man who is dead and who is a shareholder if the Estate Duty Officer informs the Manager not to register the shares, he should not, but for the sake of 5 per cent. of those that may be liable to make such a rule certainly is not proper. I agree with Mr. More on this point that supposing power is given to the Manager, the Manager is likely to cause harassment. There are so many interests involved. If the managing agent wants to keep out certain people he can do it. To my mind, this power if not modified, would certainly interfere with the normal things.

There is one other thing which I notice. Why should only shareholders be selected for this purpose? For instance, there are Government securities. We do not propose to prevent their transfers, there are deposits in banks. Their transfers are not prevented, and then why select only shareholders? There are so many other things which are not prevented. The approach is not correct. Primarily our business is to see that there is no avoidance of payment of estate duty. Wherever we think estate duty is going to be avoided we can make provision for specific things. Or as you want to put it the other way that because some 5 per cent. or 1 per cent. of people may avoid the estate duty therefore all shares should not be transferred or as is now suggested in this amendment it is left to the discretion of the manager. But how is the manager going to be satisfied? It is better that the Estate Duty Officer should be satisfied rather than the Manager of the company because, I am sure, in the matter of registered shareholders he would not be satisfied. In specific cases, to my mind it appears that in the case of registered companies 90 per cent. of the information will be available to them and they can issue specific instructions.

Pandit K. C. Sharma (Meerut Distt.—South): I do not argee with my friend, Mr. Bhargava, that this provision is barred by the provisions of the Constitution. If we read sub article 5 of 19 of the Constitution we will find that there is a provision for making any law for imposing reasonable restriction on the exercise of any of the rights conferred by the article 19 either in the interests of the general public or for the protection of the interests of the Scheduled Tribes.

The interests of the general public is wide enough to cover a provision like this. I respectfully submit that collection of estate duty is in the interest of the general public as every revenue measure which gets the

wherewithal for the Government for the good of the people is in the interest of the people. Therefore, there is nothing to bar this provision in the Constitution. It is constitutional; it is perfectly right and Government has a right to have this provision for the collection of estate duty.

Having said this, I do not find much use of this provision so far as the practical aspect of this question is concerned because any property is liable to the charge under Clause 72 read with Clause 19 of the Bill. Wherever the property of the deceased goes it takes the charge on itself so far as the payment of estate duty is concerned. Further the amendment proposed by Finance Minister limits the provision by the knowledge of the dead—by the officer. Now what is the criterion whether the officers of the company had knowledge or not. In most of the cases whether they have knowledge or not, they will not use the information to the Government's advantage.

The second point is regarding the transfer of the property for valuable consideration. I think it is useless, because under Clause 19(2) the estate duty on the property will not follow if that is transferred for valuable consideration. So under Clause 19 this estate duty is not charged on property transferred for valuable consideration.

Mr. Deputy-Speaker: Where does it say?

Pandit K. C. Sharma: Clause 19 Proviso) "Provided that nothing in this sub-section shall operate to make any property chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice." Estate duty is not charged after the transfer is for valuable consideration without notice. That is already exempted. My respectful submission is that balancing the hardship to the people as against the advantage in the favour of the Government, the balance is much more to the disadvantage of the people with little benefit or little advantage in favour of the Government. Therefore, it may be dropped in view of the provision under Clause 19 of the bill and also clause 72.

Mr. Deputy-Speaker: Mr. Gandhi. The hon. Member will speak on law or on fact or on both?

Shri Gadgil (Poona Central): He will take an hour.

Shri V. B. Gandhi: Mr. Deputy-Speaker, Sir, I shall be very brief. I propose to speak on the two amendments moved by the Finance Minister.

Mr. Deputy-Speaker: We are not concerned with amendment No. 592. Amendment to amendment has been moved.

Shri V. B. Gandhi: These are 592 and 744.

Shri Gadgil: It is the same as the one moved by Shri Parikh.

Shri V. B. Gandhi: Sir, all of us agree with the object with which the Select Committee inserted this new clause, sub-clause (2) of Clause 80. The object was to expedite the realisation of estate duty, but, Sir, in the light of the many facts that have been now revealed in speeches made in this House, it is doubtful whether this sub-clause will at all help in achieving the object that the Select Committee had before it. Not only will the original sub-clause (2) not do that, but even in the form in which it is sought to be amended by the two amendments of the Finance Minister—Nos. 592 and 744—the sub-clause will not achieve the object either. It is clear that these two amendments, to some extent, mitigate the possibility of mischief under the original sub-clause (2) of clause 80. Now, Sir, if we delete sub-clause (2) altogether as proposed in the amendment of Shri S. G. Parikh—amendment No. 746—there will be no interference with the remaining provisions of clause 80. Sir, this sub-clause (2) of clause 80, is going to raise more difficulties than solving the problem of expediting the realisation of estate duty on a property which is

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held in the form of investment in shares. I will just take one small illustration. Let us first realise that a vast proportion of the shares is not usually of shares which are held by people who just keep them in their safes and forget about them. A very large proportion of these shares is held by people who use the shares as a means of investment, for the purpose of utilizing them in one form or another in business. Now, if we scrutinize the overdraft accounts of the commercial banks, we shall be astounded to find how crores and crores of rupees worth of overdrafts have been taken on the security of these shares by men, not only rich men, big businessmen dealing with lakhs and crores, but by men of moderate means. I will take a simple illustration of a man, a businessman, of moderate means. He has a small business of his own, and he also owns certain shares. When his business needs some money, what he is likely to do is to hypothecate his shares with a bank and have an overdraft on the security of the shares and then give the amount which he receives by way of an overdraft to his business as a loan. Supposing this man dies. Then the first thing that his widow would naturally want to do would be to extinguish his overdraft, to pay this overdraft, so that no more interest will run on that overdraft. Now, this widow cannot do that, because to do that, she would have to ask the bank to sell the shares and the Bank will not be able to sell the shares, because the man in whose name the shares stood is dead. So, until something happens and the shares are released for sale after she receives the certificate of the Controller and all that—it is all a matter of time—it is difficult for her to take action. Several months would elapse during which time the overdraft would not be extinguished, and the interest would continue to run. Perhaps in the meantime, the value of the shares may have depreciated to the disadvantage of the widow, because it is a matter of months and months, and mostly the shares which are accepted by the commercial banks for granting overdrafts are shares like the Tata deferred or Tata ordinary or Bombay Dyeing shares which are subject to frequent fluctuations. Now, all such risks are there, and many others have been pointed out by other Members in their speeches. For all these reasons, Sir, I would urge upon the Government to seriously consider whether it will not be just as well to delete sub-clause (2). Let us proceed on the basis of this sub-clause (2) having been deleted. Let us have some experience and, if at a later stage, we find that we run into real difficulties, then such a clause can always be inserted. After all, Sir, even in the United Kingdom where transactions in such shares are out of all proportion to anything that we have to deal with in this country, they do not feel the necessity for having a sub-section like this, then why should we have it here? Sir, let us do nothing at all that will in any way discourage the habit of investment among the middle classes.

Shri Jhunjhunwala (Bhagalpur Central): I have nothing more to say except to point out to an argument advanced by my friend Mr. Gandhi and by Mr. Bhargava that 80 per cent. or 90 per cent. of the shareholders might be very poor shareholders, and as soon as the company knows that the shareholder has died, they would be put into difficulties and if the successors will not be able to raise any money on those shares. Further, the other thing, which I think, the Finance Minister should be able to realise more than anybody else, is that it is bound to tell upon the negotiability of the shares. If it will tell upon the negotiability of the shares and the transferability of the shares, in that case, business will be hampered to a great extent and investment in shares will stop, and all the industries will be hampered. These are the only two points which I wanted to point out. There is nothing more which needs elucidation. I would appeal to the

Finance Minister to look to it, especially from the point of view of negotiability and from the point of view of the fact that 80 to 90 per cent. of the shareholders have got very small shares, and if the news of the death of the shareholders goes to the company, they will be put into great difficulties.

Shri C. D. Deshmukh: Mr. Deputy-Speaker, Sir, first, as regards the constitutional point. Firstly, restrictions are liable to be placed on the transfer of shares as a matter of agreement under the Company Law. For example in the case of a private company, the transfer of shares is restricted. The question which we have now to consider is different, namely, whether it is competent for a State law to impose restrictions on the freedom to transfer shares contrary to Article 19(f) of the Constitution. This is the opinion of the Law Ministry which I am reading out: "The first point is to consider whether there is really any restriction on the freedom to acquire, hold or dispose of property." There is nothing in our clause 80(2) restricting this. The restriction, if at all, is only indirect, that is to say, that no transfer after it has already taken place will be registered in the company's books, unless certain conditions are fulfilled. Would it be correct to say, for example, that a provision stating that no title to immovable property shall pass unless the document in writing is registered in respect thereof? That is an analogous case. It is, therefore, even possible to argue that there is no restriction. In other words, these restrictions are imposed for certain purposes: they do not interfere with the freedom of transfer. But, even if we assume for argument's sake, that there is a restriction in contravention of Article 19(f), then the question is whether it is a reasonable restriction in the public interest, or general public interest, or in the interest of the general public.

When the State decides to levy estate duty any provision which will enable the Government to collect the duty and to prevent evasion thereof should necessarily be in the interest of the general public. The particular provision prohibits the registration of transfers in certain cases where the Government has knowledge of the death of a particular member, unless certain conditions are fulfilled. Is it wrong to enlist the support of the machinery of the company to ensure that estate duty is not evaded? In my opinion, not. This is the Law Minister's opinion.

A few comparable instances of reasonable restrictions may be quoted in this connection. Section 46A of the Income-tax Act requires persons domiciled in India also to be in possession of tax clearance certificate before leaving India. Now that is a restriction on free movement, in the interest of the general public. Then, the Payment of Taxes (Transfer of Property) Act, 1949. The restrictions placed by this Act are more severe, and though this is a pre-Constitution Act it has not so far been challenged.

One word more, and that is my own, arising out of what Pandit Thakur Das Bhargava said. He contended that the words used are "interest of the general public" and not "public interest" as we are apt to say in replying to supplementaries. I have hastily gone through the Chapter on Fundamental Rights and I have not been able to confirm what he has said that where public interests are involved it is specifically said "public interest." There is "public order", "in the interest of public order".

Pandit Thakur Das Bhargava: The word "public interest" has been defined in other statutes also and a portion of the public is public in the Indian Penal Code. Here the words used are 'general public' not 'public'.

Shri C. D. Deshmukh: I understood his argument to be that in the Constitution itself when we mean in the public interest we say 'in the public interest' and not 'in the interest of

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the general public', and that there is some distinction intended between the two. I have confined my hurried examination only to that Chapter and I find that the reference is to public order. But I cannot find any distinction between public interest and interest of general public, the inference therefore being that the interest of the general public as distinguished or distinguishable from the interest of the Scheduled Tribes. That is what the hon. Member is trying to argue.

That is what strikes me on this constitutional point and Government are satisfied that this is not violating any Article of the Constitution, in particular 19(f).

Pandit Thakur Das Bhargava: Is the Finance Minister prepared to agree with this proposition that there is no restriction on acquisition? A person gives the money and yet he is not able to get possession, of shares or dividend unless he is able to register.

Shri C. D. Deshmukh: There is no restriction on acquisition. I was going to refer to that point in connection with the merits of the case. We inserted this clause in the Select Committee in order to prevent evasion. What we had particularly in mind were blank transfers. In the ordinary case this kind of difficulty does not arise. A person dies, his heirs or legal representatives write to the company, they show their title, or if it is through a *bona fide* purchaser, through a broker the title is conveyed and the necessary entry is made in the books of the company. It was only when we tried to find out what are the ways of evasion that it struck the Select Committee that evasion would be very easy through what is known as 'blank transfers'. That is to say, a person holding shares may write an authority of transfer, without any date and without filling the place where the purchaser's name is to be inserted. Now on these blank transfers scores of transfers take place. These cases have gone to courts of law in connection with voting. It has been held that if it is proved that a person has paid consideration, no matter what the previous chain of transaction may be, he has a right to vote, not the person who is registered as the owner of the shares. Therefore there are certain peculiar incidents attached to this institution of blank transfers and it is against this that this clause was directed.

Pandit Thakur Das Bhargava: How can you prevent it by this clause?

Mr. Deputy-Speaker: The point is how does this help. It is not the contention that no property passes independently of registration. The registration may be necessary for some other purposes. Therefore, we will assume that X is the original person in whose name the registration stands. He transfers it to Y and Y in his turn transfers it to Z, who is the person who dies. All the same the transfer has not been changed to the name of Z. The clause does not seem to be useful at all.

Shri C. D. Deshmukh: Sometime or the other, for some other purpose, maybe receipt of dividends, maybe for something else, the person who is actually holding it may wish it to be registered.

Mr. Deputy-Speaker: How is it effective? The person who dies is a person in whose name the registry has not been effected, we will assume. The registry has been in the name of A. It passes hands from A to B, then B to C and then from C to D. It is D that dies without the transfer being changed in the name of D. Now A the original man does not die. Therefore, how is it useful to Government?

Shri C. D. Deshmukh: We are only concerned if A dies.

Mr. Deputy-Speaker: But if D is the real owner?

Shri C. D. Deshmukh: If at all it is a subject of charge, then all these people would be accountable persons, if the chain can be established. Therefore, sometime or other we shall be able to place a charge on the shares, when the matter comes to the company for change of the original registration. Now, as I said the motive, the predominant motive, might be the desire to receive dividends.

Mr. Deputy-Speaker: Now the man who dies is D. A is the person in whose name the registration stands. He transfers it to B, B transfers it to C and C in turn transfers it to D. If A and E are able to come together and A who is still alive writes to the company that it is transferred in the name of E it can still be done, notwithstanding this amendment. The man who dies is D. Of course, if it stands in the name of the man who dies this amendment stands in the way of its being transferred. To a large extent the amendment may not be effective.

I am only asking as to how far it is going to be useful to Government.

Shri C. D. Deshmukh: If a person does not die, it is not affected. We are only concerned with the property of those persons that die. There may be other kinds of cases than what is said here.

Mr. Deputy-Speaker: What is the object of ignoring all of them and catching hold of only this? From the hon. Minister's experience, what period does it normally take to get it transferred?

Shri C. D. Deshmukh: It takes about 6 months and within a year certain dividends have to be received.

Mr. Deputy-Speaker: Cannot dividends also be paid to order, without even a registration?

Shri C. D. Deshmukh: As far as I am aware, the dividends are only paid to the registered holders.

Mr. Deputy-Speaker: He endorses and signs, and any other man can receive it.

Shri C. D. Deshmukh: That is as a power of attorney. I am referring to his receiving as the owner.

Mr. Deputy-Speaker: Notwithstanding the non-transfer of the shares, the money can be received on the basis of endorsement from time to time. Now, what I am concerned with is this. Notwithstanding this restriction, in the majority of the cases, the ordinary practice is that as and when transfers are effected quickly, they are not registered. What is the object of trying to catch hold of this particular case only?

Shri C. D. Deshmukh: All that you are suggesting, Sir, is that there might be a number of evasions. So far it has not been necessary for anyone to see that as dividends are declared, they may be received by someone else. I have no doubt that some of these ways will be found, but as and when they are found, we shall deal with them. To my knowledge it has never happened that somebody else was asked to receive dividends on one's behalf, although there might be just a blank transfer. We are now dealing with the problem as might exist today.

Shri S. S. More: Will not clause 72 prevent the passing of the property, on the death of the deceased, as a matter of fact?

Mr. Deputy-Speaker: There is nothing in clause 72 which makes anything void. Clause 72 deals with the existence of a first charge or release from that charge and all that it says is that if consideration has been paid, then there is no charge.

Shri N. C. Chatterjee (Hooghly): The first charge on *immovable* property.

Mr. Deputy-Speaker: Yes, whoever takes it, takes it subject to the charge. Even then, notwithstanding the non-transfer, cannot the Government proceed against the other person who

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takes the property. We will assume that it is transferred and the transfer is effected in the books of the Company. How does the Government suffer, because it is the first charge under Section 72? Whether the transfer is effected in the registers of the Company or not, that man escapes. Under section 73, in the case of a *bona fide* transfer for valuable consideration without notice, the person who purchases is also protected.

Shri C. D. Deshmukh: In section 72, there is no doubt a charge and the object of the Government is to insist upon payment before it is transferred. If he is a *bona fide* purchaser, notwithstanding the non-registration, he will escape and he is not liable to pay duty.

The Company is doing what Government would have done when it is known that someone has acquired property or shares belonging to the deceased. If, for instance, there was some automatic way by which we also want to know all details of transfers, certainly we can do what the Company can do. All that we are asking here is to cast a responsibility on the Company to which some matters come in the normal course of business. The object is simply to ensure that there is no charge. In other words, someone on our behalf has to be satisfied that due consideration has been paid. Then we say 'we don't bother you'. If the Company tells us that no consideration has been paid, we can still value the property. The only object that is gained here is that at the earliest stage there is some kind of check on properties escaping estate duty.

Mr. Deputy-Speaker: Whoever takes the property takes it subject to the liability of paying duty. The only thing is that his name has to be revealed.

Shri C. D. Deshmukh: He has not got to come to us, but he has got to go to the Company.

Mr. Deputy-Speaker: Whoever wants to have a transfer goes to the Company, whether the other man dies or not.

Shri C. D. Deshmukh: Our clause only applies where the death takes place.

Mr. Deputy-Speaker: How does it help the Government at the earlier stage?

Shri C. D. Deshmukh: At the earlier stage, he has to produce a certificate that will prove that he has acquired the property or share for some consideration. Therefore, he releases his title at the earlier stage when it is possible for him to do so. There is no compulsion for him to come to Government, nor has Government any other means of finding out how many transfers have taken place between the deceased and a large number of people.

Mr. Deputy-Speaker: We will assume there is no transfer. Then it is the duty of the Company to intimate to Government.

Shri A. M. Thomas: The Estate Duty Officers have the information.

Mr. Deputy-Speaker: How do the Estate Duty Officers get to know about the properties of the deceased?

Shri C. D. Deshmukh: At any rate, what we shall have secured is that certainly properties which are not subject to estate duty will at least be left out because there will be proof here that either consideration has been paid or a certificate has been issued. Therefore, a large number of cases will be excluded from the administrative and other enquiries following this levy. It is a limited object and it may be attended with limited success. The only refinement that was suggested on this was the one suggested by Shri Pataskar that Income Tax Officers must have complete information. Now, income-tax is concerned with only non-agricultural income. There are many agri-

cultural incomes about which we have no information.

Mr. Deputy-Speaker: That does not affect the shares with which we are concerned here.

Shri C. D. Deshmukh: A record is kept of the shares because there is other income also. I mean there is income from the shares. There are so many potential properties in which also there might be a shareholding. But there may be no connection with Income-tax.

Secondly, I am not quite sure if section 54 of the Income-tax Act will not prevent the disclosure of this even between departments of Government.

Pandit Thakur Das Bhargava: You have already got a section here.

Shri C. D. Deshmukh: It has not yet been passed. We have not been able to get it through.

Shri Tulsidas (Mehsana West): It has been passed in the last Amending Bill.

Shri C. D. Deshmukh: Maybe, in which case of course this objection cannot remain and it can be passed on, but my first point remains that it is not always that the Income-tax officers will have the information. Secondly, Income-tax assessments are made late. It is two or three years after the actual accrual of income, whereas we cannot hold all that up as we are anxious that the determination of estate duty is done as early as possible. Therefore, for this reason I am not able to accept this particular amendment to my amendment.

As regards the possible effect of negotiability or inconvenience to people, we have consulted one industrial unit here, a company, in regard to the frequency of these registrations of transfers. They say that in the case of companies these transfers are made on the basis of either a succession certificate or an indemnity bond. And most of the companies follow this procedure. Blank transfers operate generally, if not wholly, in the case of speculative shares only. That is a point which I wish to mention. If one fears that the negotiability of shares as a whole is affected, my answer would be 'No'. The people likely to be affected would be largely those who speculate in some of the well known counters of speculation.

The last point I would urge is that this is a clause in respect of which we have had prolonged discussions with the President of the Bombay Stock Exchange and we have given very careful consideration to representations made in this behalf by the Calcutta and other Stock Exchanges. We received a telegram from the President of the Bombay Stock Exchange. We indicated to him the sort of solution that it might be possible for us to find in order to include a clause which, if it stood in its original stead, might have been a serious impediment in the matter of negotiability. Now I wish to state that according to him the two changes that we are now making will make the clause acceptable to the Stock Exchange. I would suggest humbly to hon. Members that in this matter they should accept the verdict of those who have to deal with shares all their lives—I mean whose profession it is to be concerned about negotiability, irrespective of what their personal views might be.

Shri S. S. More: May I make a useful suggestion, Sir? Under clause 51(3) every person accountable for estate duty shall within six months make a disclosure to the Government regarding the property. So in this clause some time limit must be prescribed—unless there is a certificate or within six or eight months. Because within six months you will get all the information necessary. After the lapse of seven or eight months the company may automatically register it if they deem it fit. Otherwise for the production of certificates indefinite time will be required. If

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people die in larger number the period will be very long. So a time limit must be there

Shri K. K. Basu: They give receipts for the money they have received.

Mr. Deputy-Speaker: I have two doubts about this and I would like them to be cleared by the Finance Minister before I come to any conclusion.

What is the effect of saying that it will be unlawful for the officer to register? We will assume he registers or effects the registry of transfer in the name of the new person notwithstanding his knowledge that the other man, the previous registered holder, is dead. What happens to this transfer? Is it void? Or will the officer be taken to task? We will assume he does so. Does the transfer itself in the registry become void?

Shri Pataskar: Sub-clause (3) provides the penalty.

Mr. Deputy-Speaker: Let the company damn itself. What is the effect on the transfer? The transfer is not going to be voided, or the registry is not going to be null and void. How does Government get any information? We will assume it is a transfer worth lakhs of rupees. The penalty on the company is a thousand rupees.

Shri K. K. Basu: Or double the duty.

Mr. Deputy-Speaker: Is it reasonable restriction? The moment somebody dies, whether his estate is liable to duty or not, if it comes to the notice of the company—it is a certificate—he must run up. Is it a reasonable restriction? The property may be only twenty thousand rupees. It may not be liable to estate duty. He may have shares. He may die. If he has small shares of one hundred or two hundred rupees, the man must run up. Is it a reasonable restriction in the interests of gathering tax?

Shri C. D. Deshmukh: That is assumed in clause 58, is it not?

Mr. Deputy-Speaker: Where?

Shri C. D. Deshmukh: Persons accountable, where accounts have to be given under clause 58.

Mr. Deputy-Speaker: We will assume he is liable to account. But I am concerned here with article 19(5) regarding his property. I will assume that 'in public interest' and 'in the interests of the public' mean the same thing and the State interests are as good as public interests. Then the restrictions, apart from the question of "existing law" and so on which was raised by Mr. Trivedi, must be reasonable. The wording is "in the interests of the general public or for the protection of the interests of any Scheduled Tribe". Is it not proper to say that this is not in the interests of the general public?

Shri Raghavachari (Penukonda): It is definitely stated that sale and disposal is not affected. Therefore there is no restriction. Properties can be disposed of. Registration is something formal which may or may not take place.

Mr. Deputy-Speaker: In which case it is unnecessary.

Pandit Thakur Das Bhargava: It will be on the acquisition itself. Unless a thing is registered what is the use of acquisition? It is a national disposal.

Shri C. D. Deshmukh: Section 34 of the Companies Act says:

> "It shall not be lawful for the company to register a transfer of shares in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the scrip".

Mr. Deputy-Speaker: It is not in the interest of stamp duty alone. It is also to safeguard the interests of the company registering under the name of X, Y, Z without knowing that the property has been transferred. They must have some evidence, apart from the stamp duty.

Objection has been raised to these two amendments 592 and 744—744 is part and parcel of 592—read together on the ground that this stands in the way of free transfer of property as envisaged in article 19 (1) (f) of the Constitution. I will refer to the objections one after the other.

The first objection that was raised by Shri U. M. Trivedi was this. He laid emphasis on the word 'existing' in the provision "....said clause shall affect the operation of any existing law in so far as it imposes....". But, he failed to read the other portion. The wording here is 'prevent': not only the existing law, but it cannot also prevent future laws. If, instead of 'prevent' it were "....of any existing law in so far as it imposes or prevents the State from making any law...." it will go along with the previous one. In asmuch as the word 'prevent' is used, it must be read along with 'affect' as: "....shall affect.....or prevent the State from making any law imposing....". It therefore relates both to existing and future laws also. There is no force in the contention that future law ought not to be made. That objection is overruled.

So far as the objection regarding the words 'in the interests of the general public' is concerned, wherever they are used in the earlier portions, the wording has been 'in the interests of public' so far. I am unable to lay my hands on any portion here, where as pointed out by the Finance Minister the phrase 'public interest' is used. This phrase 'in the interests of general public' means only 'public interest' as we ordinarily use, or general public interest. It is not contended that the wording should be public interest. Anything which affects the taxation of the State is a matter of public interest. Therefore I feel that no difference ought to be made between the expression 'in the interests of general public' and 'public interest'. Anything that is done in the interests of the State is as much in the interests of the general public. Both these points are therefore found against.

The only point is how far these amendments stand in the way of free transfer. I do not find that this compulsion in the matter of registration or making it unlawful to register stands in the way of free circulation of property. It can pass from hand to hand. If he is a *bona fide* purchaser, he is not affected at all; if he is not a *bona fide* purchaser, Government has nothing to lose and it can proceed upon the property. The only object of the Government seems to be that at some point, whoever might purchase, he has to obtain the sanction or certificate of the Controller in which case some attention or some intimation will be given to the Controller that that person is dead, and he has some shares to his credit, so that they may be taken into account. I do not personally feel that this has much value inasmuch as blank transfers are going on. It is left to the Government to consider how far it is necessary or useful. Apart from that, I am considering the question how far this insistence upon recognition or certificate from the Controller stands in the way of free circulation of shares, and also of the people whose estate on their death is not liable to estate duty. There is already clause 51 laying down the persons accountable, and their duties and liabilities. It may be that at this point, there is no restriction that it ought not to be transferred or that the transfer shall be unlawful. Every man may be liable to give his account. But, the other question is preventing transfer for his own benefit and circulation of property. These are two different things altogether. It is rather difficult for me and I do not know the percentage of such people. A person whose estate is not liable to duty at all may have some shares. If every

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one of them is to obtain the certificate of the Controller, I think it is too great a restriction upon that kind of circulation. Inasmuch as it does not stand in the way of circulation, except that it may prevent the drawing of dividend for some time, I put the question: what will be the effect if, in spite of these amendments, the officer of the company transfers. That man will be punished. All the same, the registry would not become invalid. For these reasons I hold that there is absolutely nothing standing in the way of the transfer being valid or transfers being effected; only it causes some inconvenience to those persons whose estate is not liable to duty. This is a matter which the Government may consider. I would have liked that they should have accepted some amendment. But, it is not for me to decide whether it is right or wrong. It does not stand in the way of mobility or free circulation or negotiability of these transfers. It is only an indirect method of getting information. I overrule this objection. There is no point of order in this. Only some inconvenience may be caused.

11 A.M.

Now, I shall put the amendments to the vote of the House. There has been enough discussion on the questions of law and fact. Now, the amendment to amendment No. 592.

The question is:

In the amendment proposed by Shri C. D. Deshmukh, *after* "unless" *insert* "the company is satisfied that the transferee has acquired such shares for valuable consideration or".

The motion was adopted.

Mr. Deputy-Speaker: Now, amendment No. 592, moved by Shri C. D. Deshmukh as amended by amendment No. 744.

The question is:

In page 35,

for lines 33 to 39 *substitute*:

"(2) If any member of a company formed and registered under the Indian Companies Act, 1913 (VII of 1913) dies after the commencement of this Act and the Company through any of its principal officers as defined in section 18 has knowledge of the death, it shall not be lawful for the company to register the transfer of any shares standing in the name of the deceased member unless the company is satisfied that the transferee has acquired such shares for valuable consideration or there is produced before it a certificate from the Controller that either the estate duty in respect thereof has been paid or will be paid or none is due, as the case may be."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 35, lines 27 and 28,

for "at such scale as may be fixed by the Act of Parliament in pursuance of section 34" *substitute* "at the rates mentioned in Part III of the Second Schedule.".

The motion was adopted.

Mr. Deputy-Speaker: The amendment of Shri S. G. Parikh. It is barred. Shri Tulsidas.

Shri Tulsidas: It is barred.

Mr. Deputy-Speaker: Shri S. G. Parikh. 746.

Shri S. G. Parikh (Mehsana East): I beg leave to withdraw my amendment number 746.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: Even otherwise, it is barred. The amendment of Shri Tulsidas.

Shri Tulsidas: It is also barred.

Mr. Deputy-Speaker: I am glad the hon. Member himself says so.

Then amendment No. 445. That is barred.

Shri Tulsidas: That amendment is not barred.

Mr. Deputy-Speaker: His amendment is for the omission of lines 33 to 39. Those lines have already been omitted and substituted. So the hon. Member has succeeded. The Finance Minister also has succeeded.

Mr. Deputy-Speaker: The question is:

"That clause 80, as amended, stand part of the Bill."

The motion was adopted.

Clause 80, as amended, was added to the Bill.

Clause 18.—(*Rule making powers etc.*)

Shri Pataskar: Sir, I do not move amendment No. 567.

I beg to move:

In pages 35 and 36, *for* clause 81 *substitute*:

"81. (1) The Central Government may make rules prescribing all matters which by this Act are required or permitted to be prescribed and for carrying out the purposes of this Act.

(2) Rules made under this section shall be published in the Official Gazette of the Government of India and shall not have effect before such publication.

(3) These rules shall also be published in the Official Gazette of all State Governments and at least in one newspaper of the language or each of the languages recognised and prevalent in each State, as soon as may be after they are made.

(4) Rules made under this Act shall be laid before both the Houses of Parliament within ten days of the date on which each of these two Houses meets after the first publication of such rules in the Official Gazette of the Government of India."

Mr. Deputy-Speaker: Amendment moved:

In pages 35 and 36, *for* clause 81 *substitute*:

"81. (1) The Central Government may make rules prescribing all matters which by this Act are required or permitted to be prescribed and for carrying out the purposes of this Act.

(2) Rules made under this section shall be published in the Official Gazette of the Government of India and shall not have effect before such publication.

(3) These rules shall also be published in the Official Gazette of all State Governments and at least in one newspaper of the language or each of the languages recognised and prevalent in each State, as soon as may be after they are made.

(4) Rules made under this Act shall be laid before both the Houses of Parliament within ten days of the date on which each of these two Houses meets after the first publication of such rules in the Official Gazette of the Government of India."

Shri C. D. Deshmukh: I beg to move:

(1) In page 35, line 47, *after* "previous publication" *insert*:

"and subject to the control of the Central Government".

(2) In page 36, *after* line 2, *insert*:

"(1A) The power to make rules conferred by this section shall, on the first occasion of the exercise thereof, include the power to give retrospective effect to the rules or any of them from a date not earlier than the date of the commencement of this Act."

Mr. Deputy-Speaker: Amendments moved:

(1) In page 35, line 47, *after* "previous publication" *insert*:

"and subject to the control of the Central Government."

(2) In page 36, *after* line 2, *insert*:

"(1A) The power to make rules conferred by this section shall, on the first occasion of the exercise thereof, include the power to give retrospective effect to the rules or any of them from a date not earlier than the date of the commencement of this Act."

Shri Pataskar: The point which is raised by my amendment is not pertinent only to this particular legislation, but it is a point of some constitutional and general importance. Therefore, for the sake of convenience, I will first read out how the Section will be after the amendments proposed by the hon. Finance Minister are accepted:

"81. Rule-making powers of the Board.—

(1) Subject to the condition of previous publication, and subject to the control of the Central Government, the Board may make rules not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed....

—So far as my amendment is concerned, you will not find the word "convenient" there. That is another change.—

"..for carrying out the purposes of or giving effect to this Act."

Now, I will read out my amendment. It is like this:

"81. (1) The Central Government may make rules prescribing all matters which by this Act..

—so that I want this power to be given in the first place to the Central Government and not to any statutory body—

"..prescribing all matters which by this Act are required or permitted to be prescribed and for carrying out the purposes of this Act."

Only the wording is different. The change is that I do not want anybody to frame rules which are convenient to be prescribed. So far as I know, Sir, I have never come across this phrase in any other enactment, *viz.*, that they are to be as are convenient to be prescribed. It will be very difficult to prescribe what is convenient, and what is not.

Then,

"(2) Rules made under this section shall be published in the Official Gazette of the Government of India and shall not have effect before such publication."

I have made provision for that because it is not clear in this Clause as to where the publication is going to be made. Now, under the English Act there is always a provision that they shall be published in the King's Printers or some such body which corresponds to our Official Gazette of the Government of India. This is an important Clause. I want it to be made clear that these rules shall not have the force of law unless they are published, in the official Gazette of India, and I will explain at a later stage why it is necessary under this Section.

Then the third is:

"(3) These rules shall also be published in the Official Gazette of all State Governments and at least in one newspaper of the language or each of the languages recognised and prevalent in each State, as soon as may be after they are made."

Here there is no restriction that they shall not come into effect before they

are published in the Gazettes of the State Governments or in any of the languages, but this provision is made in order that there should be adequate publication of the rules made. A large number of people owning properties even in the rural areas and particularly in a number of States are going to be affected. Therefore, I propose that these rules must be published in the official Gazettes of those States, and because it is going to be applicable even to agricultural land, it must be published also in each of the languages prevalent in each State.

Then,

> "(4) Rules made under this Act shall be laid before both the Houses of Parliament within ten days of the date on which each of these two Houses meets after the first publication of such rules in the Official Gazette of the Government of India."

This restriction is also necessary because in England under the old Act of 1893, when the same words "as soon as may be" were there, it was found that in many cases for months together they were not laid on the Table of the House, and it was found nothing could be done. Therefore, they went further in the new Act which they passed in 1946 saying that in some cases the rules will not come into force unless they are laid on the Table of the House by a particular period of time. I do not want to apply it here, but it is necessary that they must be laid on the Table of the House at least within ten days after the next session begins, so that during the period of that session if any one wants to raise any objection to these rules, he can do so by an appropriate motion before the House. I do not think there should be any objection to that.

There are two main questions which I wish to raise by this amendment, and the first and the most important question is: To whom are these powers to be delegated? We know that the history of this delegated legislation is a long one, and unless there is effective Parliamentary control, it is not likely to be of use. Then, we are going to lay down a precedent in this case, when we give powers not to Government, but to a third statutory body. What is the nature of our Constitution? As I say, we have got a Parliamentary system of democracy in the sense that people have elected these Members as their representatives to this House. They are, as we always say, the supreme, the sovereign body, and Government comes into existence as a result of these elections and this body. They are accountable to whom? To the Parliament itself. The accountability of the Cabinet or the political executive as, I would say to the Parliament is the keystone of the Parliamentary system of democratic Government. I will not dilate on that point. Many people are here. They know the principles of our Constitution, and therefore I say it will not be disputed that accountability of the Cabinet or the political executive to the Parliament is the keystone of the Parliamentary system of democratic Government. In such cases, to whom should Parliament delegate this power of subordinate legislation: to the Government or to any outside body? Therefore, my submission is that looking to the nature of the House, Parliament can give and should give, at least constitutionally, its power only to the Cabinet or to the Government.

I know in England as a result of the two wars of 1914 and 1935, a number of rules which had the force of law, known as delegated legislation, came into effect on a very large scale. Ultimately, they appointed certain committees, and as I have pointed out, they found that Parliamentary control was practically disappearing by this means. Therefore, they passed an Act which is known as the Statutory Instruments Act of 1946. I will not trouble hon. Members with a long discussion, but I will only say that after a good deal of discussion they have made provision in Section 11 of that Act. Before that Act there were certain Acts which had

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given powers to different departments of Government, and thereafter, of course—after 1946—there is a different system which they follow. Therefore, they have made provision in Section 11 which reads:

> "11. (1) For the purposes of this Act, any power to make, confirm or approve orders, rules, regulations or other subordinate legislation conferred on the Treasury, the Admiralty, the Board of Trade..

—the three main branches of their Government—

> "or....any other government department shall be deemed to be conferred on the Minister of the Crown in charge of that department."

Even with respect to those Acts where formerly powers had been given to the Treasury or other departments, they said: "No. They shall be deemed to be conferred on the Minister of the Crown in charge of that department".

Now, in this case, if we are going to give power for the first time to make rules and to frame subordinate legislation, the power must be given to the Government and to none else. I do not understand why it is necessary. It may be argued that after I referred to this point at the time of the first reading, there is an amendment brought forward by Government which says: "and subject to the control of the Central Government". But the question is: Will it contribute to an effective control by Parliament over this delegated legislation? That is the main question before us. It may be said: "To whom do we pass power?" "A" delegates his power to "B" and says it shall be controlled at the discretion of "C", but to whom is the power transferred? The power is transferred not to "C", not to Government subject to whose control they will work, but we are going to delegate the power to a certain other body—it may be statutory—over which I do not know how far we can exercise Parliamentary control. I can understand Government being given the power, and they being allowed to delegate to the department. Naturally, they will do it through their department, but this is not a case of sub-delegation even.

There are cases in which power is delegated to Government and Government are authorised to delegate it to somebody else. That may be sub-delegation, but here it is not so. This delegation of this power may be there. I have nothing against it. But the principle, the basis, of it is wrong because if you delegate power to that body, a body subordinate to Government, so far as Parliament is concerned, naturally its control over it will be very remote at the most. It is not direct. But if we give the power to the Government, there will be adequate control.

Then, Sir, look to this aspect, for instance, previous publication and laying on the Table of the House. Now, if we give power to the Government, they lay it before Parliament and we can, if necessary, by a proper motion change it. But, Sir, what will happen if we give power to a third party? These things are placed before the House and it would be open to the Government to say: "Well, this Parliament with its eyes open delegated to that body the power to frame rules"—of course, we approved of them—"How can you hold us responsible in this House? What Motion can you bring before the House for holding this Government responsible for these rules?" My friend, Mr. Gadgil, is probably in a very light mood, but I would like to say that here it is not about the Estate Duty Bill that I am talking. It is about this principle, that when you delegate power to a third body—because there is a clear distinction between this Government and the CBR—only subject to your control, it does not mean the same thing as giving the power to the Government over

which Parliament can exercise legitimate control by bringing in an appropriate Motion under the rules.

Sir, I would therefore submit that we all take this point very seriously into consideration. After all, even if power is given to the Government, the Government can only make rules after consulting their departments. It is expected of them. But, Sir, it is one thing to give power to the department and it is another thing to give power to the Government which can delegate it and get that work done by the appropriate department. This is naturally a matter which we must seriously consider.

I look upon this as laying down a very sound principle. In so many matters now we are being guided by the experience which parliamentary democracy has got in the U.K. Why do we not take it here also into consideration? What is the harm if instead of the CBR being given these powers to make rules, the Government takes the powers? Therefore, I say, Sir, that so far as parliamentary control is concerned, it is necessary. Probably it may be suggested that if the powers are given directly to the CBR, the work might be better facilitated. The Government may not step in at all. They have only got control and the CBR is left free to make whatever rules it likes. As I said on another occasion, speed in efficiency and in execution is of paramount importance, no doubt, but we have to see when Parliament is passing this legislation not only to speed, but to what we are doing so far as our powers of control are concerned. We have to see how far we can best exercise them. It cannot be denied that under the system as it prevails now, which we have established by our Constitution, there is, as I said, the accountability of the Cabinet or the political executive to the Parliament and that is the keystone of our system of parliamentary democracy. I hope, Sir, that the hon. the Finance Minister will find that at any rate so far as this point is concerned, he is not likely to be embarrassed in any way whatsoever. But I would still appeal to him to consider whether 'subject to the control' is really enough. If it is not, why not put it in a straight manner? Why not put it in the manner in which it should normally be done in all such matters?

I have, therefore, raised this question not only from this point of view. The Government will lose nothing by this power being given to the Government. It is not my intention to say that Government should not have the power, the absolute power, to make the rules necessary. But the question is, to whom it should be given? Who should properly exercise this? I would again make it clear that it is one thing to give power to the Government and quite another to give it to some other body which is only subject to the control of Government. So far as practical things are concerned, I do not think that it would mean much to the hon. the Finance Minister and I am sure, Sir, with his usual approach to these questions in a very deep and thinking manner, he will come to the conclusion that if the Government accept this principle that these powers should be delegated in the first instance to the Government, there will be no difficulty; they can get all those rules framed by their department whether it is the CBR or any other department. Sir, I do not think I need add anything to this, because I have already referred to this on two previous occasions.

Then, Sir, what is the other point that arises if this power is to be delegated? Naturally, there are certain principles which govern these rule-making powers to be conferred. First, there must be the obligation for antecedent publicity. This is the first of the three principles which should govern this delegation of powers. It may be said that it is there. I have only changed the wording of it so as to make it consistent. Sir, it is of the highest importance that there must be adequate publication of delegated legislation. This is a principle accepted all over the democratic countries. Suppose, for instance, we are

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passing this Estate Duty Bill. There is discussion all over in the papers, in the whole of the country and we can say that the people know what is happening. But, Sir, in the case of the rules, what happens if there is no adequate publication? We say that every citizen is expected to know the law. That principle is all right, but that principle also throws a certain other responsibility upon the Government and it is this: that there must be adequate publication of delegated legislation. I have suggested adequate publication and I do not think there should be any objection.

Now, for instance, they say 'subject to the condition of previous publication'. But in what? Generally it is in the Official Gazette. But suppose in a particular case, it is not followed. Then why should it be left at that. In so many things we are following the practice in England. In England it is the King's Printers. Unless it is published in that, it cannot be valid. Here also, there is nothing to prevent its being published in the Government of India Official Gazette. It must be published there. I find, Sir, that in the Income Tax Act, sec. 59 (under clause 5) it is said that the "rules made under this section shall be published in the Official Gazette and shall thereupon have effect..". That means the Gazette of the Government of India. Such a provision was already there in the section covering the rule-making powers.

Shri Gadgil: Here it is 'subject to publication'—a wider term.

Shri Pataskar: I do not want it wider. I want that the publication must be in the Official Gazette. It should not be open to anybody to say: 'Well, I did not publish it in the Official Gazette, but I published it in some other paper'. Here we are going to saddle the subject with a responsibility that he must be presumed to know the rules. In the case of delegated legislation, it is an accepted principle all over the democratic countries that there should be the widest publicity. This principle has been rightly embodied in the Income-tax Act. I do not know why it was thought necessary to make a change there. Probably it may have happened inadvertently. But I would suggest that nothing will be lost by adopting this principle. I go further and say that it must be published in the Official Gazettes of all State Government and at least in one newspaper of the language or each of the languages recognised and prevalent in each State.

Sir, when section 153(C) was introduced in the Indian Companies Act, I, at Jalagaon, wanted to get a copy. For months it could not be had. Even the District court was not supplied with a copy of the Government of India Gazette. When I made an application, they said: "Well, we do not know anything about this". Therefore I have suggested further that previous publication means publication in the official gazette.

Shri U. M. Trivedi (Chittor): Unless it is widely done by public notification.

Shri Pataskar: Otherwise why should it be necessary in the Indian Income-tax Act to say that that publication should be in the official gazette. I say that it should be published not only in the official gazette, the Gazette of India but it must also be published in the State gazettes, because this is a measure which is going to affect everybody, even people in the rural areas. Therefore I say it should be published in the local gazettes also. I know that the Acts and Rules which are made here are sometimes published in the State gazettes. But, I want to make it clear. It should be published also in one of the language papers. For instance, in the Bombay State there are 3 languages prevalent.

Mr. Deputy Speaker: No fears. Every rich man will purchase a copy in advance.

Shri Pataskar: May I make a submission, Sir? I am not concerned with

the rich person at all. But there are so many people who own houses and properties in the rural areas who do not really know these things. As a matter of fact and principle I say that whenever there is going to be delegated legislation, why should it not be broadcast? What is lost or what is the expenditure involved? The provision in the other Bills for adequate publication must be followed. From the provisions it is not clear whether there will be adequate parliamentary control. Otherwise it is no good delegating powers and then seeing that we have not got adequate powers to secure Parliamentary control. It is why I want that the rules made under this Act shall be laid before both Houses of Parliament. Now, I see that there is a provision also in this Bill that all the rules made under this Act shall be laid before both Houses of Parliament as soon as may be. In England, it has been found that these words 'as soon as may be' are of no avail from the practical point of view. There were cases in which—I will not take the time of the House by quoting instances —these rules were not at all laid on the table of the House for many months and the House found that nothing could be done. I do not want that they should be laid on the table of the House immediately. But, in order to preserve the control of this Parliament over this delegated legislation, I want that they should be placed on the table of the House at least within ten days after the next session after publication in the Gazette. Supposing they publish in the Gazette of India some time in December and the House meets in February.

Mr. Deputy-Speaker: Why is the word 'first' in the amendment? Is more than one publication contemplated?

Shri Pataskar: I contemplate that they may publish it again.

Mr. Deputy-Speaker: In the official gazette it is published only once.

Shri Pataskar: I thought when I drafted the amendment that there may be a second publication and therefore I said that it need not be placed on the table of the House. But the word 'first' may be dropped. What occurred to me was that if the rules were to be published not once but twice, it is not necessary to place them on the table of the House again. There should also be some time limit. In England unless they are on the table of the House for 40 days, they cannot come into effect. But, in a measure like this I do not want to impose a condition like this.

An Hon. Member: That is good.

Shri Pataskar: That may be good but that is not what the amendment seeks. I have been guarded and moderate and I do not want, as far as possible, to come in the way of those who want to recover these dues as early as possible. I can assure every member of this House that even if my amendment is accepted, there will be no difficulty in the way of Government. I was told that publication means publication in the official gazette. How can it mean that and if that was so why was it so mentioned in the Indian Income-tax Act and other Acts up till now?

Therefore, I say, three provisions are essential, namely the obligation for antecedent publicity, the necessity for adequate publication and the necessity for adequate parliamentary control. 'As soon as may be' is not adequate parliamentary control. From experience in U. K. we know that if the words 'as soon as may be' are there and if nothing is done, the Parliament can have no control.

Mr. Deputy-Speaker: The hon. Member is repeating.

Shri Pataskar: Therefore I would again appeal to the hon. Finance Minister that he will find it convenient to accept this innocent amendment which would not come in his way.

With these words, I commend my amendment.

Mr. Deputy-Speaker: The hon. Finance Minister...

Shri U. M. Trivedi: Is he accepting this amendment, Sir?

Mr. Deputy-Speaker: In almost every Bill we are discussing this point.

Shri S. S. More: It is a matter of principle, Sir.

Mr. Deputy-Speaker: The hon. Member is fully aware of all the points for and against such a position as this. Let us hear the hon. Finance Minister.

Shri Damodara Menon (Kozhikode): We must be given a chance to speak, Sir.

Shri S. S. More: Sir, he has tabled one amendment, No. 593, in which he says, after 'previous publication' insert, 'and subject to the control of the Central Government'. I think he is making an effort to create an impression that he is trying to appease the opponents. But, as a matter of fact I can refer him to the Central Board of Revenue Act, 1924. There it has been stated that the Central Board of Revenue after it is constituted shall be subject to the control of the Central Government in the exercise of such powers and the performance of such duties as may be entrusted to it by the Central Government by or under any law. In the light of this particular section, this is no further gain to the opponents who maintain that the Board should not be entrusted with any power subject to government control. That control is the remedy given to you by the 1924 Act.

Mr. Deputy-Speaker: What is the difference between the Government doing so and the Board doing so. The Board is working under the control of the Government. No doubt it is a statutory body. What is the difficulty if the Government takes it over? I am talking of practical administrative difficulty. Hitherto Parliament has not delegated the power of making rules to any other authority than the Government. The Government will do it either itself or through its agency of officers. Why should the old practice be departed from and what is the advantage gained?

Shri C. D. Deshmukh: We have already passed clauses which give the power to the Board.

Mr. Deputy-Speaker: Generally the rule-making power is given to the Government. What is the difficulty?

Shri C. D. Deshmukh: That may or may not be convenient. But, I say it is too late to start the argument as to what difference it makes. Already the power of making more important rules has vested in the Board. Only the residuary powers are to be made under clause 81. There are many clauses under which the power has been given to the Board by this House.

Mr. Deputy-Speaker: Control may not entitle the Government to interfere. Does control mean that Government can alter the rules made by the Board?

Shri C. D. Deshmukh: Government can certainly take notice of the rules. In the first place, the rules will not issue without the Government having seen them or approved of them.

Mr. Deputy-Speaker: We are told that if it is subject to control, the Government may not have the right to revise them. They may give some directions.

Shri C. D. Deshmukh: The directions which will be given will be obligatory on the Board. I think we are spending too much time on minutiae and methods of control as between the Government and the Central Board of Revenue.

Shri S. S. More: Sir, I want to know on procedural points. Suppose the Board makes these rules. Government being responsible to us, we can criticise the Government for certain acts of omission and commission. But possibly the Board may be criticized for framing a particular rule. It may be considered that the Board is not directly responsible to the House.

Mr. Deputy-Speaker: That may be one of the points. But the Parliament cannot go on criticising the Government.

Shri Gadgil: That makes no difference so far as Government's responsibility to the Parliament is concerned if you adopt the word "under the control of the Government" or keep the phrase

as it is. In either case Government is responsible to this House. Because whatever the expenses that are undertaken, so far as the activities of the Board are concerned they are incorporated in the budget for which the Finance Ministry is responsible to the Parliament.

Pandit Thakur Das Bhargava: Even the Central Government will not be able to alter the rules. If you give the power to the Board Government may be able to give only directions but the rules cannot be changed by them. When they come before the House, the House will not be able to say that the Board has gone out of their way. Therefore, there is no harm caused if the power is taken over by the Central Government directly. The Central Government will then be directly responsible to the Parliament.

Mr. Deputy-Speaker: In practice if the obnoxious rules are criticised by the Government, will not the Government ask the Board itself to modify them?

Pandit Thakur Das Bhargava: There are two different things. The House in itself will be in a position to alter the rules if the rules are made by the Central Government. If the rules are made by the Board.....

Mr. Deputy-Speaker: Unless there is a provision here, "subject to such modifications as the Parliament may make," notwithstanding the fact that the rules are framed by the Central Government, this Parliament will not be entitled to modify the rules if they are made and merely placed on the Table of the House.

Shri Gadgil: When the rules are made and laid before the House, it is open to any member to move a motion that the rules be taken into consideration and that the following rules be modified. But if after the rules are laid on the Table of the House nobody takes any interest it is not the fault of the procedure but it is due to the lack of care and vigilance on the part of Members of Parliament that there should be no move to modify, alter or cancel it.

Pandit Thakur Das Bhargava: By what provision?

Shri Gadgil: The annual budgetary statement of the Damodar Valley Corporation and the annual report are usually laid on the table of the House. It is open to any member to cringe a motion and require the House to consider the report or the statement.

Mr. Deputy-Speaker: I may cut short the discussion. Whatever might be the interpretation, I am not called upon to give an opinion but the reason is that there is no amendment here which says "the rules that are laid before the House of the Parliament shall be open to such modification as the Parliament might like."

Shri Gadgil: It is there.

Mr. Deputy-Speaker: Where is it? There is no amendment to that effect. both the amendments of Mr. Deshmukh and the original clause, as also the amendment by Shri Pataskar are always referring to laying before the House of the People. Let us not go into the question of what it means. "Laying" only means as any other paper is laid on the table of the House, only for the purpose of information and not for the purpose of modification. I do not want to treat it as a ruling. This House has no jurisdiction to modify the rules if merely they are placed on the table of the House for information, unless this House is given power to modify the rules that are framed by the Government. Unless this House can criticise in some form or other and give directions to the Central Government to modify those rules, it is left to the Government If it does not then there are other ways other means for dislodging the Central Government. But there is no amendment moved by any hon. Member that this must be subject to revision by this House. Let there be no amount of misapprehension on this matter. The only question is whether "the Board" or the "Government".

Shri R. K. Chaudhury (Gauhati): Can I move an amendment?

Mr. Deputy-Speaker: I cannot allow him to move an amendment now. It is too late.

Shri Raghavachari: What difference does it really make because the Government has said "subject to the control of the Central Government". The language that "the Board will frame the rules" is subject to the control of the Central Government. Therefore, it is the Central Government which is deemed to make the rules. It will be consistent with the wishes of the House if the words "subject to the control" is retained. Is it that the Government wants to shirk the responsibility or do not want to take the responsibility of framing these rules themselves or is it that they want some convenient authority to do it?

Shri R. K. Chaudhury: I wish to oppose this clause.

Shri U. M. Trivedi: Sir, it is said that the word "previous publication" is defined in the General Clauses Act and therefore it must be published in the gazette. If that is the thing then I need not speak.

Mr. Deputy-Speaker: It is so.

Shri C. D. Deshmukh: I am sorry there has been so much ado about something which, as you have pointed out, is customarily accepted by the House. As you have observed, with all respect, the question of what Parliament can do does not really arise here. The only thing Parliament can do is to say there shall be no rule but everything possible that is intended to regulate this shall be in the Act. Now that has been found by experience to be quite impracticable.

Shri Pataskar: No, difficult.

Shri C. D. Deshmukh: I am only saying logic. Therefore, control of Parliament is a general control of Government. The Parliament can take the opportunity of drawing the attention of the Government to the sins of commission and omission in the rules that are brought to their notice and then it is for the Government to take notice of them. I should be very surprised if any Government connives at anything or is blind or deaf to anything that the House suggests. Every suggestion that is made by the House is bound to be considered with the greatest care and thought by the Government. Therefore, although there is no modification of the rules as such before they became operative, certainly the earliest opportunity will be taken of modifying them if the House by majority feels that way.

Shri S. S. More: How can the House have an opportunity to express?

Mr. Deputy-Speaker: The hon. Member has not thought of any amendment. The House still can have a resolution.

Shri S. S. More: The Finance Minister is still maintaining that the House shall have opportunity.....

Mr. Deputy-Speaker: It is always open to the hon. Members to point out the difficulty. The rules can be modified.

Shri C. D. Deshmukh: There is no other way open to the House except having everything included in the Act itself and since that is not possible, the House must have resort to this if the House feels sufficient interest. It is no use calling it cumbrous. It is part of the same democratic way in which control is exercised by the House over the Government.

Now as regards the rule making power to be vested either with the Board or with the Central Government, as I have said, we are partly going over the ground already covered. In many places specific powers are given to the Board. Now what we are dealing with are the residual powers. I am not prepared to say that all the residual powers are unimportant. There may be some important powers but it would be equally true to say that some matters will be of procedural nature. As it is, it does not call for any intimate exercise of control by Government.

Now control does not mean approval. If we were going to suggest that the rules shall be made with the approval of the Government then I can understand this position. There is nothing which stops us having it that way. Either the Government should do them or the Board should be allowed to issue them. As I understand control, and as the matter has been experienced with relation to this section 59 of the Income Tax Act they are minor matters. The Board just proceeds to issue the rules of the Income Tax Act with the wording "subject to the Control of the Central Government". They proceed to issue the rules and the control might go in perhaps *ipso facto*. In case if anything is discovered or brought to the notice of the Government, Government might draw attention of the House to them but if there is any important matter then it is the practice for the Board to send the draft rules to the Government before issue. Possibly Government may issue directives from time to time. Now, all this is comprised within the term "subject to the control of the Central Government," and I think that incorporates a valuable provision. Therefore, for the sake of consistency, as well as in the light of our actual experience, I can see no objection to the clause remaining as it is where it will be parallel to the similar clause in section 59 of the Income-tax Act. There are various other sections which we have taken more or less bodily from the Income-tax Act, variations which are only verbal, so as to suit this measure as in section 61, we are going to come back to it. Therefore, I think there is advantage in retaining the same scheme of things.

Now, as regards the provision for previous publication, that is a point easy to answer. Here again, one must not imagine something which is extraordinary. In trying to comment on a law, one should imagine the ordinary state of affairs. This point is governed by clause 23 of the General Clauses Act. It is a very long section, but I wish to read the first portion of it:

> "Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—
>
> (1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
>
> and also
>
> (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Central Government or the Provincial Government prescribes;

and there are other clauses: "there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration."

Mr. Deputy-Speaker: Is it anywhere stated, "in the official gazette"?

Shri C. D. Deshmukh: Yes; in the last clause. Sub-clause (5) says:

> "the publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made."

It is not precisely in the same form that it shall be published, but obviously this is the minimum that Government considers necessary. I should challenge any hon. Member to give an instance where important rules have not been published in the Official Gazette.

Shri Pataskar: Why leave it vague?

Mr. Deputy-Speaker: If it is not published in the Official Gazette, finally it will be open to challenge. That is why the Government will always take care to see that it is published in the Official Gazette.

Shri C. D. Deshmukh: This safeguards the position from the Government point of view, and I am astonished at the position taken up by the hon. Member.

What I was going to say is that under clause (2), we may have other modes of publication, and it is certainly open to us to take notice of the valuable suggestions made by the hon. Member if he said that it should be published in a newspaper, maybe in one newspaper, or two or three. It all depends on the view that one takes about the adequacy of publication and that may differ with the subject matter. It may be that we are very anxious that the public should know about this; then we publish it not only in one paper but in several language newspapers. Therefore, I say this clause, especially sub-clause (2) of the Clause 23 of the General Clauses Act gives very wide powers to Government, and unless the assumption is that Government is completely inept and is bent to suppress the rules that are made on this subject, one should assume that they will take advantage of the powers that have been given and take note of the suggestions that have been made. Therefore, I do not think it is necessary to include all these things and to encumber this clause by saying that it should be published in all the language newspapers and all that.

Now, the other question is about the term "convenience." It was put in there by the original draftsman, Sir B. N. Rau. If there had been any amendment just by itself to drop it, I should not have resisted it, so to speak. It is convenient to retain it, but if hon. Members feel that it looks very odd, I should have been prepared to drop it, but, as I said, there is no particular amendment to that effect.

Pandit Thakur Das Bhargava: It will be repeated in other enactments. That is the apprehension.

Shri C. D. Deshmukh: From the drafting of the other Bills now, if it had not been there, I am free to say that I would not have thought of including it.

Mr. Deputy-Speaker: It is convenient also. We are developing; we are not static.

Shri C. D. Deshmukh: Clauses 46 to 53: no one has thought it convenient to object to this. So it might be retained.

Mr. Deputy-Speaker: It may not be necessary but convenient.

Shri C. D. Deshmukh: Then, substituting "ten days" for "as soon as may be." I think the House will recall instances where the executive has been taken to task for not bringing any matter before the House. "As soon as may be" is itself after the publication of a notification. I think we have similar provisions in regard to export duties and so on. You will remember an occasion when an hon. Member came up with information as to when that export duty was imposed, with a calculation of what time had elapsed. Therefore, it is also a matter which is usually taken care of by the House and it is not, therefore, necessary to provide for every contingency and every ineptitude on the part of Government. Therefore, I think that is a usual formula and there is no need to depart from it.

Mr. Deputy-Speaker: That is your amendment?

Shri C. D. Deshmukh: I am justifying my own amendment. I move the amendment—No. 593—which of course I have already anticipated, because it inserts the words, "and subject to the control of the Central Government."

Shri S. S. More: An act of 1924 gives you the control.

Mr. Deputy-Speaker: By way of abundant caution.

Shri C. D. Deshmukh: Yes; by way of abundant caution.

The other amendment is a little more important. All rules made under the Act are subject to the condition of previous publication and the rules relating to controlled companies have also to be laid before the House of the

People after not less than 15 days. The Act must begin to operate on the commencement therefrom and if, in respect of the first set of rules, these conditions have to be complied with, it is possible that several cases where estate duty should be levied may escape. Consequently, a provision as outlined in the amendment seems necessary. But we have taken care to provide that the power can be exercised only with respect to the first set of rules, and the rules have to be laid before Parliament. I submit again that Parliament need not entertain any fear that this power will be misused. An alternative method of meeting the difficulty would have been to eliminate the requirements of the previous publication in the case of the first set of rules. In the Select Committee great emphasis was laid on previous publication as well as on laying the rules before Parliament. And it is for this reason that I have chosen the other alternative.

Mr. Deputy-Speaker: Retrospective effect from the date of the commencement of the Act—not from the date of passing of the Act. That is all. The question is...

Shri Pataskar: I have moved my amendment, and I hoped that the hon. Finance Minister may find it convenient to accept it. But in view of the fact that I have always been missing the bus, I would like to withdraw it. I may make one thing clear. There was no object of criticising the Government for ineptitude. Only from the constitutional point of view, I said so.

Mr. Deputy-Speaker: Why should he be so apologetic? He has got a right.

Shri Pataskar: Not apologetic. I was misunderstood as saying that I wanted to charge the Government with ineptitude.

Mr. Deputy-Speaker: Government is feeling that the hon. Member is not criticizing the Government sufficiently. Mr. Pataskar, does he withdraw his amendment?

Shri Pataskar: I beg leave to withdraw my amendment.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

In page 35, line 47, *after* "previous publication" *insert* "and subject to the control of the Central Government."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 36, *after* line 2, *insert*:

"(1A) the power to make rules conferred by this section shall, on the first occasion of the exercise thereof, include the power to give retrospective effect to the rules or any of them from a date not earlier than the date of the commencement of this Act."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 81, as amended, stand part of the Bill."

The motion was adopted.

Clause 81, *as amended, was added to the Bill.*

New Clause 82

Mr. Deputy-Speaker: Will the amendment No. 206 proposed by Shri Tulsidas not be inconsistent with the previous provisions: shall I rule it out of order?

Shri N. Somana (Coorg): It would also be inconsistent with clause 72(3).

Mr. Deputy-Speaker: It is a charge upon the particular property. There is a similar provision in the Civil Procedure Code.

My difficulty is this. Government is given power to exempt. Now he wants some other agency also to be given power to exempt.

Shri Tulsidas: Please give me a chance to convince you. I beg to move:

[Shri Tulsidas]

In page 36, *after* line 4, *insert*:

"82. The Board shall have powers by Notification in the Government Gazette to exempt any class of estates and in particular small estates from all or any of the provisions of this Act subject to such conditions as the Board may prescribe."

I would like to point out that under the different clauses, namely, 33, 51 and 55 estates within the exemption limit will also have first to approach Government before they can sell or do anything with their property. I feel that even smaller estates which are within the exemption limit of Rs. 50,000 or Rs. 1 lakh, particularly people in possession of immovable property, or shares, will have to go to the Controller to get a certificate before they dispose of or sell them. This will cause tremendous difficulties to the smaller estates especially. I may not have couched my amendment in proper language, my drafting may be poor—I am not a lawyer, I have put it in my own way. But I feel that there must be some power in the hands of the Government or the Board to exempt those estates at least which are within the exemption limit. Otherwise everybody will have to go to the Controller, to obtain a certificate.....

Shri C. D. Deshmukh: Why?

Shri Tulsidas: Because you have restricted transfers of properties. You have got the first charge on the property. Who is going to buy the property of anyone who is dead without his heirs first getting an exemption certificate? Nobody will buy them. It will be considered as a property which is not transferable, because the person who buys them will have a misgiving that it will not be within the exemption limit. How is he to know?

Mr. Deputy-Speaker: The man who sells it would know it.

Shri Tulsidas: But he will have to produce an exemption certificate. In our country no one goes in for letters of administration or probate, as is the practice in the United Kingdom. For example let us take an estate which may be worth two lakhs of rupees; it may be the property of a Joint Hindu family, there may be coparceners to the extent of four or five, but still the property may be within the exemption limit. But how is it to be proved, except by production of an exemption certificate? It will not be possible, in actual practice, for anyone to sell his property unless the Controller issues a certificate of exemption. That is my apprehension. If Government, however, feels that it is not so, I am quite willing to accept their opinion. But I feel that there should be certain powers to exempt certain estates.

Mr. Deputy-Speaker: Can't rules be framed to that effect?

Shri C. D. Deshmukh: The difficulty is not about the law here. The difficulty, which the hon. member has pointed out, is in regard to transactions between two people. Now there must be an exercise of commonsense on the part of the buyer. What he says is that no one will buy the property of a dead person, for fear that there may be a charge on that property. The only answer to that can be not anything we can provide here in the law, because then we shall have to take away the charge on such property. The only remedy is.....

12 NOON

An Hon. Member: Consult a lawyer!

Shri C. D. Deshmukh: Not so much consultation with a lawyer, but a general knowledge of the status of the man who is dead. In a country where 90% of the people are poor, with an average income of Rs. 265 per year, I do not suppose that this will be a difficulty that will arise, except in regard to marginal cases. What we are providing in section 51(3) is of course for a person

who feels that an estate duty is payable. The choice is with him. He may be quite certain that no estate duty is payable, in which case he need not give an account. Therefore, although there may be a difficulty—I am not denying there will not be a difficulty—it could not be surmounted by the particular amendment suggested by the hon. member. Legally it is impossible to determine what a small estate is. How can a general power be given to the Central Board of Revenue? How does the prospective purchaser know that the Central Board is going or not going to exempt a small estate?

Mr. Deputy-Speaker: The same difficulty would arise under the Hindu law. Some risk has to be taken in marginal cases.

So, the question is:

In page 36, *after* line 4, *insert*:

"82. The Board shall have powers by Notification in the Government Gazette to exempt any class of estates and in particular small estates from all or any of the provisions of this Act subject to such conditions as the Board may prescribe."

The motion was negatived.

Clause 61.—(*Appeal against etc.*)

Mr. Deputy-Speaker: Before I proceed I would like to know whether any agreed formula has been evolved.

Shri U. M. Trivedi: I have been instructed by Shri Chatterjee to move this amendment.

Shri S. S. More: Can't we postpone discussion on this?

Mr. Deputy-Speaker: The hon. Member at a moment's notice can bring an amendment if there is any insurmountable difficulty.

Shri U. M. Trivedi: I beg to move:

(1) In page 28, *for* lines 44 to 50, *substitute*:

"61. *Appeal against determination by Controller.*—(1) Any person—

(a) objecting

(i) to any valuation made by the Controller, or

(ii) to any order made by the Controller determining the estate duty payable, or

(iii) to any penalty levied by the Controller under section 54, or

(iv) to any final order or adjudication having the effect of imposing a liability or an obligation to pay estate duty in respect of any property, or

(b) denying his liability to account for the estate duty payable in respect of any property, or

(c) objecting to any order made by the Controller refusing to grant a certificate of discharge or any other certificate under this Act,

may, within ninety days of the date of the receipt of the notice of demand under section 56 in the cases specified in clauses (a) and (b), and within ninety days of the date of the order in the cases specified in clause (c), appeal to the Board in the prescribed form which shall be verified in the prescribed manner."

(2) In page 29, *after* line 21 *insert*:

"(4A) The valuers may, in disposing of any matter referred to them for arbitration under subsection (4), hold or cause to be held such inquiry as they think fit, and, after giving the appellant and the Controller an opportunity of being heard, pass such orders thereon as they think fit and shall send a copy of such order to the appellant and to the Board."

Mr. Deputy-Speaker: I think we have discussed this at length, and this is only drafting.

The question is:

In page 28, *for* lines 44 to 50, *substitute*:

[Mr. Deputy-Speaker]

"61. *Appeal against determination by Controller.*—(1) Any person—

(a) objecting

(i) to any valuation made by the Controller, or.

(ii) to any order made by the Controller determining the estate duty payable, or

(iii) to any penalty levied by the Controller under section 54, or

(iv) to any final order or adjudication having the effect of imposing a liability or an obligation to pay estate duty in respect of any property, or

(b) denying his liability to account for the estate duty payable in respect of any property, or

(c) objecting to any order made by the Controller refusing to grant a certificate or discharge or any other certificate under this Act,

may, within ninety days of the date of the receipt of the notice of demand under section 56 in the cases specified in clauses (a) and (b), and within ninety days of the date of the order in the cases specified in clause (c), appeal to the Board in the prescribed form which shall be verified in the prescribed manner."

The motion was adopted.

Mr. Deputy-Speaker The question is:

In page 29, *after* line 21 *insert*:

"(4A) The valuers may, in disposing of any matter referred to them for arbitration under subsection (4), hold or cause to be held such inquiry as they think fit, and, after giving the appellant and the Controller an opportunity of being heard, pass such orders thereon as they think fit and shall send a copy of such order to the appellant and to the Board."

The motion was adopted.

Mr. Deputy-Speaker: These amendments cover the amendments held over the other day.

The question is:

"That clause 61, as amended, stand part of the Bill."

The motion was adopted.

Clause 61, as amended, was added to the Bill.

Shri N. Somana: I have got a doubt in sub-section (4), Sir.

Mr. Deputy-Speaker: Let it continue. We argued this matter and discussed it at length. Let there be an amending Bill later, if necessary.

Shri N. Somana: It only says that a reference has to be made to an arbitrator, but what will happen to his decision?

Mr. Deputy-Speaker: Only in cases of difference of opinion between the two valuers, it will be referred to a third valuer.

Shri K. K. Basu: Further sub-section (3) says "subject to the provisions of sub-section (4)" the Board may pass such orders as it thinks fit.

First Schedule

Amendments made:

(1) In page 36, line 5, *for* "THE SCHEDULE" *substitute* "THE FIRST SCHEDULE".

(2) In page 36, *after* line 10, *insert* "Punjab".

(3) In page 36, *after* line 12, *insert* "Madhya Bharat".

(4) In page 36, *after* line 14, *insert* "All Part C States".

—[*Shri C. D. Deshmukh.*]

Mr. Deputy-Speaker: The question is:

"That the First Schedule, as amended, stand part of the Bill."

The motion was adopted.

The First Schedule, as amended, was added to the Bill.

Second Schedule

Shri C. D. Deshmukh: I beg to move Amendment No. 637, with the consequential change required in Part II thereof, *viz.*—

(i) in entry (1), *for* Rs. 75,000, *substitute* "Rs. 1,00,000".

(ii) omit entry (2) and re-number the remaining entries.

I beg to move:

In page 36, *after* line 14, *add*:

"THE SECOND SCHEDULE

(See sections 5, 34 and 80)

Rates of Estate Duty

PART I

In the case of property which consists of an interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law,—

	Rs.		*Rate of Duty*
(1) on the first	50,000	of the principal value of the estate	Nil.
(2) on the next	50,000	Do.	5 per cent
(3) on the next	50,000	Do.	7½ ,,
(4) on the next	50,000	Do.	10 ,,
(5) on the next	1,00,000	Do.	12½ ,,
(6) on the next	2,00,000	Do.	15 ,,
(7) on the next	5,00,000	Do.	20 ,,
(8) on the next	10,00,000	Do.	25 ,,
(9) on the next	10,00,000	Do.	30 ,,
(10) on the next	20,00,000	Do.	35 ,,
(11) on the balance of the principal value of the estate			40 ,,

PART II

In the case of property of any other kind—

	Rs.		*Rate of Duty*
(1) on the first	1,00,000	of the principal value of the estate	Nil.
(2) on the next	50,000	Do.	7½ per cent
(3) on the next	50,000	Do.	10 ,,
(4) on the next	1,00,000	Do.	12½ ,,
(5) on the next	2,00,000	Do.	15 ,,
(6) on the next	5,00,000	Do.	20 ,,
(7) on the next	10,00,000	Do.	25 ,,
(8) on the next	10,00,000	Do.	30 ,,
(9) on the next	20,00,000	Do.	35 ,,
(10) on the balance of the principal value of the estate			40 ,,

PART III

In the case of shares held by a deceased member in any such company as is referred to in sub-section (1) of section 80—

	Rate of Duty
(1) If the principal value of the shares does not exceed Rs. 5,000	Nil
(2) If the principal value of the shares exceeds Rs. 5,000	7½ per cent ,,

Mr. Deputy-Speaker: What are the amendments to this? I have already given my ruling in this matter.

Shri Gadgil: All the increases above 40% are gone. Each increase occurs from stage to stage. Has anybody worked it out?

Shri S. S. More: Suppose without disturbing the whole scheme or making it an additional burden, if at intermediate stages some rates are sought to be increased or decreased the result is that the picture is not disturbed.

Mr. Deputy-Speaker: The House is the representative of the people. Wherever it seeks to decrease the rates, no permission is necessary, but if it wants an increase, it can't be justified on the ground that the general picture is not disturbed. The hon. Member is not the Finance Minister. The point is that it ought not to be increased anywhere.

I am judging from that standard.

Shri R. D. Misra (Bulandshahr Distt.) I wish to move my amendment No. 748.

Mr. Deputy-Speaker: Then about Shri H. N. Mukerjee's amendment—No. 735—the President's recommendation has not been given. Is he moving?

Shri K. K. Basu: If it is not barred.

Mr. Deputy-Speaker: Let me see if any portion here is in order.

The Deputy Minister of Finance (Shri M. C. Shah): The President's permission has not been given.

Mr. Deputy-Speaker: I know. Without the President's sanction I am trying to see how far it is in order. Items (4) to (15) go out. The other items are unnecessary as they are already contained in the amendment of Mr. C. D. Deshmukh. I am sorry, the whole thing has to go out Let me see Part II.

Pandit Thakur Das Bhargava: To Part I there are other amendments.

Mr. Deputy-Speaker: I am disposing of one amendment after another. What does it say in Part II?

Shri S. S. More: It is reduction.

Mr. Deputy-Speaker: Then it is allowed. He goes on reducing, is it?

Shri U. M. Trivedi: He is *Dayabhag*, Sir.

Mr. Deputy-Speaker: Very well. Hon. Members themselves will kindly tell me how far their amendments are in order and how far they are not in order.

Shri H. N. Mukerjee (Calcutta North-East): You may save yourself the trouble, Sir.

Mr. Deputy-Speaker: No. 735 is not pressed.

Shri Morarka (Ganganagar-Jhunjhunu): Sir, I am moving No. 681 except the last two lines which are out of order. I move the first seven items. Items (viii) and (ix) are out of order.

Mr. Deputy-Speaker: So, No. 681, with that modification, is moved.

Shri Chandak (Betul): Sir, I want to move No. 708.

Mr. Deputy-Speaker: Is the whole thing in order?

Shri Chandak: Yes, Sir.

Shri Mulchand Dube (Farrukhabad Distt.—North): I want to move amendment Nos. 709, 710 and 712.

Shri Krishna Chandra (Mathura Distt.—West): I wish to move No. 738.

Pandit Thakur Das Bhargava: I wish to move No. 749 and No. 750.

Mr. Deputy-Speaker: Then, No. 730 by Pandit S. C. Mishra. Is he moving it? Is it in order?

Pandit S. C. Mishra (Monghyr North-East): Yes, Sir. The ceiling of 40 per cent. has been reduced to 30, on page 5.

Mr. Deputy-Speaker: The hon. Member must be judge of his own cause.

Pandit S. C. Mishra: It should be the Finance Minister. It brings more revenue.

Mr. Deputy-Speaker: I do not want to spend time in seeing whether it is high or low. Let him pass on a note as to what are the portions which are in order according to my ruling.

Shri Chandak: I wish to move No. 714. It is in order, Sir.

Shri Mulchand Dube: I wish to move Nos. 715, 716 and 717.

Pandit S. C. Mishra: I want to move amendment No. 731 so far as it falls in order under your ruling.

Shri Raghavachari: Only the last item is in order: not the rest of it.

Mr. Deputy-Speaker: It will be taken in the amended form. No. 664 by Shri M. S. Gurupadaswamy: Out of order. The amendment of Shri V. Missir seems to be out of order. If per chance hon. Members can bring it within the ruling, I am prepared to take them. Amendment No. 719: seems to be out of order; 665: out of order.

Shri R. D. Misra: I beg to move:

That in the amendment proposed by Shri C. D. Deshmukh, *for* the Second Schedule *substitute*:

"THE SECOND SCHEDULE

(See sections 5, 34 and 80)

Rates of Estate Duty

PART I

In the case of property which consists of an interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law,—

Scale of Rates of Estate Duty

Principal value of estate		Rate per cent. of duty
	Rs.	Rs.
(1) Exceeding	50,000	1
(2) Exceeding	1,00,000	2
(3) Exceeding	1,50,000	3
(4) Exceeding	2,00,000	5
(5) Exceeding	2,50,000	7
(6) Exceeding	3,00,000	10
(7) Exceeding	3,50,000	12
(8) Exceeding	4,00,000	15
(9) on the next	5,00,000	20
(10) on the next	10,00,000	25
(11) on the next	10,00,000	30
(12) on the next	20,00,000	35
(13) on the balance of the principal value of the estate		40

PART II

In the case of property of any other kind—

Principal value of estate		Rate per cent. of duty
	Rs.	Rs.
(1) Exceeding	1,00,000	1
(2) Exceeding	1,50,000	2
(3) Exceeding	2,00,000	3
(4) Exceeding	2,50,000	5
(5) Exceeding	3,00,000	7

[Shri R. D. Misra]

Principal value of state		Rate per cent. of duty
	Rs.	Rs.
(6) Exceeding	3,50,000	10
(7) Exceeding	4,00,000	12
(8) Exceeding	4,50,000	15
(9) on the next	5,00,000	20
(10) on the next	10,00,000	25
(11) on the next	10,00,000	30
(12) on the next	20,00,000	35
(13) on the balance of the principal value of the estate		40

PART III

In the case of shares held by a deceased member in any such company as is referred to in sub-section (1) of section 80—

	Rate of Duty
(1) If the principal value of the shares does not exceed Rs. 5,000	Nil.
(2) If the principal value of the shares exceeds Rs. 5,000	7½ per cent.

Shri Morarka: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh in Part I,

(i)	In item No.	(2)	*for*	"5"	*substitute*	"1"
(ii)	,,	(3)	*for*	"7½"	,,	"2"
(iii)	,,	(4)	*for*	"10"	,,	"4"
(iv)	,,	(5)	*for*	"12½"	,,	"7½"
(v)	,,	(6)	*for*	"15"	,,	"12½"
(vi)	,,	(7)	*for*	"20"	,,	"17½"
(vii)	,,	(8)	*for*	"25"	,,	"22½"

Shri Chandak: I beg to move:—

In the amendment proposed by Shri C. D. Deshmukh, Part I, for items (2) to (7), *substitute*:

	Rs.			
(2) on the next	50,000	of the principal value of the estate	2½	per cent.
(3) on the next	50,000	Do.	4	,, ,,
(4) on the next	50,000	Do.	5	,, ,,
(5) on the next	1,00,000	Do.	7½	,, ,,
(6) on the next	2,00,000	Do.	10	,, ,,
(7) on the next	5,00,000	Do.	15	,, ,,

Shri Mulchand Dube: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, in Part I, item (2) *for* "(5) per cent" *substitute* "3 per cent."

Shri Mulchand Dube: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh in Part I, item (3) *for* "7½ per cent" *substitute* "5 per cent."

Shri Mulchand Dube: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, in Part I, item (4) *for* "10 per cent" *substitute* "7½ per cent."

Shri Krishna Chandra: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, in item (2) of Part I, *for* "5 per cent" *substitute* "2 per cent."

Pandit Thakur Das Bhargava: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, in item (2) of Part I, *for* "5 per cent" *substitute* "Nil".

Shri Chandak: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, in Part I, *for* items (2) to (7), *substitute*—

	Rs.		per cent.
(2) on the next . . .	50,000	of the principal value of the estate	2½
(3) on the next . . .	50,000	Do.	4
(4) on the next . . .	50,000	Do.	5
(5) on the next . . .	1,00,000	Do.	7½
(6) on the next . .	2,00,000	Do.	10
(7) on the next . . .	5,00,000	Do.	15

Shri Mulchand Dube: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, in Part I, item (2) *for* "(5) per cent" *substitute* "3 per cent."

Shri Mulchand Dube: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, in Part I, item (3) *for* "7½ per cent" *substitute* "5 per cent."

Shri Mulchand Dube: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, in Part I, item (4) *for* "10 per cent" *substitute* "7½ per cent."

Shri Krishna Chandra: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, in item (2) of Part I, *for* "5 per cent" *substitute* "2 per cent."

Pandit Thakur Das Bhargava: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, in item (2) of Part I, *for* "5 per cent" *substitute* "Nil".

Pandit Thakur Das Bhargava: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, in item (2) of Part I, *for* "5 per cent" *substitute* ".01 per cent."

Pandit S. C. Mishra: Sir, I beg to move:

In the amendment proposed by Shri C. D. Deshmukh in Part I, *for* items (5) to (11) *substitute*—

	Rs.		per cent
(5) on the next . . .	50,000	of the principal value of the estate	12½
(6) on the next . . .	50,000	Do.	15
(7) on the next . . .	50,000	Do.	17½
(8) on the next . . .	50,000	Do.	20
(9) on the next . . .	50,000	Do.	22½
(10) on the next . . .	50,000	Do.	25
(11) on the next . . .	50,000	Do.	27½
(12) on the next . . .	50,000	Do.	30
(13) on the next . . .	50,000	Do.	32½
(14) on the next . . .	50,000	Do.	35
(15) on the next . . .	50,000	Do.	37½
(16) on the balance of the principal value of the estate			40

Shri Chandak: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh in Part II, *for* items (2) to (7), *substitute*—

	Rs.		per cent
(2) on the next . . .	50,000	on the principal value of the estate	2½
(3) on the next . . .	50,000	Do.	4
(4) on the next . . .	50,000	Do.	5
(5) on the next . .	1,00,000	Do.	7½
(6) on the next . . .	2,00,000	Do.	10
(7) on the next . . .	5,00,000	Do.	15

Shri Mulchand Dube: I beg to move:

(i) In the amendment proposed by Shri C. D. Deshmukh, in Part II, item (2) *for* "(5) per cent" *substitute* "3 per cent.".

(ii) In the amendment proposed by Shri C. D. Deshmukh, in Part II, item (3) *for* "7½ per cent" *substitute* "5 per cent".

(iii) In the amendment proposed by Shri C. D. Deshmukh, in Part II, item (4) *for* "10 per cent" *substitute* "7½ per cent".

Pandit S. C. Mishra: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh in Part II, *for* items (5) to (11) *substitute*—

	Rs.		per cent
(5) on the next . . .	50,000	of the principal value of the estate	12½
(6) on the next . . .	50,000	Do.	15
(7) on the next . . .	50,000	Do.	17½
(8) on the next . . .	50,000	Do.	20
(9) on the next . . .	50,000	Do.	22½
(10) on the next . . .	50,000	Do.	25
(11) on the next . . .	50,000	Do.	27½
(12) on the next . . .	50,000	Do.	30

Mr. Deputy-Speaker: All the amendments, including the amendment of the Finance Minister and the amendments to the amendment and the new Schedule are before the House for discussion.

Shri Jhunjhunwala: How is my amendment No. 736 out of order?

Mr. Deputy-Speaker: I will ask him to judge for himself.

Shri Jhunjhunwala: It is in order.

Mr. Deputy-Speaker: All right; I shall note it as moved, subject to further verification.

Shri Jhunjhunwala: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, in Part I, item (2) *for* "5 per cent" *substitute* "2 per cent."

Mr. Deputy-Speaker: The Finance Minister.

Shri C. D. Deshmukh: I will reserve my remarks to the end.

Mr. Deputy-Speaker: Shri A. M. Thomas: He has not moved any amendment.

Shri A. M. Thomas: I wish to speak on the Schedule.

Mr. Deputy-Speaker: I will come to him later. I shall first of all call upon the hon. Members who have moved amendments. Pandit Thakur Das Bhargava.

पंडित ठाकुर दास भार्गव : जनाब डिप्टी स्पीकर साहब, मैं ने दो अमेंडमेंट्स का नोटिस दिया है, एक ७४९ और दूसरा ७५०। ७५० की रू से मैं यह चाहता हूं कि देशमुख साहब के अमेंडमेंट के आइटम नम्बर २ में ५ के बजाय 'निल' रख दिया जाय, और मेरा दूसरा आल्टर्नेटिव अमेंडमेंट यह है कि अगर वहां 'निल' न रक्खा जा सके. तो फिर उस के बजाय ·०१ पर्सेंट रख दिया जाय ।

इन दोनों अमेंडमेंट्स के मुलाहिजे से वाजेह हो गया होगा कि दरअस्ल मेरी कोशिश यह है कि जो डिस्क्रिमिनेशन हाउस ने इस वक्त मंजूर फरमा लिया है, ५०,००० और एक लाख का उस को जहां तक हो सके, इस शेडयूलड के जरिये या इन दोनों अमेंडमेन्ट के जरिये बराबर कर दिया जाय । या जो कम से कम तमीज हो सकती है वह रक्खी जाय ।

मैं जनाब वाला की खिदमत में यह अर्ज करना चाहता हूं कि दरअस्ल यह जो एमेंडमेन्ट किया गया है वह सिर्फ इतना ही नहीं है कि अब तक जितने उसूल हम मानते चले आये हैं उन के खिलाफ है, बल्कि यह एक अजीब चीज वाक्य हो गई है जो न कभी किसी लेजिस्लेटर के दिमाग में आई और न कभी फाइनेन्स मिनिस्टर के दिमाग में थी न ही कभी पहले बिल में थी। जब पहले सन् १९२४ में टैक्सेशन इन्क्वायरी कमेटी के सामने यह सवाल उठा तो उन को दिक्कत वाक्य हुई कि हिन्दू मिताक्षरा फैमिली के बारे में हम क्या करें । हिन्दू ला के जो उसूल हैं वह कहीं आब्स्टैकल न हों। लेकिन उन्हों ने यह करार दिया कि कोई वजह नहीं है कि ज्वाइंट हिन्दू फैमिली को टैक्स करने में कोई आब्स्टैक्ल पैदा हो और मौत की वजह से दूसरों का जो इन्टरैस्ट होता है वह पास आन न होता हो। जब नया बिल सन् १९४६ में आया, मेरे पास वह बिल भी मौजूद है और सेलैक्ट कमेटी की रिपोर्ट भी मौजूद है, उस के अन्दर एक लाख की जो सीमा रक्खी गई थी वह हर एक के वास्ते एक ही थी । उस में किसी तरह की तमीज मिताक्षरा और दायभाग में या हिन्दू, मुस्लिम और क्रिश्चियन में नहीं की गई थी । चुनांचे जब सैलैक्ट कमेटी में मामला गया तो मिताक्षरा फैमिली के वास्ते कुछ रियायतें रक्खी गयीं। वहां यह कहा गया कि मिताक्षरा ज्वाइंट फैमिली का जो मैम्बर हो उस पर टैक्स न रहे अगर वह १८ साल की उम्र से पहले मर जावे। लेकिन सैलेक्ट कमेटी ने भी उस एक लाख की लिमिट को रक्खा और ऐग्जेम्प्शन में किसी तरह का डिफरेन्शिएशन मिताक्षरा और दयाभाग में नहीं किया । जब हाउस में यह बिल आया तो भी उस में कोई तमीज नहीं थी । लेकिन मेरी हैरानी की हद्द नहीं रही जब इस सैलेक्ट कमेटी ने पचास हजार और एक लाख की सीमा कायम कर दी। अब अगर आप इस फर्क को मुलाहिजा फरमायेंगे तो इसके वास्ते कोई जवाज नहीं है कि क्यों यह फर्क रक्खा जाय। मगर अब चूंकि दफा ३४ हाउस में पास हो चुकी है मैं इस के खिलाफ कुछ नहीं कहना चाहता क्योंकि उस के खिलाफ कहना अब ठीक भी नहीं है । लेकिन अब शैडयूल हमारे पास आया है, शेडयूल का वही असर है जो किसी सैक्शन का असर है, इस लिये मैं इस बिल के अन्दर यह दुरुस्ती चाहता हूं कि यह तमीज जो हाउस ने एक तरह से नामुनासिब तौर पर गलती से पास करदी, उस का असर जायल हो जाय ।

[श्री पाटस्कर अध्यक्ष-पद पर आसीन हुए]

[पंडित ठाकुर दास भार्गव]

सवाल यह पैदा होता है कि आया इस को करने का क्या असर पैदा होगा और जो मिताक्षरा फैमिली का मैम्बर होगा उस के ऊपर यह कानून लागू करना जायज होगा या नहीं ।

श्री आर० डी० मिश्र: हाउस ने क्या कर दिया ?

पंडित ठाकुर दास भार्गव: हाउस ने जो डिस्टिंक्शन कर दिया वह मेरी नाकिस राय में मुनासिब नहीं था। लेकिन चूंकि हाउस ने फैसला कर दिया है, मैं यह नहीं चाहता कि उस फैसले पर कोई ऐसी बात कहूं जिस का मतलब उस फैसले को मिटाना हो जाय । इसलिये इस शैड्यूडल के अन्दर जो तरमीमें रखी गई हैं वह ऐसी हैं कि बावजूद इस के कि हम दफा ३४ पास कर चुके हैं .....

श्री आर० डी० मिश्र : क्या यहां पर भार्गव साहब यह कह सकते हैं कि इस हाउस ने यह फैसला गलत कर दिया । यह तो इस हाउस के ऊपर एतराज है कि यह फैसला गलत कर दिया गया है । मैं समझता हूं कि हाउस ने फैसला गलत किया, यहां नहीं कहा जा सकता है ।

Mr. Chairman: There is no point of order. The hon. Member may carry on.

पंडित ठाकुर दास भार्गव : मैं अदब से अर्ज करूंगा कि हाउस क नजदीक यह कहना कि यह फैसला हाउस ने गलत कर दिया है, यह हाउस की तौहीन नहीं है । हम यहां पर रोज कहते हैं कि लेजिस्लेटर्स ने गलती कर दी । हम इस बात को हमेशा कह सकते हैं कि मैं इस चीज को गलत समझता हूं कि हाउस कोई डिस्टिंक्शन करने का काम करे । मैं यहां पर एक एक मैम्बर की उतनी इज्जत करता हूं जितनी की उस की होनी चाहिये । लेकिन मैं हाउस के फैसले को जरूर गलत कह सकता हूं । मैं अपने आनरेबुल दोस्त, श्री टी० टी० कृष्णमाचारी की और अपने बहुत पुराने मैम्बर गाडगिल साहब की कितनी इज्जत है, वह सब को मालूम है । लेकिन इस के माने यह नहीं हैं कि अगर कोई फैसला यह लोग गलत करें तो मैं उसे कहूं नहीं कि यह फैसला गलत है ।

श्री आर० डी० मिश्र : उन की गलतियों से आप को कितनी मुहब्बत है ?

Mr. Chairman: There is no point of order. The hon. Member may carry on.

Shri C. D. Deshmukh: The only point of order is, when in clause 34 we have approved of two exemption limits and if we now want to modify the Schedule in a consequential way, is it open to the hon. Member now to say that the second 50,000 shall also be Nil, the effect of which is that the exemption limit on both Mitakshara and Dayabhaga becomes one lakh. Therefore, is it not barred? The other thing he says is this. Make it nominal. For all practical purposes, this :01 per cent or whatever it is, it is almost nil. Technically you may say that it is not barred. It is open to the hon. Member to say, well, instead of 5 per cent make it 2. That is another matter, that would not be barred.

पंडित ठाकुर दास भार्गव : मैं अदब से अर्ज करूंगा कि दोनों अमेंडमेंट बिल्कुल दुरुस्त हैं । दूसरे अमेंडमेंट के बारे में तो फाइनेन्स मिनिस्टर साहब ने फरमा ही दिया है । मैं ने यह समझा कि शायद पहले पर ऐतराज हो । इसलिये मैं ने दूसरा अमेंडमेंट रखा था । आप ·०५ रखें या आप बिल्कुल चार्ज न करें यह आप की अख्तियार है । तो भी दूसरा अमेंडमेंट इन आर्डर है । मैं दफा ३४ को रिव्यू नहीं करता । लेकिन शिड्यूल में आप को

अख्तियार है कि आप निल कर दें। लिमिट वही रहेगी पर आप को अख्तियार है कि आप चार्ज न करें। बहरसूरतदूसरे अमेंडमेंट पर तो फाइनेन्स मिनिस्टर साहब ऐतराज नहीं करते। ·०५ से भी कुछ न कुछ तो आप के खजाने में आ जायगा, लाखों रुपया आप के काफर्स में आजायगा। मेरे वास्ते दोनों अमेंडमेंट एक तरह के हैं। अगर फाइनेन्स मिनिस्टर साहब को पहले पर ऐतराज है तो दूसरे को मंजूर फरमा लें।

जनाब वाला, मेरी अदब से गुजारिश है और में बड़े दुःख और तकलीफ से दो चार बातें फाइनेन्स मिनिस्टर साहब की खिदमत में पेश करना चाहता हूं और वे ये हैं।

सब से पहले सवाल यह पैदा होता है कि यह स्टेट ड्यूटी किस चीज पर लगनी चाहिये। जिस दिन से यह स्टेट ड्यूटी का सवाल चला है पहले सन् १९२४ में टैक्सेशन इन्क्वायरी कमेटी के सामने सन् ४६ के ऐक्ट में और सन् ५२ में, उस में यह लिखा हुआ है कि जब एक शक्स मर जाता है तो उस की जायदाद जो दूसरों पर जाती है उस पर यह स्टेट ड्यूटी लगायी जायेगी। मेरी अदब से गुजारिश है कि 'ए' के मरने के बाद अगर उस की जायदाद २५ हजार या ५० हजार या एक लाख की है आप को उस से ज्यादा पर टैक्स लगाने का अख्तियार नहीं है। अगर आप यह उसूल दुरुस्त समझते हैं तो मैं अदब से अर्ज करूंगा कि आप ने एक ऐसी तमीज रवा रखी है कि जो हमारे कांस्टी-ट्यूशन के खिलाफ है, हमारी सिक्यूलर स्टेट के खिलाफ है और दुनिया भर के टैक्सेशन के जितने कानून हैं उन के खिलाफ है।

श्री झुनझुनवाला : इनकम टैक्स में है।

पंडित ठाकुर दास भार्गव : मेरे पीछे से मिस्टर रोहिणी कुमार जी के कहने पर यह तमीज रवा रखी गई है, उन के कहने पर यह कहा जाता है कि यह इनकम टैक्स में रवा है इसलिये इस में भी इस को रवा कर दिया गया है। मैं और सब बातों को छोड़ कर सब से पहले इसी बात को एग्जामिन करना चाहता हूं कि यह जो इनकम टैक्स में रवा रखी गई है यह कहां तक दुरुस्त है। जनाब वाला को मालूम है कि पिछले ८० वर्ष से मिताक्षरा ज्वाइंट हिन्दू फैमिली पर किस कद्र जुल्म है कि एक इंडीवीजुअल को और एक ज्वाइंट फैमिली को एक ही बेसिस पर रखा जाता है। मैं ने इस के खिलाफ बार बार सख्त आवाज उठाई है। मैं सन् २८ से इस के खिलाफ आवाज उठाता रहा हूं और बीस बरस बाद सन् ४८ में जान मथाई साहब ने यह महसूस किया कि मेरी आवाज में असर था और हिन्दू ज्वाइंट फैमिली के साथ इन्साफ नहीं हो रहा है। चुनांचे उन्हों ने सन् १९४८ में उस की लोअर लिमिट को डबल कर दिया : आज इंडीवीजुअल के वास्ते ४,२०० है तो ज्वाइंट हिन्दू फैमिली के वास्ते ८,४०० है। मैं ने समझा था कि यह पहला कदम है और आगे चल कर यह तमीज बिल्कुल मिट जायेगी। चुनांचे इंवेस्टीगेटिंग कमीशन ने जब अपनी रिपोर्ट लिखी तो उन्हों ने यह करार दिया कि अगर ज्वाइंट हिन्दू फैमिली में तीन या तीन से ज्यादा मैम्बर हों तो ८,४०० नहीं बल्कि लिमिट तीन गुनी होनी चाहिये। वह सवाल चल रहा था कि इसी दौरान में यह बिल आ गया। जनाब वाला महसूस करेंगे कि एक बात के लिये बीस बरस तक लड़ना पड़ा। मैं अदब से अर्ज करना चाहता हूं कि इस तमीज को भी दूर कराने के लिये बीस बरस नहीं चाहे १०० बरस तक लड़ना पड़े हम इस को दूर करा के छोड़ेंगे क्योंकि यह एक डिस्क्रिमिनेशन है जो कि सिक्यूलर स्टेट के खिलाफ है और

[पंडित ठाकुर दास भार्गव]

सिक्यूलर उसूलों के खिलाफ है और टैक्सेशन के उसूलों के खिलाफ है । मैं नहीं चाहता था कि मैं इस पर ज्यादा बहस करता लेकिन मिस्टर रोहिणी कुमार चौधरी ने मुझे मजबूर कर दिया कि मैं जनाब वाला की खिदमत में चन्द और बातें अर्ज करूं ।

चुनांचे मैं जनाब वाला की खिदमत में एक स्पीच पेश करना चाहता हूं जो कि मैं ने इस हाउस में सन् ४७ में दी थी । उस वक्त भी मैं ने फाइनेन्स मिनिस्टर से यही शिकायत की थी कि यह जो तबीज रखा गई है ज्वाइंट हिन्दू फैमिली के साथ यह दुरुस्त नहीं है । हिन्दुस्तान में हर एक इन्सान के साथ यकसां सलूक होना चाहिये । मैं ने उस वक्त यह कहा था :

This point was raised by me a very long time ago and the reply I got on 20th March, 1930, from Sir George Schuster was:

> "I am quite ready to admit that as the law stands at present there are frequent cases of—I may almost say—injustice, certainly of hardship as regards taxation. But I do submit that the existence of these cases does not justify the wholesale alteration of the law without careful consideration".

और मुझे उन्होंने कहा था कि इस वक्त फाइनेन्स बिल पर यह नहीं हो सकता पर यह टैक्सेशन इन्क्वायरी कमेटी के सामने रखा जायेगा ।

Sir, similar words were spoken by Sir Archibold Rowlands, on the 28th March, 1946. He said:

> "From my short study of this question, it seems to me that there may be cases in which the operation of the law at present works hardship on a Hindu undivided family. I do recognise there are several cases in which I say the operations of the present law may be hard on a Hindu family".

मैं ने दो को कोट किया है । मैं अदब से अर्ज करूंगा कि सन् २८ में जब कि मैं सब से पहले इस हाउस में आया और बाद में भी सन् १९४५-४६ और ४७ में हर मर्तबा मैं आवाज उठाता रहा लेकिन मुझे अफसोस है कि जो जवाब मुझे मिस्टर लियाकत अली खां साहब ने दिया वही हमारे दूसरे फाइनेन्स मिनिस्टर साहिबान देते रहे कि टैक्सेशन इन्क्वायरी कमेटी को आने दो उस के सामने यह मामला आयेगा, बीच में हम कुछ नहीं कर सकते । हमारे मौजूदा फाइनेन्स मिनिस्टर साहब फरमाते हैं कि बहुत से मामलों में वह ओपिन माइन्ड रखते हैं लेकिन हिन्दू ज्वाइंट फैमिली का बदकिस्मती से ऐसा एक सबजैक्ट है कि जिस के लिये दरवाजा बहुत थोड़ा सा खुला है । और मैं थोड़ा सा खुला है इसलिये कहता हूं कि अगर वह चाहते तो इस वक्त भी कुछ न कुछ कर सकते थे । टैक्सेशन इन्क्वायरी को मामला जायगा उस में न मालूम कितना वक्त लगेगा और न मालूम इस मामले पर कब गौर होगा । मैं एक बात अर्ज करूंगा कि यह एस्टेट ड्यूटी बिल सन् ४७ में आया था उस वक्त मैं ने इस को रिफर किया था और अर्ज किया था कि अब गवर्नमेंट ने इस उसूल को मान लिया है कि फार परपेजेज आफ टैक्स अनडिवाइडेड हिन्दू ज्वाइंट फेमिली डिवाइडेड के तौर पर ट्रीट किया जा सकता है । सन् ४६ के अन्दर यह उसूल माना गया कि किसी शख्स के मरने के बाद ख्वाह खानदान मुश्तरका हो उस को डिवाइडेड माना जायगा । मैं ने सन् १९४७ में अर्ज किया कि कोई जवाज नहीं है आप के पास कि आप दो तरह का उसूल रखें । मैं तो एक स्पोर्टिंग आफर करता हूं । यह कितनी नामुनासिब बात है कि एक ही

स्टेट में एक ही टैक्स के लिये दो उसूल माने जायं। मुझ को दो मर्तबा पहले इस बिल पर बोलने का मौका मिला और मैं ने दोनों मर्तबा फाइनेन्स मिनिस्टर साहब की खिदमत में अर्ज किया कि आप मेहरबानी कर के अपना हाथ इनकम टैक्स से जल्द ज्वाइंट हिन्दू फैमिली से उठा लें। मैं अदब से पूछना चाहता हूं अपने फाइनेन्स मिनिस्टर साहब से कि वह आज हिसाब लगायें और देखें कि सुपर टैक्स, जिस की पहले लिमिट ७५ हजार थी हिन्दू ज्वाइंट फैमिली के लिये और ५० हजार थी अनडिवाइडेड फैमिली के वास्ते उस को भी बाद में उसी के साथ कर दिया गया था, और जो इनकम टैक्स हिंदू ज्वाइंट फैमिली पर लगाया गया है, सिवाय उस के कि जो लिमिट मिस्टर जान मथाई साहब ने घटा दी थी, तो पता चलगा कि दीगर फैमिलीज पर जो टैक्स लगा है उस के मुकाबले में ज्वाइंट हिन्दू फैमिलोज पर अरबहा खरबहा ज्यादा रुपया गवर्नमेंट वसूल कर चुकी है जो कि उस को ज्वाइंट हिन्दू फैमिली से इनकम टैक्स के उसूल के मुताबिक वसूल नहीं करना चाहिये था।

मैं अदब से अर्ज करना चाहता हूं कि आप देखिये कि आज १९५३ में किस कदर सख्त एक्सटार्शन हिन्दू ज्वाइंट फैमिली पर होता है। अब फिर आज गवर्नमेंट उसी चीज को परपेचुएट करने की कोशिश कर रही है। मैं उम्मीद रखता था कि कम से कम आज तो गवर्नमेन्ट इस बात को समझेगी कि ज्वाइंट हिन्दू फैमिली ऐसी चीज नहीं है कि जिस को आप जिस तरह चाहें दबा लें और जिस तरह चाहें मल्कट करलें। मैं जनाब से अर्ज करना चाहता हूं कि मैं ज्वाइंट हिन्दू फैमिली के तौर पर टैक्स नहीं देता हूं और मैं नहीं चाहता कि इस तरह किसी और का मामला देखा जाय कि वह ज्वाइंट हिन्दू फैमिली की बिना पर

टैक्स देता है या नहीं। यह मामला 'ए' और 'बी' का नहीं है। यह जनरल सवाल है। मैं जानता हूं कि इस हाउस में इस ऐक्ट के बनने के बाद भी ज्वाइंट हिन्दू फैमिली के तौर पर एस्टेट ड्यूटी लगेगी। आम तौर पर इनकम टैक्स की मेहरबानी से हिन्दू ज्वाइंट फैमिली खत्म होती जा रही है और यह जो आखिरी किक लगा है उस से आइन्दा हिन्दू ज्वाइंट फैमिली बिल्कुल खत्म हो जायेगी। मैं अदब से अर्ज करना चाहता हूं कि यह सवाल पर्सनैलिटी का नहीं है कि कौन टैक्स देता है, कौन नहीं देता है। यह सवाल बिल्कुल प्यौरली इन्साफ का सवाल है। अगर आप ऐसा टैक्स लगायें जिस में हिन्दुओं पर अलग टैक्स की इन्सीडेंस हो और मुसलमानों पर अलग हो, क्रिश्चियन्स पर अलग हो, तो मैं पूछना चाहता हूं कि क्या यह टैक्स जायज होगा। अगर शिया पर अलग टैक्स हो, सुन्नी पर अलग टैक्स हो, तो क्या यह जायज होगा? अगर आप प्रोटैस्टेंट्स पर अलग टैक्स की इन्सीडेंस लगावें, कैथालिक्स पर अलग लगावें, अगर आर्यसमाजियों पर अलग हो और ब्रह्म समाजियों पर अलग इन्सीडेंस हो, तो क्या यह जायज है। आज आप देश के अन्दर क्या कर रहे हैं। आज मिताक्षरा फैमिली पर टैक्स की लिमिट अलग कर रहे हैं और दायभाग मुसलमानों और क्रिश्चियन्स पर टैक्स और है। मैं अदब से अर्ज करता हूं कि हम ने जो यह कांस्टीट्यूशन बनाया है उस में मैं जनाब की तवज्जह दफा १४ और १५ की तरफ दिलाना चाहता हूं। हमने इस कान्स्टीट्यूशन में इस तरह के बेसिस को नहीं रखा। It is like this:

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

[पंडित ठाकुर दास भार्गव]

मैं अदब से अर्ज करना चाहता हूं कि अगर आज एक आदमी के पास सिर्फ ज्वाइंट फैमिली प्रापर्टी है ।

He is being denied the equality before law.

इसी तरह से आप आगे मुलाहजा फरमायें :

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

मेरी अदब से गुजारिश है कि एग्जम्पशन लिमिट में फर्क है और बहुत से मैम्बर साहबान ने स्केल का भी डिफरेंस रखा है । लेकिन स्केल अब तो मेहरबानी कर के हमारे मिनिस्टर साहब ने तरमीम कर दिया और अब स्केल exemption के अतिरिक्त एक सा हो गया है । इस के पहले स्केल भी और था, क्योंकि ७५ हजार और उस के बाद २५ हजार पर और था, स्केल में भी फर्क था और अमाउंट में भी फर्क था । मैं जनाब की खिदमत में एक जरा सा फिक्रा और पढ़ दूं, हमारे कांस्टीट्यूशन को उस कुंजी में से जो कि यहां बयान की गई है और जिस के वास्ते हम अपने प्राइम मिनिस्टर के हमेशा के लिये अनुगृहीत हैं । उन्हों ने प्रीएम्बुल में लिखा था :

We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens:

गो फैमिली आफ सिटीजन्स को नहीं, सारे सिटीजन्स को, । यहां आप सिटीजन्स की फैमिलीज में तमीज करते हैं, आप अलग अलग फैमिलीज के तौर पर देखते हैं । फिर कहते हैं :

Justice, social, economic and political;

सोशियल जस्टिस है । लेकिन यह सोशियल जस्टिस कहां रहती है जब कि आप कहते हैं कि जो हम एक सिस्टम आफ ला को बिलांग करते हैं तो दूसरे बेसिस पर टैक्स लगता है । मेरा एक सिस्टम ऐसा है जो कि परम्परा से चला आया है और उस को आप इस तरह अलग तरीके से टैक्स करते हैं । यह कहां सोशियल जस्टिस रहती है ? फिर :

Equality of status and of opportunity.

This is also being denied. Then again:

Fraternity assuring the dignity of the individual and the unity of the Nation,

Where is the dignity of the individual here, when he is only looked at belonging to a family governed by this law or that law

जब कि आप उसी किस्म का जजिया मेरे ऊपर लगाने की कोशिश करते हैं जैसे कि मुग़लों ने कभी लगाया था । वह एक तरह से तमीज करते थे । मुग़ल बादशाहों के जमाने में तो यह होता था कि मुसलमानों पर इस तरह टैक्स लगे और हिन्दुओं पर दूसरी तरह से टैक्स लगे। अभी राजस्थान में भी यह तमीज होती थी कि अगर उसी जमीन को बोने वाला कोई राजपूत है तो उस से एक चोथाई हिस्सा लिया जाता था और अगर वही बोने वाला जाट होता था तो उस से एक तिहाई ले लिया जाता था । यह सब बातें हम ने देखी हैं। लेकिन आज सन् १९५३ में यह कहना कि एक हिन्दू से तो हम फैमिली के तौर पर टैक्स लेंगे और दूसरे को और तरह के सिटीजन की तरह ट्रीट करेंगे, यह बिल्कुल ऐरोनियसली रांग, अनजस्ट और सबवर्सिव आफ आल प्रिंसिपल्स

आफ जस्टिस है और यह अनडिमाक्राटि है और अनकांस्टीट्यूशनल है । मेरे पास और कोई अल्फाज नहीं हैं कि जिन को मैं इस्तेमाल करूं इस तमीज को जाहिर करने के लिये । इस तमीज के रखने से हमें बड़ा भारी नुक्सान हुआ है ।

मैं ने जनाब वाला की खिदमत में अर्ज किया कि हिन्दू ज्वाइंट फैमिली को ट्रीट करने में जो उसूल कायम किया गया वह यह है कि इंडीवीजुअल पर टैक्स नहीं लगता है, बल्कि फैमिलीज पर टैक्स लगता है । मैं अदब से पूछना चाहता हूं कि क्या कोई कायदा, कोई कानून और कोई कैनन कहीं पर भी आप दिखला सकते हैं जहां पर कि फैमिली पर टैक्स लगता हो ? मैं तो निहायत अदब से अर्ज करूंगा कि इस को इस तरह करने से आप के सामने बड़ी दिक्कतें पेश आवेंगी, इस में बड़े मुश्किल सवाल पैदा होंगे जिन का हल करना हमारे आनरेबिल फाइनेंस मिनिस्टर साहब और इन के डिपार्टमेंट के लिये बड़ा मुश्किल होगा । मैं अदब से कहना चाहता हूं कि मुझे तो कोई भी सैक्शन इस में ऐसा नहीं मिला जिस में एक सवाल का जवाब मिलता हो । मैं ने सैक्शन ३४ को गौर से पढ़ा है, लेकिन उस में भी यह नहीं दिया है कि जिस के पास दो तरह की प्रापर्टी होगी तो एग्जम्प्शन लिमिट आप कैसे कायम करेंगे । दो तरह की प्रापर्टी है, एक तो हिन्दू फैमिली प्रापर्टी है और दूसरी गैर ज्वाइंट फैमिली प्रापर्टी । ऐसी सूरत में एग्जम्प्शन लिमिट किस को दी जायेगी ?

Shri S. S. More: *Prorata.*

पंडित ठाकुर दास भार्गव: अगर एग्जम्प्शन लिमिट से ज्यादा होगी तो प्रो रेटा टैक्स होगा । मगर एग्जम्प्शन लिमिट से ज्यादा हो तभी यह होगा, लेकिन एग्जम्प्शन लिमिट किस तरह से डिटरमिन होगी यह मेरी समझ में नहीं आया । मुझ को इस का किसी भी सैक्शन में पता नहीं लगा ।

मैं जनाब की खिदमत में एक बात और अर्ज करना चाहता हूं । अब पंजाब का नाम हमारे आनरेबिल मिनिस्टर साहब ने इस अमेंडमेंट के जरिये लिया है, पंजाब की एग्रीकल्चरल लैंड और दूसरी जगह को भी शामिल किया गया है, बम्बई और मध्य भारत को भी शामिल किया है । मैं उन की खिदमत में अर्ज करना चाहता हूं कि पंजाब में

Custom is the first rule of decision —Hindu law or Mohammedan Law do not bind the Punjabis.

पंजाब ला एक्ट में बतलाते हैं कि :

Custom is the first rule of decision, so far as succession, inheritance, etc., are concerned.

जिन को पंजाब के हालात से बाकफियत है और जिन्होंने इन पर गौर फरमाया होगा वे तसव्वुर करेंगे कि पंजाब में कस्टम की कितनी इम्पार्टेंस है । जब कभी पंजाब में कोई लिटिगेशन होता है, तो जितने मुकद्दमे वहां आते हैं उन में कस्टम का सवाल पैदा होता है । देहात के बारे में मैं बहुत नहीं कहता वहां तो कस्टम हो सब से ज्यादा इम्पार्टेंट होता है । लेकिन जहां कि अरबन प्रापर्टी का क्वश्चन पैदा होता है वहां हर मुकद्दमे में यह तनकीद निकलती है कि यह शख्स हिन्दू ला से गवर्न्ड है या कस्टम से और हर चीज पर शहादतें ली जाती हैं किस वह किस ला से गवर्न्ड है । फिर मैं जानता हूं कि सारे हिन्दुस्तान में कस्टम की कितनी इम्पार्टेंस है, जिन्होंने हिन्दू ला पढ़ा होगा वह इस को बखूबी जानते हैं । हिन्दू ला को कस्टम ने कितना चेंज कर दिया है यह सब को मालूम है । क्या देशमुख

[पंडित ठाकुर दास भार्गव]

साहब ने १९३७ में हिन्दू ला को, बेवा को हक दे कर तरमीम नहीं कर दिया है ? पंजाब में हिन्दू फैमिलीज पर इस का बड़ा एडवर्स और पड़ता है । वहां हर एक केस में यह तय करना होता है कि आया वह हिन्दू ज्वाइंट फैमिली से गवर्न होता है या नहीं और किस कस्टम से गवर्न होता है ।

इस सिलसिले में, जनाब वाला, मैं आनरेबिल फाइनेन्स मिनिस्टर साहब की खिदमत में अर्ज करना चाहता हूं कि हिन्दू ला का क्या उसूल है : यहां अव्वल उसूल यह है कि हर एक शख्स के हाथ में यह चीज है, उस को यह अख्तियार है कि वह हिन्दू ज्वाइंट फैमिली को खत्म कर सकता है । अगर कोई शख्स, हिन्दू, चाहे कि इस ज्वाइंट फैमिली को खत्म कर दूं तो अपने इरादे के इजहार से वह इरादा अनईक्वीवोकल (unequivocal) हो, तो उस से वह फैमिली को जब चाहे खत्म कर सकता है । वह एक नोटिस दे कर खत्म कर सकता है । एक पार्टीशन की दरख्वास्त से वह फैमिली को खत्म कर सकता है । जनाब वाला पहले कानून कुछ और होगा, लेकिन आज का कानून हमारे सारे देश का यह है, सब इस को मानते हैं, प्रीवी कौंसिल के फैसले से यह तय शुदा कानून है और सारे वकला इस की ताईद करेंगे कि हर एक हिन्दू को अख्तियार है कि एक अनईक्वीवोकल नोटिस दे कर वह ज्वाइंट फैमिली को जब चाहे खत्म कर सकता है । उस को कोई चीज ऐसा करने से नहीं रोकती । लेकिन इनकम टैक्स ला में ऐसी बात नहीं, क्योंकि वहां पर उन्होंने इस के लिये एक और नई दफा २५ ए बनाई कि जब तक कि पार्टीशन बिल्कुल मुकम्मिल तरीके से नहीं हो जाता उस वक्त इनकम टैक्स के लिये वह सैपरेशन नहीं माना जायगा । यह चीज हिन्दू ला के कतई खिलाफ थी । उस पर इस हाउस में जब बहस हुई थी, तो इसी तरह फायनैन्स बिल के मौके पर बहस करते हुए जहां पर आज हमारे सी० डी० देशमुख साहब बैठे हुए हैं उसी जगह पर उन के प्रैडेसेसर षण्मुखम् चैट्टी साहब ने हम को यकीन दिलाया था कि इस पर अमल करते वक्त हम इस तरह से अमल करेंगे कि जहां हार्डशिप होगी वहां हिन्दू ला के प्रिंसिपल्स को माना जायगा और metes and bounds को ही हर एक जगह देखने की कोशिश नहीं की जायेगी ।

अगर कानून यह है जैसा कि मैं कहता हूं, तो मैं अदब से पूछना चाहता हूं कि आप ज्वाइंट हिन्दू फैमिली को तो पचास हजार तक एग्जम्प्शन देते हैं लेकिन दूसरों को एक लाख तक देते हैं तो मेरा तो एतराज इस डिस्क्रिमिनेशन पर है और वह उसूली ऐतराज है । इस का नतीजा तो यह होने वाला है कि वह जिस का फायदा इस में होगा अनइक्वीवोकल इंटेंशन जाहिर करेगा कि मुझे ज्वाइंट हिन्दू फैमिली से माफ फरमाया जाय, मैं ज्वाइंट हिन्दू फैमिली को छोड़ता हूं और इस तरह वह इस से अलग हो कर हम ने जो एक अलग लिमिट उन के लिये कायम की है, वह उस लिमिट को खत्म कर देगा और वह लिमिट एक मिनट भी कायम नहीं रहेगी । इनकमटैक्स ऐक्ट में तो हिन्दू ज्वाइंट फैमिलीज के लिये जो लिमिट कायम की, वह तो किसी हद तक कायम भी रह सकी, क्योंकि उस के लिये हम ने ऐक्ट में २५ (क) का प्रावीजन कर दिया था कि जब तक रजिस्ट्रियां न होंगी, तब तक आप यह वैलिड नहीं होंगी, लेकिन हमारे इस स्टेट ड्यूटी बिल के अन्दर कोई ऐसी दफा नहीं है और इस वास्ते में आप से अर्ज करूं कि इस में होगा यह कि एक लाख को एग्जम्प्शन पाने के लिये जायदाद वाला शख्स मरने से पहले अपना इरादा जाहिर कर देगा

कि मैं अपनी जायदाद का पार्टीशन करता और इस पार्टीशन के करने से उस की टैक्सेशन लिमिट इप्सो फैक्टो एक लाख बन जायेगी। मैं अदब से अर्ज करना चाहता हूं कि उस के लिये एक तरीका यह है कि एक आदमी सिविल मैरिज कर ले, अथवा कोई और मजहब अख्तियार कर ले और तीसरा तरीका मैं ने आप की खिदमत में अर्ज किया। एकोनामिक लाज बड़े रूथलेस होते हैं, इन की तारीफ बड़ी सख्त होती है और इन से कोई बच नहीं सकता और यह वाकया है कि आप के इनकम टैक्स ने सारे देश भर की ज्वाइंट हिन्दू फैमिलीज को सब से ज्यादा नुकसान पहुंचाया है और आइन्दा इस ज्वाइंट हिन्दू फैमिलीज का अन्त और अन्तेष्टि संस्कार, हिन्दू सोसायटी का जो ज्वाइंट फैमिली सिस्टम में यकीन रखती है, हिन्दू समाज के जो बैस्ट आदमी हैं और हिन्दू सोसायटी के स्तम्भ हैं, उन के हाथों से हो जायगा। आज सब लोग जानते हैं कि हिन्दू ज्वाइंट फैमिली सिस्टम किस तरह से चलता है और पंजाब हाई कोर्ट ने सन् १८८९(१०२) में और सन् १९१९ (३४) में रूलिंग दी और दोनों रूलिंग्स में उन्होंने लिखा कि पंजाब के अन्दर कोई ज्वाइंट हिन्दू फैमिली नहीं है। एक लड़के को अख्तियार नहीं है, चाहे उस की जायदाद उस के दादा की हो या परदादा की हो, अपने बाप से बंटवारा करा सके। मैं अदब से अर्ज करना चाहता हूं कि ऐसी सूरत में हर एक ज्वाइंट हिन्दू फैमिली वर्षों तक चलती रहती है और इस ज्वाइंट फैमिली की लाइफ एक इंडीवीजुअल की तरह नहीं है, बहुत अर्से चलती है, भाइयों में अक्सर झगड़ा हो जाता है, लेकिन पार्टीशन नहीं होता और भाइयों के आपसी झगड़े कुछ दिन बाद खत्म हो जाते हैं और ज्वाइंट फैमिली में एक फर्द के मरने पर भी कोई फर्क नहीं पड़ता, और फैमिली में जो बड़ा होता है वह उस खानदान को चलाता रहता है और उस का फायदा नुकसान सब का सब एक आदमी को पता रहता है। हिन्दू ज्वाइंट फैमिली एक आदमी के या, दो, चार के मरने से खत्म नहीं होती, क्योंकि इन्सानी हमदर्दी और रिश्तेदारों की मुहब्बत की वजह से अदालत में जाने की नौबत नहीं आती। और इस में कोई नहीं जानता था कि किस को फायदा पहुंचा और किस को नुकसान पहुंचा। लेकिन मैं बतलाऊं कि आज इस बिल के पास होने से यह होगा कि हर एक आदमी के मरने पर आनरेबिल फायनैन्स मिनिस्टर साहब के मुहकमे वाले पेश्तर इस के कि घर पर से उस की अर्थी उठे, यह मालूम करने की कोशिश करेंगे, कि मरने वाले की जायदाद क्या है उस के डिटेल्स मालूम करेंगे उस के ट्रान्जेक्शन्स क्या हैं और इस जायदाद से कितना रुपया सरकार को वसूल करना है और इस का नतीजा यह होने वाला है कि उस फैमिली में अब तक जो सबोरडिनेट हैसियत रखते थे, उन के दिल में यह ख्याल आयेगा कि अब यह मामला ही खुल गया और वह पता लगायेंगे कि फैमिली की क्या हालत है, उस में हमारा क्या हक है और क्या हिस्सा है और खानदान के जो मैटर्स डारमैन्सी में पड़े हुए थे, वह सरफेस में आ जायेंगे, और मुकद्दमेबाजी और आपस में झगड़ा बढ़ने के अलावा और दूसरी कोई चीज पैदा नहीं होगी। मैं यह देखता हूं लेकिन मैं यह भी जानता हूं कि आप इस के वास्ते फायनैन्स मिनिस्टर साहब की शिकायत नहीं करते, क्योंकि ऐस्टेट ड्यूटी बिल जब पास हो कर सारे देश पर लागू होगा तो यह नहीं हो सकता कि मिताक्षर वाले हिन्दुओं को इस से बरी कर दिया जायगा। मैं ऐस्टेट ड्यूटी बिल को बनाने में पार्टी हूं और मैं समझता हूं कि सारा हाउस इस से कमिटेड है। इस को हम ने अच्छी तरह से हिन्दू खानदान की पलेसिडिटी को रफल कर दिया है और हम ने कोशिश

[पंडित ठाकुर दास भार्गव]

की है इस तरह से कि हिन्दू ज्वाइंट फैमिली यहां पर नहीं रहे । डाक्टर अम्बेडकर की बात मान लेनी चाहिये थी क्योंकि इस बिल का असर वही होगा जो वह पैदा करना चाहते थे हिन्दू ला के अन्दर उस को न मान कर हिन्दू ज्वाइंट फैमिली ने बड़ी गलती की, उसी को गुड ग्रेस में मान लेना चाहिये था । इस के अन्दर किसी को शिकायत करने का मौका नहीं है । मैं तो उन में से हूं जो यह मानते हैं कि

"The old order changes giving place to new. And God fulfils himself in many ways lest one good custom should corrupt the world."

इस इन्स्टीट्यूशन को जो इतने जमाने से चला आ रहा है, आज खात्मा हो जाय, मुझे फाइनैन्स मिनिस्टर साहब की उस कोशिश से डर नहीं है, क्योंकि मैं भी उस कोशिश में शामिल हूं, मैं खुद चाहता हूं कि हिन्दू ज्वाइंट फैमिलीज से ऐस्टेट ड्यूटी वसूल किया जाय, और सारे देश भर में ऐस्टेट ड्यूटी बिल के जरिये रुपया इकट्ठा किया जाय, क्योंकि आखिर हमारी स्टेट तो एक वेलफेयर स्टेट है और जब तक सरकार के खजाने पूरे न होंगे, हम कोई वैलफेयर का काम नहीं कर सकते, मेरी शिकायत इस सम्बन्ध में तो इस कदर है कि जब कि इस ज्वाइंट फैमिली सिस्टम का अन्तिम संस्कार होने जा रहा है और यह बिल उस को समाप्त करने के लिये तीर का काम देगा, तो आप उस तीर में जहर क्यों लगा रहे हैं, बस यही मेरी आप से शिकायत है, वह हियूमीलेशन क्यों कायम रख रहे हैं और अब भी आप चाहते हैं कि जैसे ८० वर्ष से इनकम टैक्स में होता आया है, और जो तमीज आज तक रही है वह सदा के लिये पक्की हो जावे । आप दोनों के वास्ते एक लाख लिमिट कर दें । मैं जनाब की इजाजत से उन के उस रुझान को ऐनालाइज करना चाहता हूं कि क्यों ऐसा किया गया । कहते यह हैं कि हमारे लायक दोस्त श्री चटर्जी साहब जिन की जवान की ताकत और अक्ल बमुकाबले दूसरों के बहुत ज्यादा है और जिन की बात हमारे आनरेबिल फायनैन्स मिनिस्टर के दिल में घुस जाती है, मैं चाहता हूं कि काश मेरे भी इतनी अक्ल होती और मेरी जबान में भी इतनी ताकत होती कि मैं अपनी बात आनरेबिल फायनैन्स मिनिस्टर से मनवा सकता । उन का आर्गुमेंट क्या है ? एक मकान में ने बनाया और एक मारवाड़ी ने बनाया जो मेरे पास रहता है और वह मिताक्षर से गवर्न्ड है, होगा यह कि मेरे से ज्यादा टैक्स लिया जायगा और उस से कम टैक्स लिया जायगा, इस से उन्हों ने यह दिखलाने की कोशिश की कि अगर दोनों की सेल्फ एक्वायर्ड प्रापर्टी है, इंसाफ यह कहता है कि कोई डिस्क्रिमिनेशन नहीं करना चाहिये, उन का आर्गुमेंट यह है कि नार्थ इंडिया में ज्वाइंट हिन्दू फैमिलीज इस से गवर्न्ड नहीं हैं जिन के पास ज्वाइंट फैमिली प्रापर्टी नहीं है, वह इस की जद में नहीं आयेंगे लेकिन मैं अदब से अर्ज करना चाहता हूं कि आप ने फैमिली पर टैक्स नहीं लगाया, आप ने तारीफ अब भी जो की है दफा पांच, छै और सात में कि वह प्रापर्टी जो किसी शख्स के मरने पर पास होगी उस के ऊपर टैक्स लगेगा, क्या उस सूरत में "ए" के मरने के बाद जो मिताक्षर का है जो प्रापर्टी पास होगी और "बी" जो दूसरे मत का मानने वाला है उस के मरने पर जो प्रापर्टी पास होगी, उस में आप क्यों अन्तर रखते हैं क्या आप एक कानून के द्वारा एबसोल्यूट (absolute) इक्वैलिटी करना चाहते हैं, क्या इस ला के जरिये एब्सोलूट इक्वैलिटी इन दोनों तरह की जायदादों में करना चाहते हैं ? आप का एम तो एक ही था और वह एम यह था कि जिस शख्स की प्रापर्टी मरने पर जितनी हो, उस पर टैक्स

लगाया जाय, अब "ए" पर ज्यादा टैक्स लगेगा और "बी" पर कम पड़ेगा, एबसलूट इक्वैलिटी के उसूल पर इसे नहीं तौला जा सकता, क्योंकि आप देखेंगे कि भगवान ने भी किसी को ज्यादा अक्ल दी है तो किसी को उतनी नहीं दी है और जो बड़े बड़े आदमी हैं उन को शुक्र मनाना चाहिये कि सारे इनसानों को उन के बराबर नहीं बनाया और अगर फायनैन्स मिनिस्टर जैसा मेरे पास भी ज़हन और इल्मियत होती तो फिर उन की काहे को सुपीरियोरिटी रहती और एबसलूट इक्वैलिटी अगर होती तो सोमानी साहब के पास इतनी ज्यादा दौलत क्यों होती और मेरे पास उन के बराबर क्यों न होती । इस वास्ते मेरी अदब से गुजारिश यह है कि यह प्लीड करना और ऐस्टेट ड्यूटी बिल के जरिये यह तमीज़ करना कि फलांने सिस्टम पर इतना टैक्स लगना चाहिये और दूसरे सिस्टम वालों पर इतना लगना चाहिये, इस तरह की तमीज करना कतई ग़लत है और मेरा तो इस बारे में खुला चेलेंज है कि ऐस्टेट ड्यूटी से आप को फायदा उतना नहीं पहुंचेगा जितना आप को नुक्सान पहुंच जायेगा अगर आप ने उस बिल के उसूल उसी तरह से कायम रक्खे ।

नतीजा क्या हुआ ? नतीजा यह हुआ, जनाब वाला, इसके करने से कि अगर आप कंसिस्टेन्टली यही उसूल दूसरी चीज यानी इन्कमटैक्स में लागू करें तो हमारी सरकार को आमदनी पहले से कम होगी ज्यादा नहीं । जनाब वाला का हाथ मुझे घंटी पर मालूम पड़ता है । अगर जनाब का यह खयाल है कि किसी क्लाज पर किसी मेम्बर को अपने ख्याल के इजहार करने का हक़ नहीं है.....

Mr Chairman: I do not want to interfere if the hon. Member wants to go to some other point.

पंडित ठाकुर दास भार्गव : मेरी अदब से गुजारिश है कि मैं डिस्क्रिमिनेशन नहीं चाहता मगर चूंकि हम दफा ३४ से मजबूर हैं इस लिये इस शेड्यूल को ऐसा बना दिया जाय कि यह दफा 'निल' के बराबर हो जाय या उससे जरा सा ज्यादा हो जाय । मेरी इतनी सी तरमीम है और उसके वास्ते मैं जनाब के रूबरू वजूहात दे रहा हूं ताकि आप इस को मान लें । इस के लिये मैंने कुछ वजूहात तो अर्ज कर दी हैं और चन्द वजूहात और हैं जो मैं अर्ज करना चाहता हूं ।

मैं जनाब की खिदमत में यह अर्ज कर रहा था कि यह सवाल यू सख्त पड़ता है और मैं फाइनेन्स मिनिस्टर साहब से यह पूछना चाहता हूं कि आखिर उन के पास कौन सा कांटा है जिसके मुताबिक उन्होंने यह तय किया । एक वक्त था जिस की मैंने अभी हिस्ट्री सुनाई । सन् १९४६ तक एक लाख का एग्जेम्प्शन सब के वास्ते था । लेकिन अब वह और सेलेक्ट कमेटी के ३५ मेम्बर बैठे और उन्होंने बहुत दिनों के गौर व खोज के बाद सारी चीजों को तोला तो मालूम हुआ कि दायभाग या मुसलमान और क्रिश्चियन को ज्वाइंट हिन्दू फैमिली के मुकाबले में.....

Shri R. K. Chaudhury: Sir, on a point of order. In the Select Committee there were thirty five Members out of which only seven were *Dayabhag* or non-*Mitakshara* people.

पंडित ठाकुर दास भार्गव : मेरी दाय भाग के मेम्बरों से या मि० रोहिणी कुमार चौधरी से हर्गिज कोई शिकायत नहीं है । दाय भाग वालों ने ऐसा कर दिया यह मैं नहीं कहता ।

श्री गाडगिल : दाय भाग नहीं है वह तो अब दया भाग बन गया है ।

Dr. M. M. Das (Burdwan—Reserved —Sch. Castes): *Dayaa bhag* has been reduced to *Dayaa bhag*. They are objects of pity!

पंडित ठाकुर दास भार्गव : जनाब वाला, मैं इस सवाल में तो जाना नहीं चाहता था लेकिन गाडगिल साहब ने मुझ को याद दिलाया

[पंडित ठाकुर दास भार्गव]

कि दाय भाग नहीं है अब वह दया भाग है। मैं कुछ इस के बारे में कहना चाहता हूं। दाय उस को कहते हैं जो कि मरने वाला आदमी दूसरों के लिये छोड़ दे। हिन्दू कोड में लिखा हुआ है, पहला फिकरा है, कि दाय भाग क्यों कहते हैं। लेकिन मैं पूछता हूं कि दाय भाग वालों की ही फिक्र है या मिताक्षरा वालों की भी है, इस को बतलाइये। मिताक्षर तो सिर्फ स्पिरिचुअल बिना पर है। मैं यह कहना नहीं चाहता लेकिन गाडगिल साहब ने मजबूर कर दिया है। यह मिताक्षर ला हिन्दू ज्वाइन्ट फैमिली के लिये बना हुआ था वह कोई टैक्सेशन मेजर के लिये बेसिस नहीं था कि सन् १९५३ में ज्वाइन्ट हिन्दू फैमिली के ऊपर टैक्स लगाया जाय। यह तो 'वेस्ट फार्म आफ मिउचुअल वालन्टरी हेल्प था।' उस के अन्दर कोआपरेटिव स्पिरिट थी। मिताक्षर ला इस का अदना सा नहीं बल्कि एक मजबूत नमूना है। इसके अन्दर क्या होता है कि आज चार भाई और एक बाप का खानदान है। बाप बुड्ढा हो जाता है, बेटा काम करता है और जायदाद पैदा करता है। बहुत सी जायदाद कुल खान्दान पैदा कर लेता है। उस वक्त दाय भाग और मिताक्षर खान्दान में यह फर्क हो जाता है कि ज्वाइन्ट फैमिली का सारा खानदान मुश्तर्का कोशिश से जायदाद पैदा करता है। दाय भाग वाले जब जायदाद लेते हैं तो वह ज्वाइंट तरह की नहीं होती है। हिन्दू ज्वाइंट फैमिली की तरह की नहीं है। ज्वाइंट फैमिली के अन्दर बूढ़े बाप और बेटों की जो कमाई है वह मुश्तर्का समझी जाती है जैसे कि कुल एक ही आदमी ने पैदा की हो। यह मेन फर्क है जो इस में रक्खा गया है। नतीजा यह होता है कि लड़का तो मेहनत से पैदा करता है लेकिन बाप के मरने के बाद उसको सिवाय सर्वाइवरशिप के द्वारा पूरा हक नहीं मिल सकता है सिर्फ जरा सा हिस्सा मिलता है। उसका पूरा हिस्सा मानना ऐस्टेट ड्यटी के तौर से नहीं मिल सकता और मिताक्षर ला के मुताबिक पूरा मिलना चाहिये। इसी वास्ते मिताक्षर ज्वाइंट फैमिली पर सन् १९२४ से १९४६ तक यह चीज चली आई कि डेथ ड्यूटी नहीं लग सकती। लेकिन मेरा यह प्वाइंट नहीं है। मैं कहता हूं कि मिताक्षर पर भी डेथ ड्यूटी लगनी चाहिये, मैं इस के खिलाफ नहीं हूं। किसी वेलफेअर स्टेट का काम नहीं चल सकता अगर उस के पास रुपया न हो। दुनिया भर में यह तरीका है रुपया वसूल करने का, मैं क्यों कहूं कि मिताक्षर को प्रोटेक्शन दिया जाय। लेकिन मेरे दोस्त गाडगिल साहब जरूर मंजूर करेंगे कि आप ने मिताक्षर के आदमियों को उनके कानून से अलग कर दिया है। जो जायदाद खुद एक आदमी की पैदा की हुई है उस पर डैथ ड्यूटी न लगनी चाहिये, आप ने इस को रख कर और मिताक्षर फैमिली में तमीज कर के उनके उसूलों को सेट बैक कर दिया है। मैं इस बारे में यह अर्ज करना चाहता था कि स्पिरिचुअल बांड की बिना पर मिताक्षर का ला आफ सक्सेशन बैस्ट है। मैं अर्ज करूंगा कि ज्वाइंट मिताक्षर फैमिली का जो उसूल था उस को सरकार ने नहीं माना। मैं भी नहीं मानता और कोई भी आदमी ऐसा नहीं है जो यह मानता हो कि हिन्दू ज्वाइंट फैमिली पर टैक्स न लगे। मैं तो यह अर्ज कर रहा था जब गाडगिल साहब ने दखल दिया। मैं तो यह पूछना चाहता था अपने फाइनेन्स मिनिस्टर साहब से कि उन के पास कौनसा कांटा है, कौन सा वैलेन्स है जिसकी बिना पर उन्होंने यह पर्सेन्टेज कायम की है। ३५ मेम्बर सेलेक्ट कमेटी में बैठे, उन में से सात काले थे, या सात गोरे थे इस से मुझे कोई मतलब नहीं। ३५ मेम्बर बैठे। उन्होंने

मुनसिफ तौर पर, गलत या सही, यह तय किया कि पचास हजार और पछत्तर हजार की सीमा रहेगी, चलो वह शिकायत भी जाती रही, लेकिन अब वहां से आने के बाद कौन सी वजूहात नई निकलीं, श्री एन० सी० चैटर्जी की जबान में कौन सा नया रस था जिस की वजह से सीमा दाय भाग की पछत्तर हजार से एक लाख कर दी ! मैं निहायत अदब से अर्ज करना चाहता हूं कि मेरा अपना विउ यह था और मैं श्री देशमुख और गाडगिल साहब के दलायल से इत्मीनान रखता था कि मैंने सही राय कायम की कि हाउस में कहा कि पछत्तर हजार की लिमिट होनी चाहिये। मैं अब भी चाहता हूं कि बड़े बड़े आदमियों से रुपया लेकर वैलफेअर स्टेट के ऊपर खर्च किया जाय और पछत्तर हजार की लिमिट रक्खी जाय ताकि हमारे देश का खजाना कम न हो। यही हमारे देशमुख साहब और गाडगिल साहब की राय है। मैं अब भी इसी राय का हूं, लेकिन मैं पूछना चाहता हूं कि जब आप इस तरह से दोनों सिस्टमों में तमीज नहीं करना चाहते हैं, जब आप चाहते हैं कि देश का जो धन है जो दो चार दस आदमियों का अनआब्स्ट्रक्टेड (unobstructed) हेरिटेज है वह ले लिया जाय, जब तक वह नहीं लिया जाता तब तक हमारा काम नहीं चल सकता, तो कौन से कांटे से आपने तोला जिसकी रू से पचास हजार और एक लाख की तमीज रक्खी ? क्या वह कांटा था कि चूंकि आप ने अरबों, खरबों और संखों रुपया ज्वाइंट फैमिली से इन्कम टैक्स में ज्यादा वसूल किया है अस्सी वर्ष तक, इस लिये और भी उन से वसूल किया जाय। यह कोई वजह थी ? यह कोई बुनियाद थी ? अगर आप को तमीज करनी ही थी तो यह करते कि मिताक्षरा को करते एक लाख और दाय भाग को करते पचास हजार। जो भी पुराना रुपया उन से वसूल किया गया है अगर उसका आप को ख्याल था तो उसका यह असर होना चाहिये था।

इस लिये मेरी गुजारिश यह है कि जो मिताक्षरा की लिमिट पचास हजार की रक्खी है उस के बखिलाफ मेरी अब भी शिकायत है कि वह मुनासिब नहीं था। तमीज करना ही गलत था। फिर यह और भी गलत था कि ३५ आदमियों के रिपोर्ट देने के बाद एक दम बिना किसी माकूल वजह के उन की सीमा को पछत्तर हजार से एक लाख कर दिया। क्यों ऐसा किया गया मैं इस को समझ नहीं सका। यह मामला इतना ही नहीं है।.....

Mr. Chairman: Is the hon. Member likely to take some more time?

Pandit Thakur Das Bhargava: Yes.

Mr. Chairman: The House will now adjourn till 4 P.M.

The House then adjourned till Four of the Clock.

The House reassembled at Four of the Clock.

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

MESSAGE FROM THE COUNCIL OF STATES

Secretary: Sir, I have to report the following message received from the Secretary of the Council of States:

"In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Council of States, I am directed to inform the House of the People that the Council of States, at its sitting held on the 12th September, 1953, agreed without any amendment to the Andhra State Bill, 1953, which was passed by the House of the People at its sitting held on the 27th August, 1953"
