

13.43 hrs.

**PUBLIC DEBT (AMENDMENT)
BILL**

The Deputy Minister of Finance (Shrimati Tarkeshwari Sinha): I beg to move:

"That the Bill further to amend the Public Debt Act, 1944, be taken into consideration."

The Public Debt Act, 1944, regulates the administration by the Reserve Bank of India of the public debt of the Central and State Governments and securities issued by them. It also governs the sale and discharge, through the Reserve Bank of India, of the 10-year Treasury Savings Deposit Certificates and 15-year Annuity Certificates issued by the Central Government.

As hon. Members are aware, this House has already agreed to allow the right of nomination to the depositors in Post Office Savings Bank and holders of Savings Certificates. It is necessary, therefore, to extend similar facilities in respect of 10-year Treasury Savings Deposit Certificates and 15-year Annuity Certificates by amending the Public Debt Act, 1944, in its application to these certificates. The nominees would thereby acquire the title to receive the payments due on these certificates, in the event of the death of the holders, to the exclusion of all other persons, without the production of legal documents. This is, however, an enabling provision for the payment to be made to the nominees against a valid discharge and is not intended to affect adversely the right or claim of third parties for recovery from the nominees of any amounts due from the deceased holders. Provision for this purpose has been made in sub-section (5) of the new section 9C.

Sir, I move.

Shri Naushir Bharucha (East Khandesh): Last time when I raised the point that probably this infringes

the right of State Governments to succession duty, I was told that it does not make any alteration in relation to the existing Act.

In the Statement of Objects and Reasons, it is said:

"Section 7 of the Public Debt Act, 1944 provides that if the face-value of Government securities belonging to a deceased holder exceeds Rs. 5,000, the executors or administrators of the deceased holder and the holder of a succession certificate shall be the only persons who may be recognised by the Reserve Bank as having any title to the securities."

So, the position is under section 7, if the amount exceeds Rs. 5,000, then they insist that the party claiming the amount shall pay proper succession duty to the State and get the necessary certificate. It is further stated here;

"Suggestions have been made from time to time that as the production of legal proof of succession involves considerable delay and expense, the holders of Ten-Year Treasury Savings Deposit Certificates and 15-Year Annuity Certificates may be allowed the right to nominate a person or persons to whom the amount due on the certificates could be paid in the event of the death of the holders without the production of succession certificate or other proof of title."

In other words, now a new principle is being introduced in the Bill under which the obligation to pay succession duty to the State is being dispensed with. Article 269 of the Constitution says:

"(1) The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause

(2), namely:—

- (a) duties in respect of succession to property other than agricultural land;
- (b) estate duty in respect of property other than agricultural land."

Article 274 says:

"No Bill or amendment which imposes or varies any tax or duty in which States are interested..." etc.

So, the first question would be whether succession duties are duties in which the States are interested or not. Under article 269, they are interested.

The second point would be whether this Bill varies it or not. As the Statement of Objects and Reasons points out, formerly for sums above Rs. 5,000 they used to insist on succession certificates. Now they want to dispense with it, as a result of which the States would lose the succession duty, which would be otherwise payable. So, this Bill would require recommendation of the President under article 274 in addition to article 117. This is a point which requires to be clarified.

Shri Prabhat Kar (Hooghly): I just want to know whether, while nominating any person, any stamp or registration will be required for the nomination.

Shrimati Tarakeshwari Sinha: Not necessary. No registration is required for this.

The Minister of Law (Shri A. K. Sen): Regarding the point raised by Shri Bharucha, first of all, from the Statement of Objects and Reasons, you will find that what is dispensed with is the production of succession certificate in certain cases. It is not changing any duty levied under the appropriate law. In the Seventh Schedule, item 88 in List I deals with duties in respect of succession to pro-

perty other than agricultural land. I am assuming for the moment that it is a duty in which the States are interested. Now, what is dispensed with is not the duty; what is dispensed with is the production of succession certificate before the Public Debt Office in certain circumstances. That is quite within the power of Parliament under the Concurrent List, item 8.

Mr. Deputy-Speaker: What Shri Bharucha says is that it would be hit by article 110(1)(a) which relates to imposition and abolition. In that connection he means to say that certain sums were being charged and credited to Government revenues, because there was this provision of succession certificate. Now we are dispensing with that. So, Government treasury would lose that amount which it was receiving. Therefore, he feels that in such a case a certificate by the President was needed. That is his argument.

Shri A. K. Sen: Not under article 110, if I have understood him correctly.

Shri Naushir Bharucha: May I make it clear? This is a money Bill, that is not disputed. So, it is coming under article 110. Therefore, they have obtained a recommendation under article 117. In addition to that, what I would point out is that succession duties, under article 269, go to the State. Then under article 274:

"No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression... shall be introduced or moved in either House of Parliament except on the recommendation of the President."

Now the question is whether this is not a "tax or duty in which States are interested".

Mr. Deputy-Speaker: In effect, it might be. But the Bill does not specifically say that.

Shri Naushir Bharucha: By introducing a new device, namely, of nominees, you cannot take away from the purview of the Succession Act certain types of assets which otherwise would require a succession duty. That is what I want to point out. Therefore, what you are really doing is changing the Schedule of duties though you have not mentioned it in so many words. You are really amending the Schedule so that duty shall not be payable on ten-year treasury savings deposit certificates and 15-year annuity certificates. It is just like introducing a clause that the succession duty shall not be payable in cases of ten-year treasury savings deposit certificates and 15-year annuity certificates. The fact that you are resorting to the device of nominees does not thereby lessen the substance of what you intend to do, namely, exemption of certain assets from the imposition of succession duties. Therefore, the States' share would certainly be varied. Article 274 only says:

"No Bill or amendment which imposes or varies any tax or duty in which States are interested "

The question is whether as a result of this measure the States' share is varied or not. It need not say that in so many words. In essence it does it.

Shri Achar (Mangalore): May I point out that the Speaker has given a ruling a little bit earlier exactly on the same point?

Mr. Deputy-Speaker: That was different. Now, according to the hon. Member, the existing Act provides certain revenues to the States. Now you are introducing a new amendment, the result of which will affect the share of the States.

Shri A. K. Sen: You will find from the Constitution that the subject "succession" comes in item 5 of the Concurrent List. So, succession is a subject on which both the Centre and the States can enact. Here, we are not even changing the law of succes-

sion. We are only saying that the Public Debt Office would not insist upon the production of succession certificates in certain cases where the nomination has already been made in the life-time of the holder of the Government security.

Mr. Deputy-Speaker: Shri Bharucha argues that if the present law had continued and the Public Debt Department had insisted on the production of the succession certificate, then there would have accrued certain sums of fees to the Government. By amending the Act now we are dispensing with the necessity of production of that succession certificate.

Shri A. K. Sen: It might be.

Mr. Deputy-Speaker: Those sums that would have gone to the treasury before the amendment of the law would not be accruing to the Government in future.

Shri A. K. Sen: That is so.

Mr. Deputy-Speaker: The only question is whether it would be hit by the words in article 274.

Shri A. K. Sen: It is not mentioned here at all.

Mr. Deputy-Speaker: The wording is:

"No Bill or amendment which imposes or varies any tax or duty in which the States are interested . . ."

The argument of Shri Bharucha is that it varies the tax. Am I interpreting him correctly?

Shri Naushir Bharucha: Yes.

Mr. Deputy-Speaker: "varying" according to the dictionary meaning, so far as I can recollect, is making a difference in the quantum or the amount that is there. It may have indirectly the effect of bringing in less revenues. But, so far as the provisions of the Bill are concerned, how

can we judge whether they vary the tax or not? Only the provisions of the Bill are to be seen. Now, so far as we can see the provisions of the Bill, they do not provide for any variation, so far as that tax is concerned. So, in my opinion, that would not be correct.

Now the question is:

"That the Bill further to amend the Public Debt Act be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: Now we come to clause-by-clause consideration. I shall put all the clauses together.

The question is:

"That clauses 2, 3, 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clauses 2, 3, 1, the Enacting Formula and the Title were added to the Bill.

Shrimati Tarkeshwari Sinha: I move:

"That the Bill be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill be passed."

The motion was adopted.

13.55 hrs.

MOTION RE: FOURTEENTH REPORT OF THE LAW COMMISSION—contd.

Mr. Deputy-Speaker: Now the House will take up further consideration of the following motion moved by Shri Ram Krishan Gupta on the 27th August, 1959, namely:

"That this House takes note of the Fourteenth Report of the Law Commission on the Reform of

Judicial Administration (Volumes I and II) laid on the Table of the House on the 25th February, 1959."

Along with that, the House will also consider the amendment moved by Shri Nemi Chandra Kasliwal on the 27th August, 1959.

Shri Nausbir Bbarucha (East Khandesh): Mr. Deputy-Speaker, on the last occasion I paid my humble tributes to the labours of the Law Commission for producing a voluminous and useful report which, as I said, even if it is partially implemented, would go a long way in putting our system of judicial administration on sounder footing. There are so many issues involved in the Law Commission's Report that a cursory list which I have prepared has got at least 42 points. So, it is hardly possible for me within the time which you, Sir, were pleased to allot to me, to deal with more than 4 or 5 of what I consider to be the most important issues

One issue dealing with the appointment of High Court Judges, to which several previous Members have made reference, is an issue which I think this House should consider in greater detail. And my excuse for reverting to that point is that I consider the whole subject so very important that it goes to the very basis of our democratic existence and unless the difficulties pointed out by the Law Commission in the report are dealt with satisfactorily, I am of the opinion that our judiciary is bound to suffer deterioration. As this House is aware, article 217 provides for the appointment of High Court judges, after consultation with the Chief Justice of India and the Governor of the State and Chief Justice of the High Court. The Commission points out that in actual practice this is reduced to a conference between the Chief Minister and the Chief Justice of the High Court.