

GIFT-TAX BILL

Mr. Speaker: The House will now take up the Gift-Tax Bill, 1958, as reported by the Select Committee, for which 6 hours have been allotted. Assuming it to be six hours, how long would we take for general discussion?

Shri Naushir Bharucha (East Khandesh): Assuming that it will be 7 hours, I suggest 4 hours for general discussion and the balance for the clause-by-clause consideration.

Mr. Speaker: So far as this Bill is concerned, the general discussion was already carried on before the Bill was sent to the Select Committee. I shall be a little strict regarding the scope of the general discussion this time. We ought not to start afresh as if this is one of first impression. The general discussion must be confined only to whatever has been done in the Select Committee; there is no question of any repetition and I shall be very careful to see that no repetition is allowed. So far as amendments are concerned, as hon. Members themselves have pointed out, there are as many as 104 amendments. Therefore, a larger time must be available for amendments.

Shri Satya Narayan Sinha: Make it three hours for general discussion.

Mr. Speaker: Very well. Tentative-ly, for general discussion we may have 3 hours—however long we may like to sit—and conclude it by 3-20 P.M. and then we shall address ourselves to the clause-by-clause consideration. Let us see. What is the good of hon. Members shaking their heads? Possibly, some hon. Members may not be getting up at all. I shall be watching. The whole thing will be disposed of today.

Shri Prabhat Kar: The original discussion that took place is completely different from what is going to take place now, because the Bill has undergone some major changes in the Select Committee.

Mr. Speaker: I have already said that I shall sit as long as the House likes to sit and finish this Bill today. What will happen if the hon. Member does not reach within that time, provided his name is given by his party? Let me consider. There are so many "ifs".

The Minister of Finance (Shri Morarji Desai): Sir, I beg to move:

"That the Bill to provide for the levy of gift-tax as reported by the Select Committee be taken into consideration."

As the House is aware, this Bill was referred to a Select Committee consisting of 43 members on the 24th April 1958. The Committee has submitted the report on the 2nd May, 1958. The Report which is now before the House bears ample testimony to the detailed scrutiny that has been made by the Committee. I do not propose to go into the details of the changes made as they are already explained in the Select Committee's Report. I shall refer only to the more important changes.

There seems to be an impression that all the changes made by the Select Committee are towards the liberalisation of the measure and the enlarging of the exemptions. While undoubtedly many of the recommendations of the Select Committee have this effect, there are quite a few changes proposed which, if adopted, will tighten the measure and minimise the chance of evasion. I shall refer particularly to the restrictions imposed in respect of gifts for charitable purposes not governed by Section 15B of the Income-tax Act. As the provision originally stood, a person could give any amount in such charities if only he took care to see that individual gifts did not exceed Rs. 100. This would have defeated the main object of making a distinction between charities to which Section 15B of the Income-tax Act

applied and others to which it did not. The clause as amended by the Select Committee provides that in no case the total value of such exempt gifts made in one year to the same person will exceed Rs. 500.

Another change made by the Select Committee which has the effect of tightening the measure is to bring to charge gifts made by a public company to its directors or managing agents or their relations. The House will recall that the Bill, as it originally stood, had exempted altogether public companies which are controlled by six persons or more from the scope of this tax. The Select Committee felt that there was no need to make a distinction between private companies and public companies in this respect as the object of levying tax on companies is only to ensure that companies are not used as means of avoidance of tax by individuals controlling them. I may mention here that it is only in Australia that there is a similar provision about the gifts made by public companies. In Canada only personal corporations which are more or less one-man companies are subject to tax whereas in U.S.A. Sweden and Japan there is no gift-tax on companies as such. If, however, the House would like to revert to the original provision Government will not raise any objection.

Then there are certain changes which have been made by the Select Committee to remove obvious anomalies. I shall first refer to clause 3 of the Bill which as it originally stood imposed a charge on the gifts made during the previous year relevant to every assessment year beginning from 1st April, 1958. The term 'previous year' has a technical meaning, and it means either the preceding financial year or the accounting year adopted by the assessee if he keeps accounts regularly. In our country there are many types of accounting years in use and quite a large number of persons will have accounting years other than the

financial year. In all such cases the previous year for the current assessment year, namely, 1958-59, will begin much earlier than 1st April, 1957. All these persons would have, therefore, had to pay tax on gifts made during the months prior to 1st April, 1957 whereas if they had adopted the financial year as the accounting year they would not have had to pay any tax in respect of those cases. The Select Committee felt that there was no justification for this discrimination between assessee whose previous year is the financial year and others to whom it is not. The Select Committee have, therefore, suggested that no gifts made prior to 1st April, 1957, should be charged to tax.

Another important change made by the Select Committee is with regard to the rate of tax chargeable on gifts. In the Bill as referred to Select Committee it was provided that gifts made during the previous year should be charged to tax at the rate applicable to the total value of gifts made during five years previous to the relevant assessment year. This provision, as I had pointed out during the debate on the motion for reference to the Select Committee, was put in with the object of checking any tendency to have the gifts spread over a number of years with a view to reduce the incidence of tax or avoid it altogether. In fact, some hon. Members had suggested we should have aggregation for a longer period. The Select Committee, however, felt that this provision is unnecessary and have suggested that the gifts made during the previous year should be charged to tax only at the rates applicable to the value of the gifts made during that year. In this view they have suggested the deletion of clause 7. I must confess that I am not very happy at this decision of the Committee. But, as this is a new measure, it will be necessary to have changes in it as we gather experience about its working and we can reconsider this provision at a later date.

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The Select Committee have also deleted the explanation to clause 3 by which gifts made by a wife from out of gifts made to her by her husband were deemed to be gifts made by the husband. They felt that this provision would result in unnecessary hardship. However, to check avoidance, they have provided by a new sub-clause to clause 5 that the husband or wife, as the case may be, does not claim exemption again for gifts made out of gifts received from one's spouse up to Rs. 1 lakh.

The Select Committee have made a change in respect of gifts of movable property abroad. Under the original Bill, gifts of such property were chargeable to tax if the donor was a citizen of India. The Select Committee felt that this would be unduly hard on Indian citizens settled abroad. The Committee have, therefore, recommended that gifts of movable property situated outside the taxable territories should be taxed only if the donor was a citizen of India and was also ordinarily resident within the meaning of the Income-tax Act.

The House will remember that during the debate on the motion for reference to the Select Committee, many hon. Members had suggested that gifts made to all charitable institutions should be exempted and not only those made to the institutions governed by section 15B of the Income-tax Act. I had more than once stated the Government policy in this matter, and I am glad that the Select Committee have after careful consideration come to the conclusion that this particular provision should stand as in the original Bill. It was, however, pointed out that gifts made for any charitable purpose during the previous year relevant to the first assessment year under this Act should be exempted, since such gifts had already been made *bona fide* and it would be a hardship to expect the donor to pay gift-tax thereon. There is a good deal of force in this contention and the Select Committee

have therefore decided that any gifts for any charitable purpose before the 1st day of April, 1958 should not be subjected to tax. As I have already stated in respect of gifts made thereafter for any charitable purpose to which the provisions of section 15B of the Income-tax Act do not apply, a further condition has been imposed that the aggregate value of all gifts made in any one previous year to the same donee does not exceed Rs. 500.

In this connection, I may refer to another change made by the Committee in respect of gifts made by religious and charitable institutions. The Committee felt that in certain cases such institutions had to make gifts in cash and kind to the poor and that at least in respect of these gifts there should be no distinction between institutions to which the provisions of section 15B of the Income-tax Act apply and to others to which those provisions do not apply. It is only proper that these religious and charitable institutions should continue to make gifts freely to the poor and needy and no obstacle should be placed in the way of their distributing such charity. The Committee have accordingly amended clause 46 of the original Bill so as to exclude from the scope of the Act gifts made by all religious and charitable institutions and funds the income of which is exempt from income-tax under the Income-tax Act.

One of the clauses of the Bill which had come in for considerable criticism was the provision for exempting gifts up to Rs. 1 lakh to one's wife. The Select Committee have extended the scope of this clause by making this exemption available also to gifts made by a wife to her husband though such cases will be comparatively rare. It has, however, been provided that if the person has more than one wife, this limit of Rs. 1 lakh should apply to all the gifts made to all the wives and not to gifts made to each wife.

In view of the liberal exemption provided for gifts to one's wife, the Select Committee did not consider it necessary to allow a further exemption in respect of gifts made to one's wife of any policies of insurance or annuities. As already stated by me earlier, clause 5 has been further amended to ensure that this generous provision for gifts to one's spouse is not abused.

In my speech moving the Bill for reference to the Select Committee, I had already indicated my intention to propose to the Select Committee that specific provision should be made for exempting reasonable gifts made to one's children for education and gifts made by employers to employees or their dependents by way of bonus, gratuity or pension. I had also made it clear that it was not the intention of the Government to subject to gift-tax bona fide business transactions. I am glad that the Select Committee have accepted my suggestions and incorporated the necessary amendments. The Bill as amended also answers the doubts raised as to whether gifts by rulers from their privy purse would be exempt.

Many hon. Members of the House had raised the question of exempting gifts made to the Bhoodan and Sampattidhan and in my reply to the debate, I had indicated that there was no intention that these great movements should be hurt or hampered in anyway. The Select Committee have suggested a specific provision exempting all gifts made to the Bhoodan or Sampattidhan movements. However, as the necessary legislation in respect of these movements has not been passed in all the States, the Central Government has been empowered to specify the movements by notification.

The House will remember that besides all the exemptions, the Bill had also provided for a basic exemption of Rs. 10,000/- in one year. Tax was payable only if the value of gifts exceeded this amount in one year.

This exemption was, however, to be reduced to Rs. 5,000 if gifts to any individual donee exceeded Rs. 3,000 in one year. The Committee felt that this further restriction was an unnecessary complication and they have recommended that in all cases, irrespective of the value of the gifts to an individual donee, a uniform exemption limit of Rs. 10,000 should be available every year.

Clause 19 of the original Bill allowed for a rebate of 10 per cent on advance payments provided the amount was paid within 15 days of making the gift. In the very nature of things, this rebate cannot be availed of by donors who have made gifts prior to the passing of the Act. The Select Committee have, therefore, suggested that this clause should be amended so as to provide that in the case of a taxable gift made before the 16th day of July, 1958, the amount could be paid before 1st day of August, 1958, in which case the rebate of 10 per cent will be available. For gifts made after that date the provision as it originally stood will apply.

I have given a detailed account of the important changes made by the Select Committee. Though some loop-holes have been plugged, the additional exemptions and concessions given will reduce the yield from this tax. In particular, the deletion of clause 7 of the original Bill, which provided for aggregation of gifts made during five years for rate purposes will reduce the yield considerably. It is difficult for me to make even a rough estimate at this stage; but even so, I doubt whether with the Bill, as amended by the Select Committee, we will be able to collect more than rupees two crores. But the importance of this measure should not be judged only by the revenue it brings directly. As I have stated earlier, this tax is important not only in itself but is also necessary for plugging the loopholes in other tax statutes. The real effect of this tax and the fiscal measures introduced last year could be judged only by taking the total

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revenue receipts from all the direct taxes and seeing how they increase from year to year. All the direct taxes—income-tax, wealth-tax, expenditure-tax, gift tax and estate duty—form one integrated tax structure and under our present system what is lost or avoided in one is bound to be gained in the other.

With these words, Sir, I move that the Bill as amended by the Select Committee be taken up for consideration by the House.

Shri Naushir Bharucha (East Khadesh): I want to raise a point of order.

Mr. Speaker: Let me first place the motion before the House before the point of order is raised.

Motion moved:

"That the Bill to provide for the levy of gift-tax, 1958, as reported by the Select Committee, be taken into consideration."

Shri Jagannatha Rao (Koraput): I also want to raise a point of order.

Shri Naldurgker (Osmanabad): I want to raise a point of order.

Mr. Speaker: Let me first hear just the points. Then we will discuss them. We will take them in the order of priority.

Shri Naushir Bharucha: I want to raise four points of order.

Shri C. D. Pande (Naini Tal): I think one will do.

Shri Naushir Bharucha: The first one is whether the definition of "gift" in clause 2, sub-clause (xii).....

Mr. Speaker: May I suggest that in future—not today, I am not commenting on the present one—whenever any point of order is raised some notice may be given? The Chair has to make up his mind almost immediately. I cannot put it off to some other day. I have to hear the other side also.

Shri Naushir Bharucha: I have a draft of the points of order which I can give you.

Mr. Speaker: In future, unless the hon. Members have not thought about it earlier and it arises on the floor of the House, they may kindly pass on a note both to the Speaker and to the Minister in charge so that they might come prepared.

Shri Naushir Bharucha: My first point of order is whether the definition of "gift" in clause 2, sub-clause (xii), read with the definition of "property" and "transfer of property", which is wide enough and is intended to include "agricultural land" does not offend against item 18 in the State List, reserving transfer and alienation of agricultural land exclusively as a State subject. I will amplify my points one by one.

Mr. Speaker: Which definition?

Shri Naushir Bharucha: When the definition of "gift" is read with the definition of "property" and "transfer of property" it is clear that "agricultural land" is also included in it.

Mr. Speaker: What is the entry in the State List?

Shri Naushir Bharucha: Entry 18, which includes "transfer and alienation of agricultural land; land improvements....."

Secondly, whether the definition of "gift" in clause 2, sub-clause (xii) read with the definition of "property" and "transfer of property", which is wide enough and which specifically includes grant or creation of new lease, does not offend against item 18 of the State List, which reserves exclusively the relationship of landlord and tenant as a State subject.

Mr. Speaker: Creation of what?

Shri Naushir Bharucha: Lease is included in the gift. That is specifically reserved to the States under entry 18.

Thirdly, whether the definition of "gift" in clause 2 read with the definition of "property" and "transfer of property", which is wide enough and which specifically includes all immovable property, does not offend against item 49 of the State List, which reserves exclusively to the State "taxes on lands and buildings".

Fourthly, whether clause 5, sub-clause (v) does not contravene article 14 in that it discriminates effectively between charitable institutions and charitable institutions; that is to say, between those which are and those which are not for the benefit of any particular religious community; in other words, between communal and non-communal charities.

Mr. Speaker: Difference between one community and another community?

Shri Naushir Bharucha: Difference is made between charities and charities, between communal, and non-communal charities.

Mr. Speaker: Discrimination?

Shri Naushir Bharucha: Yes. I shall take them one by one and shall amplify them separately.

Shri T. N. Singh: Let us hear them together.

Mr. Speaker: Let me, first of all, hear all the other points of order so that the hon. Minister may refer to all the points.

Shri Jaganatha Rao: My objection is that this Bill seeks to impose a tax on gift of agricultural property. My hon. friend, Shri Bharucha, has referred to this objection. But I would like to amplify it in my own way.

Mr. Speaker: So the point is the same. I will give him an opportunity, if necessary and if Shri Bharucha has not said all that Shri Jaganatha Rao wants to say.

Shri Naldurgker: In addition to what Shri Bharucha has stated....

Mr. Speaker: So, there is no fresh point of order.

Shri Naldurgker: The case Ralla Ram Vs. the State of Punjab went up before the Lordships of the Punjab High Court.

Mr. Speaker: That is an argument in favour of the point of order.

Shri Naldurgker: On a point of order, I want to point out....

Mr. Speaker: I will give the hon. Member an opportunity to elaborate the point. He has not raised any new point of order. If merely he wants to reinforce his case by way of argument by referring to the decision of the Punjab High Court, I will give him an opportunity.

Shri Subiman Ghose (Burdwan): I want to raise a point of order. I refer to section 22 of the Gift Tax Bill, which relates to appeal to the Appellate Assistant Commissioner from orders of Gift-Tax Officers. That section gives a right of appeal to the assessee. Under this section the State is placed in a disadvantageous position. I will show it by one example. Now there is provision to allow the matter to go up to the Appellate Court at the option of the assessee.

Mr. Speaker: Then what is the objection?

Shri Subiman Ghose: You will be pleased to find that if the State is the aggrieved party there is no provision for referring the matter to the Appellate Commissioner.

Mr. Speaker: Where?

Shri Subiman Ghose: I will give one example. Clause 5(1)(xiii) reads:

"for the education of his children, to the extent to which the gifts are provided to the satisfaction of the Gift-tax Officer as being reasonable having regard to the circumstances of the case."

A limitless discretion has been given to the Gift-tax Officer. Suppose a person.....

Mr. Speaker: How is it a point of order?

Shri Subiman Ghose: It makes a discrimination between the State and the assessee. There are two parties in an assessment case. Now, it is agreed that the assessee can carry the matter before the Appellate Commissioner but there is no provision to carry the matter before the Appellate Commissioner by the State. The State cannot take upon itself that it shall not appeal whatever the reasons given by the Gifts-Tax Officer. Ultimately, it is the people who are the real beneficiary. Therefore, there is discrimination under Article 14 of the Constitution of India.

Mr. Speaker: Does he contemplate a case of the State making gifts or is it the gifts made in favour of the State?

Shri Subiman Ghose: No. My contention is that in an assessment case there is the State and the assessee. If the assessee does not agree with the order of the Gifts-Tax Officer he can carry the matter to the Appellate Commissioner. But, if the State...

Mr. Speaker: What is the State? It is the Union Government.

Shri Subiman Ghose: In this case, the State will be according to clause 5, where the exemptions have been given.

Mr. Speaker: I have noted the point. If the fundamental rights are given to the assessee, the State imposes the obligation through its own subordinate officers. There is a fundamental right against subordinate officers to the appellate court and that is a matter of discrimination.

Shri Tyagi (Dehra Dun): What he means to say is that the State is the joint interest of all the assessee.

Shri Subiman Ghose: In the matter of taxes, who is the ultimate beneficiary? The beneficiary are the people of India.

Mr. Speaker: I have noted the point of order.

Shri K. Periaswami Gounder Karur): Sir, I rise to a point of order.

Mr. Speaker: Another point of order? Very well.

Shri K. Periaswami Gounder: I want to draw your attention to the definition of estate duty under the Constitution. There it says:

“‘estate duty’ means a duty to be assessed on or by reference to the principal value,of all property passing upon death....”

Mr. Speaker: Where is it?

Shri K. Periaswami Gounder: It is on page 202 of the Constitution. In article 366 (9) where the definition of estate duty is given. It says:

“‘estate duty’ means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under the laws made by Parliament... of all property passing upon death or deemed, under the provisions of the said laws, so to pass:”

According to this, a tax on property which is deemed to pass, is estate duty. Under section 9 of the Estate Duty Act we have said that all gifts made within two years shall be deemed to pass under the estate duty. Therefore, all gifts made within two years before death come under the Estate Duty Act. Because of that definition, any duty charged on a gift made within two years of death will come under estate duty.

Mr. Speaker: Gifts made within two years of death will be chargeable with estate duty. This would be treated for the purposes of estate duty as gifts having been made.

Shri K. Periaswami Gounder: But under the present Bill we tax all gifts whether made within two years or before two years. Therefore; when

we charge gift-tax on land made as gift within two years, we charge estate duty. Land is a State subject.

Mr. Speaker: Charging gift-tax and estate duty? Is there a tax on a tax?

Shri K. Periaswami Gounder: No. We are taxing gifts made within two years, which is estate duty under this definition.

Mr. Speaker: The property passes on the death of the individual in the hands of whosoever it might be. That is liable to estate duty. While the man is alive, so far as gifts are concerned, that is also taxed.

Shri K. Periaswami Gounder: How do you know that he will not die within two years?

Mr. Speaker: I am accepting the position in the case of a person who makes a gift and dies within two years. That property for the purpose of the Estate Duty Act continues to be his property passing on death of that individual. So, that property including that portion which is given as gift, is liable to estate duty.

Now, this Gift-Tax Bill seeks to charge that property as having passed for the purpose of this Bill. It says that the gift shall deem to have passed and therefore it is charged. But for the purpose of the Estate Duty Act, it is deemed not to have passed. That is all the difference.

Shri K. Periaswami Gounder: A man makes a gift today. If he dies within two years, it becomes estate duty and estate duty on immovable property is purely a State subject. You cannot tax it. Suppose, a man makes a gift today. If he is charged gift-tax, he may say, "No. I might die within two years." How can you charge gift-tax because his successors will pay estate duty on that?

Mr. Speaker: Estate duty will not

Shri K. Periaswami Gounder: But according to the Constitution any charge made upon any property of a man who may die within two years amounts to estate duty.

Mr. Speaker: Estate duty means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under the laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death...

Shri K. Periaswami Gounder:....or deemed to pass.....

Mr. Speaker:....under the provisions of the said laws, so to pass. How does it contradict with the other one?

Shri K. Periaswami Gounder: Estate Duty Act says that no gift made within two years shall be deemed to pass.

Mr. Speaker: Therefore, this has to be under clause 9 of Article 366, i.e., property which is deemed to have passed.

Shri K. Periaswami Gounder: Therefore, only estate duty will be charged.

Mr. Speaker: Why estate duty only? Income is taxed during the life of a man and estate duty is after his death. The same objection can be raised with regard to income-tax also then.

Shri K. Periaswami Gounder: Estate duty is a tax made upon the land of a man who makes a gift and dies within two years. That is the definition of estate duty.

Mr. Speaker: Estate duty includes that property also which he gives away and dies within two years. It is not exclusive. I have understood the point of order. I have my own doubts about this and I shall hear the other side also. It is nowhere said in sub-clause 9 of Article 366 that if estate duty is imposed no other duty

Shri K. Periaswami Gounder: You can call it by any name but under the definition it is Estate Duty. How could you call it by any other name?

Mr. Speaker: Then that man must die. (*Laughter*). My point is this. Until the man dies, Estate Duty has no significance. This relates to a case like this. Suppose a man has parted with certain property, on his death within two years of such action, though he dies, that property by a fiction of law shall be deemed to continue with him for the purpose of Estate Duty. Here we are assessing gift tax when the man is alive.

Shri K. Periaswami Gounder: He may die within two years. How can you levy the tax?

Mr. Speaker: Very well. I have heard him. The hon. Minister has also heard him. I take it the hon. Member has not got anything more to say.

Pandit Thakur Das Bhargava (Hisar): We have not followed his point of order.

Mr. Speaker: If after twenty minutes we are not able to follow, we will not follow. I shall now hear Mr. Bharucha.

Shri Naushir Bharucha: Sir, the first point that I raised was in connection with agricultural land in item 18 in the State list. But before we proceed, we have to bear in mind that my objection is not based on the same ground as the objection taken by my hon. friend Shri Gounder in respect of the Estate Duty Bill; because, in the case of that Bill, under item 48 of the State List, Estate duty in respect of agricultural land has been specifically mentioned. Our power to impose gift tax arises out of item 97 of the Union List which says "Any other matter not enumerated in List II or List III including any tax not mentioned in either of those

Lists." The gift tax is not mentioned in List II or List III and, therefore, it is presumed that Parliament has power to impose a gift tax. Therefore, I am first distinguishing that my objection in this case is not based on the same ground as has been taken in the case of the Estate Duty Bill.

Then why do I object? Let us turn to item 18 of the State List. Item 18 of the State List says:

"Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land.. "

That is the clause with which it conflicts, namely, transfer and alienation of agricultural land. We know that transfer of property has been defined as certainly including transfer and alienation of agricultural land, which is exclusively a State subject.

If we say that transfer and alienation of agricultural land is exclusively a State subject, then the State has a right to impose any type of taxes on transfer and alienation of agricultural land, including a gift tax. Because, the Supreme Court has held in the very well known prohibition case from Bombay State, with which, I am sure, the Finance Minister is fully conversant, namely, the State of Bombay vs. F. N. Bulsara, that since the enactment of the Government of India Act, 1935, there have been several cases in which the principles which govern the interpretation of the Legislative List have been laid down. One of these principles is that none of the items in each List is to be read in a narrow or restricted sense. So we have to read this item in a wide sense. That is, when they say "transfer and alienation of agricultural land", it includes power to impose taxes also on transfer and alienation of agricultural land.

Mr. Speaker: Then why is there a separate entry like "Taxes on agricultural income" in List II? I believe it is item 46. Then it is overlapping. If land compendiously under item 18 of the State List includes taxes on lands and holdings, taxes on agricultural income etc.—the hon. Member will kindly refer to items 46, 47, 48 and 49 in the State List—all these taxes relate to agricultural land.

Shri Naushir Bharucha: Item 46 relates to taxes on agricultural income, not on land.

Mr. Speaker: Of course the income comes from the land.

Shri Naushir Bharucha: That is true.

Mr. Speaker: If the argument is that item 18 of the State List which refers to "land, that is to say, rights in or over land"—right in land is for the right of recovering income on that—"land tenures including the relation of landlord and tenant, and the collection or rents; transfer and alienation of agricultural land", if his contention is that this includes taxes also, what is the need for the Constitution-makers to put down items 46, 47, 48 and 49?

Shri Naushir Bharucha: To make it more clear.

Mr. Speaker: Is it not reasonable to say that because it is not included they have put it down specifically?

Shri Naushir Bharucha: That is exactly why I cited the judgment of the Supreme Court.

Mr. Speaker: It is not on all fours. It generally says you must be as liberal as possible. But a taxation measure ought not to be imposed; whatever might be the other ones, tax must be specifically mentioned.

Shri Naushir Bharucha: My reply to that is that it has been made very clear, "Taxes on agricultural income",

so that there may not be any doubt about it. Then it refers to duties in respect of succession to agricultural land—not so much to land—and then Estate duty in respect of agricultural land. It specifies Estate duty clearly. Then where is the need for "Taxes on agricultural income"? Where is the need for "Estate duty in respect of agricultural land"? That is also a tax. It is more or less explanatory and at times the items are overlapping.

Mr. Speaker: Land by itself does not include taxes on land.

Shri Naushir Bharucha: Item 49 also refers to "Taxes on lands and buildings". If tax on agricultural income is there and tax on land is there....

Mr. Speaker: Tax on lands and buildings is different.

Shri Naushir Bharucha: Tax on land would also include succession to agricultural land, if that were so. Therefore, what I submit is that the items are not in water-tight compartments; they are occasionally overlapping in their scope.

Mr. Speaker: Tax on land may be exclusive of agricultural land. It may be merely possession of land. It may be a vacant site.

Shri Naushir Bharucha: I am coming to that point, Sir. Therefore, I submit that clause 5 of the Gift-tax Bill contravenes the provision on transfer and alienation of agricultural land which is exclusively a State subject.

The second point is that it contravenes item 18 of the State List, and the words which it contravenes are "the relation of landlord and tenant" which is reserved for the State. According to our definition of transfer of property, it includes grant or creation of lease. What I am submitting is, if this is reserved for the State List, we are here enacting a law regulating the grant or creation of a

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lease. In other words we are imposing a tax on the creation of a relation between landlord and tenant. Therefore, I submit that the words "relation of landlord and tenant" must be taken to mean also any tax which may be imposed on the relation of such tenancy or lease. So I submit that it also violates that part of item 18 of the State List.

The third point I have raised refers to gifts on land and building. If we turn to item 49 "Taxes on lands and buildings", that is a State subject. Tax includes definitely any type of tax, including a gift tax. There is no reason to say that when under item 49 taxes on lands and buildings are reserved for the States, those taxes are only other than the gift tax. The taxes would include any tax. Therefore, on land and building, only State Governments can impose a gift tax.

Sir, even if you are inclined to rule against me on the first point, I say that the first point will be covered by this third point. Because, land is excluded; and I go a step further and say that it is not merely agricultural land which we cannot touch but any land whatsoever or any building whatsoever. Parliament has no right to impose a tax on lands and buildings, because these have been specifically reserved under item 49 of the State List for the States themselves.

Therefore, if on the first point I am over-ruled, I say it is not merely agricultural land but all lands.

13.00 hrs.

Therefore this is much wider in its scope.

Finally, I come to the question of discrimination created between charities and charities. Article 14 grants equal protection of law and these words have definitely been understood to mean that. Equality does not mean universal application of all

laws to all persons, because the requirements of different persons call for differing treatment, and it does not take away the power of classification. This is also referred to in the same case which I cited before and which is reported in *AIR, 1951, Supreme Court Series*.

The Minister of Law (Shri A. K. Sen): Sir, may I raise a point of order? I did not want to disturb the hon. Member. This is rather a point of order on the so-called point of order raised by the hon. Member.

What I have followed from his speech so far is that he is raising the question of competence of Parliament in regard to the subject matter of the Bill; that is, with regard to the legislative list,—whether it falls within List I, or List II or List III. That is a matter which is not for the Chair to decide, as is amply proved by the previous rulings in this House. I have passed on to you some of the rulings. The points of order which the Chair entertains are quite different, namely whether there is a bar to the introduction of a Bill, whether there is a bar to the passing of a Bill, as happened the other day. You ruled then that without the President's assent the Bill could not be introduced, or as happened the other day that without consultation and resolution of two legislatures at least we could not pass a particular Bill. Those are points which really impede the further progress of the Bill in the House itself. But whether the House as such is competent to deal with a particular subject-matter which is before us is a matter which is never decided by the Chair, because it is too difficult and technical a matter and it should be left really for the courts to decide and I have handed over to you two of the rulings. (*Laughter*) I hear laughter. It seems serious points cause laughter in this House. I find nothing in the points I am making to cause laughter.

Mr. Speaker: What has the hon. Member to say on this point?

Shri Naushir Bharucha: There is nothing in that point for the simple reason that our Rules of Procedure lay down that even at the introduction stage I can question the competence of Parliament to enact a particular legislation. If Members have power even at the introduction stage to raise a point like that I have a right to raise it now.

Mr. Speaker: The preliminary points have been disposed of. The points of order which have been raised are that this subject comes under the State List. It has been argued that the Bill covers agricultural land and everything relating to agricultural land come under List II, State List. Shri Jaganatha Rao's point was also this. The other hon. Member supported this by reference to some rulings. So far as Shri Gounder's point of order is concerned, he said that on account of the definition of estate duty, this tax would become estate duty.

To these points, objection has been raised by the hon. the Law Minister on the ground that whether this House has jurisdiction, whether a subject comes in the Union List or State list, ought not to be decided by the Chair. Have I understood him correctly?

Shri A. K. Sen: Yes.

Mr. Speaker: It is a question of jurisdiction of this House to enact legislation regarding matters which have been referred to in the different Lists. That is what exactly it comes to.

So far as this matter is concerned, I myself was a party to a ruling which has been brought to my notice. In all these matters the Chair has never taken upon himself the duty of deciding whether it is constitutional or otherwise. It is for the House to take this into consideration and vote down a Bill or pass it.

On the 1st September, 1956, during the consideration of the All India Khadi and Village Industries Commission Bill, Shri Shree Narayan Das, on a point of order, submitted that according to article 246, Parliament had exclusive power to make laws with respect to the matters, enumerated in the Union List 'Industries' in general appeared in the State List—with the exception of those industries which would be declared by Parliament to be expedient in the public interest. He contended that unless it was provided in the Bill that Khadi and Village Industries as specified in the Schedule to the Bill were expedient in the public interest and came under Central regulation, vide entry No. 52 of the Union List, the House did not have legislative competence to discuss those industries.

The Minister of Production submitted that in the Schedule to the Industries Development and Regulation Act of 1951, those industries which came under Central regulation, included items such as textiles, soap, etc. Khadi came under textiles. Most of the industries mentioned in the Bill came in the category of industries with regard to which the Centre could take action. He added that the Bill was related to entry No. 44 of the Union List, the object of the Bill being to set up a Commission, which had to deal with matters concerning several States.

After some discussion on the point, the Deputy Speaker observed—this is the substance of the ruling, it is a long one—

"In all these matters, the Speaker has never taken upon himself the responsibility of deciding this point of order whether it is constitutional or otherwise."

This is based on an earlier ruling by the Speaker—

"The position which I had made clear was that the question of *ultra vires* will not be decided by the Chair, but that it may be left to the House. If it comes to the

[Mr. Speaker]

conclusion that it is *ultra vires*, the House may reject the Bill."

Shri Naushir Bharucha: On what date was it?

Mr. Speaker: These are from the Decisions from the Chair in Parliament, '13. Bill: Chair not to decide whether or not a Bill is *ultra vires*."

On the 23rd April, 1951, when the hon. Minister for Commerce and Industry moved that the Forward Contracts (Regulation) Bill be referred to a Select Committee, Shri Naziruddin Ahmad contended that the Bill was *ultra vires* of the Constitution and he continued opposing it on this ground even on the following day. It was on that occasion that the Speaker gave the ruling which I have read out. This was in 1951. Even before 1947 itself. I remember that the Presidents of those days refused to undertake the responsibility of deciding whether a measure was *ultra vires* or *intra vires*. To be consistent with those rulings, I do not want to take the responsibility of deciding whether this would be covered by items in one list or the other. I leave it to hon. Members and the House. Hon. Members when they speak may refer to these points and if the House agrees with them, it may throw out the Bill. Therefore, there is nothing so far as these points of order are concerned. They may be good, or they may be bad. I do not take the responsibility upon myself. Let the House decide. I agree with the hon. the Law Minister's observations that previous rulings in this House have laid down that the Chair does not enter into this question of *ultra vires* or *intra vires*.

Pandit K. C. Sharma (Hapur): The Chair can decide whether it is *ultra vires* on the face of the record.

Mr. Speaker: The hon. Member would have seen that it is not written on the face. We have spent nearly one hour over this matter. It is a

very ticklish proposition and there is the other wing on the other side. If without jurisdiction this House passes something and it conflicts with any rights of any citizen, or any other person, the other wing will decide it—I mean the Supreme Court. Let me not arrogate to myself the responsibility. If it is so *prima facie* then we may consider them. Otherwise, in matters of this kind where detailed investigation is necessary and where much can be said on both sides, I do not propose to take the responsibility upon myself and the Chair has never taken that responsibility.

Shri Naushir Bharucha: That disposes of three points; the fourth point remains, which is not covered by this.

Shri Mohamed Imam (Chitaldrug): The Chair can decide whether this House has jurisdiction in regard to the matter dealt with in this Bill or not. If the House has no jurisdiction and has no power, then it is *ultra vires*.

Mr. Speaker: Whether the House has jurisdiction or not, let it be decided by the House. I do not want to take the responsibility of deciding for the House whether it has jurisdiction or not. Let all the Members take the responsibility of deciding it. If it is still *ultra vires* and they are trying to clutch jurisdiction, let the States and the Centre quarrel and let the matter be decided by the Supreme Court. I do not want to take the responsibility upon myself. What is the other point?

Shri Naushir Bharucha: The ruling that has been given is on the point whether it is in the State List or the Union List. Where the objection is based on a totally different ground, this ruling will not apply. The fourth point that I mentioned was that there is discrimination under Article 14. There is a clear violation of Article 14.

Mr. Speaker: Whether discrimination is there is also a matter to be decided by the House. It is a more difficult matter whether discrimination exists or not. These are not *prima facie* matters where we can interfere or the Speaker will take the responsibility. He always leaves it to the House. I do not propose to take the responsibility in this matter.

Shri Naushir Bharucha: Under our Rules of Procedure, Rule 72, it has been laid down:

"If a motion for leave to introduce a Bill is opposed, the Speaker, after permitting, if he thinks fit, a brief explanatory statement from the member who moved and from the member who opposes the motion, may, without further debate, put the question:

Provided that where a motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon."

What will be the cases which will be covered by this, I cannot imagine, if the State List and the Union List is not going to be the point.

Mr. Speaker: That is not inconsistent with what I said. All that the Rule says is, if even at the stage of introduction a Bill is opposed, straightaway, he may ask as to why it is opposed. The hon. Minister or the sponsor of the Bill may make a brief statement and immediately, the Speaker puts it to the vote of the House if it is an ordinary case. If it is on the ground that it is *ultra vires*, etc., he allows not merely a brief statement, but he allows an opportunity for a full discussion on both sides as to whether it is *ultra vires* or *intra vires* and ultimately, he leaves it to the House to decide. It is not for the purpose of enabling the Speaker to decide that he allows the discussion. It is for the purpose of enabling the House to

come to a conclusion one way or the other, whether it has jurisdiction or not, that the particular provision is made to have a full discussion.

Pandit Thakur Das Bhargava (Hisar): I want to make a submission. You have been pleased to rule that the House shall decide this matter. How shall the House decide this matter? There are two ways in which the House can decide. In the ultimate voting, the House will decide whether the Bill should be passed or not. This particular question whether it is *intra vires* or *ultra vires* of the Constitution is never put to the vote of the House. The House is a sovereign body. It has full jurisdiction to decide every matter in regard to this Bill. The Chair also can decide this matter. But, the Chair does not choose to decide this matter. The Chair does not take the responsibility. It does not mean that the Chair has not got the power. The House has the power. Let a convention grow that this matter may be put to the vote of the House so that the House may give its vote upon the actual question before the House whether the matter is *intra vires* or not. This matter is never put to the House. The only vote of the House is on the question whether the Bill is to be passed or not. It means that the merits of the Bill, etc., will be also one of the component factors in deciding whether it is *ultra vires* or not. I would respectfully submit, let a convention grow; when the Chair does not take the responsibility of deciding the matter, let the matter be put before the House and let the House be given an opportunity to decide whether the matter is *intra vires* or *ultra vires*. As a matter of fact, this question is never decided by the House whether it is *ultra vires*. When we make these laws, we generally allow this matter to be only decided by the Supreme Court. This House has got the right and it should be given an opportunity to decide whether a particular law is *intra vires* or *ultra vires*.

Shri A. K. Sen: I would like to add one word. That right is given under the Rules of Procedure. At the time of introduction of the Bill, should a Member desire that a debate should be initiated as to the competence of the House, the Rules allow such a discussion. That has not been availed of. The Rules specifically provide for that.

Shri C. R. Pattabhi Raman (Kumbakonam): This point was raised in the Select Committee also. I have dealt with it. Because you are giving your ruling, I would like to point out that at the very inception of the Select Committee this was raised and it was answered.

Dr. Krishnaswami: It was said by the Chairman of the Select Committee that the Rules of Procedure of the Select Committee forbade him from giving any definite ruling on this point.

Shri C. R. Pattabhi Raman: I am sorry. I also said and I refer to the minutes which...

Mr. Speaker: That is not quite relevant for this issue. If some point was raised in the Select Committee, whether it was considered or not and a decision was taken one way or the other, this is the final court of appeal. We can take a decision. Whether what has been done in the Select Committee is right or not, let us proceed to the issue. The only point is, Pandit Thakur Das evidently wants me to split this into two parts: (i), is it *intra vires* or *ultra vires* and leave it to the House; then, if it agrees that it is *intra vires*, if that is carried, then, put the substantive portion or the matter on the merits to the House. As against this, the hon. Law Minister has brought it to the notice of the House that Rule 72 is clear on this point. If the House wants to decide, there is opportunity there. Before we go into the matter and the matter is considered, it should decide and it can be thrown out that this House has no jurisdiction. No objection has been raised.

Today, hon. Members will have ample opportunity to address the House on the legal aspect and on other matters also. Whoever votes will vote according to his own light. Even if arguments are raised, there are so many clauses and one hon. Member may feel that this clause is so important, there is no chance of this clause being erased, therefore, throw out the whole Bill. We do not go into the minds of hon. Members here. Some hon. Members may address on one portion, some on the legal portion and some on some other parts. It has to keep them all in mind. The decision may be on the ground that it is *intra vires*, it may be on the ground that the subject matter is improper, it may be on various grounds. We do not go into that.

Sardar Hukam Singh (Bhatinda): There is one other advantage. If as suggested by Pandit Thakur Das Bhargava, the House were to make it a specific issue and have a vote on that, that would mean a decision by Parliament. Then, if the Supreme Court, sitting over it as a court of appeal, gives a different decision, that would be rather embarrassing. It would not be good to have such contradictory decisions: Parliament taking it as a specific issue and deciding that it is *intra vires* and then somebody going to the Supreme Court and getting another decision reversing what the Parliament had said. Therefore, it is much better to let it remain mixed up. Whether we decide it on merits or on the legal aspect, whatever the consideration of the Parliament, the Parliament takes the decision. That should not be separated into its legal aspect and the other aspect. It should go as it is. That would be rather more dignified and more beneficial.

Shri Naushir Bharucha: May I suggest that this question may be thrashed out in the next session? I may be allowed to raise a few points.

Mr. Speaker: As an academic issue, we will consider it some time. Now, let us proceed. I have already placed the motion before the House. Hon. Members will be brief. We have already spent away one hour. I would like to call Members in this order of preference. Hon. Members who were in the Select Committee will keep out for some time. Hon. Members who had taken part in the earlier general discussion will also keep away. Hon. Members who speak on this for the first time, if they had not taken part at all, they can speak. I will give preference to them.

An Hon. Member: Those who have given minutes of dissent?

Mr. Speaker: No. no. Then, hon. Members who want to add to what the minutes of dissent say, I will allow. Then, surely, hon. Members who were parties to the Select Committee, if there are any special matters that are to be explained in regard to matters that have arisen, I will allow. Merely because he has written this or that, I am not going to allow. Only because an hon. Member has given notice of amendments, I am not going to call. Of course, I am willing to call provided we sit endlessly. This is the practice that I intend adopting. Hon. Members will decide. I have not got a chart here as to who took part in the earlier stage and who were in the Select Committee. Therefore, I leave it to the hon. Members. Those who did not take part at all either in the general discussion or were not in the Select Committee, will have first preference. Of course, among them who should be called will rest with me. Otherwise, if hon. Members who participated in the general discussion have any complaint about the manner in which it has been treated in the Select Committee, I will call them.

Shri Prabhat Kar (Hooghly): This is a specialised matter.

Mr. Speaker: I agree. I have not thrown them out. I will give them the third opportunity.

Shri Khadilkar: I would like to bring it to your notice that as a convention the persons whose names are proposed for the Select Committee are not supposed to participate in the first reading. It should not be presumed....

Mr. Speaker: What is it that they are going to do? They have to convince the House. If they have already been parties to the majority view in the Select Committee and if some doubt is raised, they would answer. If they have differed in the Select Committee and written a Minute of Dissent....

Shri Khadilkar: Now, after the Select Committee has reported, it is a new reading altogether.

Mr. Speaker: In this case I am going to allow as there are such differences between the original Bill and the Select Committee report. Of course, I am going to allow Select Committee Members to justify what they have done or have not done or have been able to do.

Shri T. N. Singh (Chandauli): In this particular Select Committee we got hardly two or three hours to write out our Minutes of Dissent. The time was inadequate and we could not express ourselves, and it may be that the Members here who read the report of the Select Committee may not get the actual information and data and the reasons and arguments which they should ordinarily get in order to arrive at a correct decision. For that reason I thought the Members of the Select Committee who have appended Minutes of Dissent would get rather a priority. They should not be placed third in the order.

Shrimati Renuka Ray (Malda): I would like to support what Shri T. N. Singh has said.

Mr. Speaker: Therefore, I will call all the Members of the Select Committee. Let them take possession of the House. If hon. Members want to place their views before the House, they must also see that there are other hon. Members who have had no chance of either being in the Select Committee or speaking on the original Bill. When are we to consider them? Of course, I shall allow hon. Members who have devoted a lot of time in the Select Committee and have appended Minutes of Dissent. It is not that I am dogmatizing.

I am sorry in this discussion on the point of order I failed to notice that there is a motion for circulation of the Bill for eliciting public opinion. Does the hon. Member want to move it?

Shri Naldurgker (Osmanabad): Yes.

I beg to move:

"That the Bill as reported by the Select Committee be circulated for the purpose of eliciting public opinion thereon by the 31st May, 1958."

Mr. Speaker. I was inclined to rule this out as a dilatory motion, but in view of the fact that it has been said that radical changes have been made in the Select Committee, I have allowed it. Normally, if the Select Committee itself feels that enormous changes have been made, they add a note that it has been so radically changed that it may be sent for eliciting public opinion. No such thing has been done here. However, I do not want to stand on technicalities. In view of what has been said and the number of Minutes of Dissent, I have allowed it. This motion for circulation is also before the House. Whoever speaks may address himself to the original motion and also the motion for circulation.

Shri Narayanankutty Menon. Was he a Member of the Select Committee?

Shri Narayanankutty Menon: Yes.

Mr. Speaker: No, no. I will call Members who were not Members of the Select Committee first.

Pandit Thakur Das Bhargava. Hon. Members will have 15 to 20 minutes each. Hon. Members who were in the Select Committee will justify one way or the other.

Pandit Thakur Das Bhargava (Hisar): In regard to this Bill, I am rather sorry that I was not present at the time when the Bill was referred to the Select Committee, but before addressing this House I have taken the care of going through every word of the debate that took place before the Bill was referred to the Select Committee. I have read the debate with great benefit to myself.

When this idea was originally mooted at the time of the Finance Bill that was previous to the last Finance Bill, it was stated by the Finance Minister then that this Bill was intended to plug the holes of evasion so far as the other Acts were concerned. This was the object of the Bill.

13.26 hrs.

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

I am very glad that in the Statement of Objects and Reasons we find the same thing repeated, and repeated in a manner which justifies us in coming to the conclusion that the main object of this Bill is to see that evasions in regard to the other taxes are plugged.

I find from the speech of the hon. Finance Minister also that this, he thinks, is the main ground on which this Bill has been brought, though he has not specifically ruled out that gifts as such are also sought to be taxed. I am very glad to find that the hon. Finance Minister has made the background of this Bill very clear. I congratulate him on this

account. In fact, I was very much distressed to find, when first this Bill was brought before the House, when I concluded that as a matter of fact Government wanted to tax gifts. I am dead opposed to the taxing of gifts. I think the taxing of gifts is not right in this country, and any person who thinks of the cultural background, the religious background or the moral background of this country will certainly come to the conclusion that all that is noble in India is based on the tradition of *dan* and *tap* in this country.

When I read the speech of the great professor and the reply of the hon. Minister, I really felt that we were dealing with a Finance Minister who was deeply imbued with the culture of India. And he told us that he cared more for sentiment than the economic aspect of the question, that he cared more for the happiness of the people and that he did not want any harassment. He told us that if all persons were making gifts all their lives, he would be too happy without taxing them. This is the spirit in which I think the whole matter should have been seen.

Now, I need hardly submit that in this country everybody is bound by religion to make gifts. Everybody is bound to make gifts according to the practices which are observed in this country from ages past and time immemorial.

When in the UNO a census was taken of the crimes committed in the various countries, as the House fully knows, India came last in the list. Really it was said about India that this was a country in which crimes were committed the least. The real reason why this is so is quite clear to us.

Pandit K. C. Sharma: Because it is primitive.

Pandit Thakur Das Bhargava: My hon. friend Pandit K. C. Sharma, like the great professor, says that India is primitive. He is really welcome to

his views, and I do not want to discuss this matter with him, because it is a sign of primitiveness to say about one's country that it is a country which is not civilised. By primitive I understand that he means that it is not civilised.

Pandit K. C. Sharma: Not with much education.

Pandit Thakur Das Bhargava: Not much educated.

If we look to our religious scriptures, they say that *dan*, *tap* and *yajna* are such as should always be practised in all states. It will not be out of place in this connection, when in the House we find persons of different views differing even on the essence of *dan* and *tap*, to refer to what is said in the 18th chapter of the Geeta.

“यज्ञदानतपः कर्म न त्याज्यं कार्यमेव तत् ।

यज्ञो दानं तपश्चैव पावत्रानि मनःशुद्धिम् ॥”

The question was asked ‘When a person becomes a *sanyasi* and renounces the world and renounces everything, are *dan*, *yajna* and *tapas* also going to be renounced by him?’. In reply to that, it was said by Lord Krishna that while all other things may be renounced, in his view:

“Acts of sacrifice, gift and austerity should not be relinquished, but should be performed; sacrifice, gift and also austerity are the purifiers of the intelligent.”.

I would submit that in this book a definition has also been given of what a *sattvic dan* is, what a *rajasic dan* is and what a *tamasic dan* is. I would not go into those things, but I would submit that when a person gives something out of his property or out of himself to another person, it is always an act of sacrifice; it is always an act which proceeds from the concept that he and the rest of the world are one. It is on account of compassion, it is on account of his good

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bhavana that a person makes a gift, even though the gifts may be made to a near relation, still, he loses something out of love, for another or he loses his own interest and then makes a gift. When a person makes gifts to others without getting any sort of consideration or any sort of return from others, it has been clearly said that it is a *sattvic* gift, one of the first-class gifts, which are spoken of. It is said here that when a person makes a gift of that kind without looking for any return from another person but looking to the *desa* and *kaala* and *patra* then, it is a *sattvic* gift.

Now, in this Bill also, a gift is defined as a transfer of something without consideration. I should, therefore, think that in this country, the pure *bhavanas* of the people will get a great set-back if a person is not allowed to make a gift. I can refer at this stage to article 19(1)(f) of the Constitution which says that everybody has got a fundamental right to acquire, hold and dispose of property. It is true that this Gift Tax Bill does not ask any person not to gift away his property or not to transfer his property, and it does not put any restriction on the right to dispose of it; all the same, every tax by its very nature is a drag upon that right; it is a sort of discouragement; it is a sort of obstacle to the noble act of gift. Therefore, I should think that though the Bill may be justified from other circumstances, yet the provision to tax every gift is not the right thing.

I would go further and submit that all taxes must be justified, and much more so, this tax which is a tax on gifts. I can understand a tax on sales. I can understand a tax on income etc. But a tax on gift rather makes one hesitate before making a gift, an inherently noble act. I should, therefore, think, that so far as the cultural background is concerned, if any person is out to tax a gift, he is not

doing the right thing. As a matter of fact, he is taxing the very good traditions which we have evolved; he is taxing those *bhavanas*, which are divine, I should say the *bhavanas* of giving oneself for the service of others.

I find that in the Bill as it has emerged from the Select Committee, certain kinds of concessions have been made. But I have put forward certain amendments, and I, for one, can only support that part of the gift tax which relates to tax evasion. If any person makes any transfers with a view to evade the payment of taxes imposed by law in this country, lawfully by this Parliament, I should think he is ill advised in doing so. If taxes are to be put on him to plug these evasions, it is perfectly justified. To that extent, I support this Bill. But I am sorry I cannot go further. If taxes are imposed on people on the basis that they transfer their properties to other people for good and noble purposes then I am opposed to that part of the Bill. Therefore, all the amendments which I have given notice of are based on this point of view. In fact, I have even gone further and gone to the extent of saying that this Bill should be named as Tax Evasion (Gift Tax) Bill. I know what the fate of this amendment will be, but at the same time, I wanted that this point must be brought out before this House. I have read the minutes of dissent of many Members, and many of them have referred to the traditions of this country etc. etc., and many of them are of this view; and perhaps, while unanimously, the House wants that all the evasions should be stopped, yet, generally speaking, the House is opposed to taxing of gifts as such.

In this connection, the first question that arises for consideration is whether gifts to religious institutions or gifts to funds which are not of a public nature in the sense in which the words may have been used by the

Finance Minister, should be taxed or not. I would very humbly submit for the consideration of the Finance Minister, though I agree with most of the points that he made in the course of his reply to the debate on this Bill on the last occasion—I have read his speech twice or thrice, and I find that he has stated that not in respect of religious institutions but in respect of charitable institutions which are of a public nature, there should be an exemption—that the word 'public' has been defined in the Indian Penal Code, and it includes a portion of the public also. I do not know how it is defined in the General Clauses Act, but I should think that the word 'public' does not mean only general public but also includes a portion of the public.

In this country, it is unfortunate that all charitable institutions are not of such a nature that all persons are equally benefited by them. There are people communally-minded; there are people who are religious-minded; and there are also people who are caste-minded. They also make gifts. But so far as the nature of gift is concerned, as I have already submitted, even when a gift is made to a near relation, the gift is not reprehensible as such; but what is reprehensible is a gift being made to evade estate duty; if the fund accruing from estate duty is lessened to that extent, then I can understand that the law may step in and see that the incidence of estate duty is not thereby lessened.

There are many people in this country who have got hospitals and *dharmsalas* and other institutions of different kinds, to give scholarships to their caste people, or to give scholarships in a particular State and so on. Well, personally, a person may be opposed to that view. A person may think that in India nobody may think of his caste, community or religion and that everybody should be national through and through. I can understand that

mentality. At the same time, it will not be wise, it will not be fair, and it will not be politic to say that those noble instincts, or those traditions or those *bhavanas* should to an extent be scuttled because we are of this view. I do wish that all kinds of charities must be encouraged in this country. If charities are encouraged today, we shall come to a day when people will lose this exclusiveness and narrowness and will come to the right standpoint. But if we scuttle even the *bhavanas* then it will be rather difficult.

Regarding that aspect of the matter, the Finance Minister said in the course of his reply that if a person paid Rs. 50,000 to a temple, he might pay Rs. 2,000 to the temple of the country. So far as that is concerned, I have got no reply to make to that, because it is perfectly true. What does the person lose if he makes a sacrifice of Rs. 48,000 towards one aspect, and Rs. 2,000 towards another? But, taking human nature as it is, this tax will certainly act as a deterrent. Whether there is good justification or not is a different question, but taking things as they are, and taking a realistic point of view, there is no doubt in my mind that many people will certainly be deterred from making gifts, and to that extent we shall not be doing the right thing by not giving the exemptions to all charities.

As regards the main question, the word 'gift' has been defined in clause 4. In this connection, may I humbly submit that today the income-tax officer is a peculiar kind of officer? He is more powerful than perhaps the district magistrate; he is more powerful than any other person. And he discharges duties which are of a very complicated nature.

In the first instance, this income-tax officer who is now burdened with all the duties of the wealth tax officer, the expenditure tax officer and the gift tax officer etc. etc. is a person who is not very experienced. There

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was a time when no person was appointed to these posts before he had an experience of about ten years. But, now, I find that after two or three years, income-tax officers are appointed. They do not even know how to read the accounts in the account-books. The institution of inspectors has perhaps died down, or there are very few inspectors now; previously, there were inspectors who were very well-versed in the art of reading accounts, and they gave valuable help to the income-tax officer.

I know that the income tax officer shall have to discharge duties of a very complicated nature. The evaluation of gift is a most complicated affair. Even the civil courts will find it very difficult to estimate the value of gifts. In the same manner, whenever a complicated question comes whether a sale or lease or other transaction like mortgage and so on and involves any element of gift, it will be very difficult to decide. Even the civil courts, after taking evidence, will not be able to decide it rightly, what to speak of the income tax officer.

In regard to business transactions, the hon. Finance Minister took a very bold and right stand by saying that he would not interfere with business transactions. So far as he is concerned, I have not the slightest doubt in my mind that he is right, and left to himself, he will see that this is effectuated. But what do we find? These income tax officers will very usually come in conflict with civil courts. May I illustrate my point? Suppose a person enters into a contract to sell a property at a price of Rs. 6,000 which he thinks is adequate. But the vendee thinks that he has scored a bargain because it is a property worth Rs. 8000. He wanted to get it sold for Rs. 8000 because the vendor thinks he is amply repaid by the payment of Rs. 6000. Then he comes and brings an action in a court of law for specific performance of the contract, and the

civil court decrees the suit and says that Rs. 8000 should be paid. That is agreed. When the income tax officer comes, he finds that the property is worth Rs. 12,000, and it has been given to the vendee for Rs. 6000. The civil court has given a decree regarding the contract. The income tax officer finds that there is an element of gift in it. Whose opinion shall prevail?

There will be many cases in civil courts where people will resort to this ingenuity. They will bring these cases and get decrees. What will happen to those decrees? Under this Bill, no person shall be allowed to put to question assessment according to section 42 of the bill. Civil courts will not be entitled to say that the assessment is wrong or has not been rightly made. At the same time, civil courts will be entitled to say whether particular transactions, releases, surrenders etc. are good or not by way of declaration and otherwise. In the face of this, it will be most difficult for any income tax officer to come to a different finding. There will be conflict of jurisdictions every day.

I would here refer to the rule that one of the High Courts in India promulgated in a criminal case to the effect that the criminal courts of this country should not go into the question of guilt of an accused with a microscope and find out whether there was any element of guilt. So far as the person is concerned, they should look at the broad facts and come to conclusions. We should frame our measures in this manner. We should presume that every transaction between two individuals is quite right, unless circumstances give rise to a different conclusion. We should, as a matter of fact, presume that the terms of the contract are square and right; only if it is otherwise, should the income tax officer be allowed to go into it.

What do I find in clause 4. Under this, he can probe into every case. Crores of cases—crores may be an

exaggeration, but lakhs of cases—will come before him. Will he go into every one of them to find out for himself whether there is any element of gift? It is an impossible thing to do. What we should do in such cases is this. If there is intention to evade tax, if there is reason for a *prima facie* presumption. Like that, if the terms of the contract show to him that *prima facie* there is something wrong, only in those cases he should make a probe; otherwise not. Otherwise, the difficulty will be that the whole thing will be so bad and so complicated and so difficult to disentangle that the income tax officer will be inextricably involved in it and will not be able to come to any conclusion.

So far as clause 4 is concerned, you will be pleased to see that it is stated:

“where property is transferred otherwise than for adequate consideration.”

Who is to decide this ‘otherwise’? Not the vendor, not the person who enters into a contract, but the income tax officer. It is he who will have to decide this question, whether the value of the consideration is adequate or not, whether it is excessive or deficient. This will be most difficult to decide. No criterion is laid down. Even in the Provincial Insolvency Acts, when a question arises as to whether a transaction has been entered into with a view to defeat the creditors, a rule is given that you have to look to the terms of the contract and the main intention and if there is anything unconscionable or suspicious, only then there will be reason to go into that; otherwise, it need not be gone into.

Similarly:

“where property is transferred for a consideration which, having regard to the circumstances of the case has not passed or is not intended to pass either in full or in part from the transferee to the transferor, the amount of the con-

sideration which has not passed or is not intended to pass shall be deemed to be a gift made by the transferor”.

Now we know that in a contract, the consideration may be from the transferee or some other person. Even then the contract is good. Here the transferee is mentioned. But I find there are so many loopholes and difficulties in seeing that this legislation is properly implemented that it will not work well. In order to see that these flaws are righted, I have tabled many amendments.

Now, I come to the other aspects of the Bill. These taxation measures are being passed every year and they give power to the income tax officer. Now the income tax officer is there as a person who is both a judicial officer as well as an executive officer. In the Assistant Appellate Commissioner, we have got one who is a judicial officer of the department to start with. After the case is decided first, we have got the Appellate Assistant Commissioner. I am anxious—and I stated it when the Expenditure Tax Bill was under discussion, when the Wealth Tax Bill was under discussion—that as a matter of fact we should see that this officer remains judicial, is judicial from top to bottom. If you take away his judicial powers or if you make him subordinate to the Board in regard to his promotion, transfer, disciplinary action and so on, it means that he cannot retain that independence that he ought to.

When another Bill amending the income-tax bill was on the anvil in 1953, I happened to be Chairman of the Select Committee. We brought it to the notice of the Finance Minister that he should make this reform. He tried his very best to see that this reform was given effect to. But unfortunately, he did not succeed. I am making this suggestion again. Formerly, the income tax officer was only income tax officer. Now he is also wealth tax officer, expenditure

(Pandit Thakur Das Bhargava)

tax officer as well as gift tax officer. When Government are enlarging his powers, it is absolutely necessary to give full confidence to the assessee. They should be enabled to know that this officer will deal nothing but justice.

I have met and talked with many of these Assistant Appellate Commissioners. I know their views on the point. I know the views of the judiciary. I know the views of the department also. I do not know whether the department people are anxious to keep their hold. They say that the suggestion is impossible to carry out because they have not got a cadre, they cannot even supply people from whom judges are to be selected. In this connection the provisions of Article 50 of the Constitution may be perused with benefit. I have made a specific suggestion through one of my amendments. It is that the Supreme Court should be asked to appoint these officers and the Supreme Court should have the direction and control so far as these persons are concerned.

In the Bill itself, they say that they will not interfere with his discretion. That is not enough. I have spoken many times in this House about the Inspecting Assistant Commissioner, whom I have called, not once, twice or three times or four times but many times, 'Ghost Commissioner'. He decides the case at the back of the assessee. He gives a direction to the income tax officer behind the back of the assessee. The officer is helpless, the assessee is helpless—both are helpless. The Inspecting Assistant Commissioner gives those orders. I am therefore submitting—and I want an amendment to be made—that he should not pass any order at the back of the assessee. He should hear the assessee in every case and then pass such orders as he thinks fit.

There are many things about which I have given amendments. Notice of similar amendments had also been

given at the time when the Wealth and Expenditure Tax Bills were under discussion. Unfortunately, in every Bill all these provisions are repeated *ad nauseum* and in the very same words and nobody takes care to find out whether the provisions have worked well or not. I do not want to let this opportunity pass without all these provisions being considered on their merits.

I have been an assessee myself for the last 40 years. If an Income-tax Officer goes away and if some new man comes in, then the assessee must be given the chance of insisting that the evidence should be heard *de novo* and it should not be taken from the place from which it was left by his predecessor. Some such provision exists in the Criminal Procedure Code. These provisions are, in a sense, penal provisions. Therefore, there must be *de novo* proceedings.

The spirit of the Constitution is that justice must be done. Justice cannot be done if the whole thing is not gone into by a person afresh. Therefore, in this provision also you should have that change.

I have given notice of many amendments but I want to speak only on the very important provisions and not on all provisions.

Mr. Deputy-Speaker: Now, the hon. Member should be very brief; he has taken about half an hour out of the three hours.

Pandit Thakur Das Bhargava: I think I have taken only 20 minutes.

Mr. Deputy-Speaker: No; more than that.

Pandit Thakur Das Bhargava: Then, I do not want to take any more time; I will stop.

Mr. Deputy-Speaker: I did not mean that he should end so abruptly.

Shri Dasaratha Deb (Tripura): Mr. Deputy-Speaker, Sir, when the Bill

was first introduced in this House, we supported the principle of the Bill because our country is in need of money and the Estate Duty Act did not cover all and left loopholes and could not collect all the moneys. It was thought that this Gift Tax would plug those loopholes. But I cannot support many clauses of this Bill as it has been amended by the Select Committee because it has left many loopholes. The idea in introducing such a Bill is to raise more money to meet the necessary expenditure for national reconstruction programmes and also for having a taxation policy by which we can tax those wealthy people who are to be taxed. But, what we find here is that the very purpose of the Bill has been defeated by allowing so many concessions and exemptions.

I want to point out certain things here. Firstly, the Gift Tax is supposed to provide some plugs to the various loopholes in the taxation structure itself. But, because of the varieties of exemptions in this Bill, it has created certain other loopholes also. So, the purpose is defeated.

I want to raise another point here regarding exemption for charitable purposes. It is here in clause 5. It says:

“to any institution or fund established for a charitable purpose to which the provisions of section 15B of the Income-tax Act apply;”

That means, this Bill seeks to exempt all those institutions from being taxed by the Gifts Tax. It is dangerous. I know a number of institutions which take shelter under charitable institutions; they may avoid this taxation itself. In our country, there are so many institutions which are being run under the name of charitable institutions, the proceeds of which ultimately go to certain individuals or groups of individuals. If, by this law, you allow them to be exempted from the payment of Gifts Tax, then, you allow these individuals ultimately to evade taxation itself. I do not support this idea. The charitable institutions may be there; but

we cannot entirely depend on those institutions. Our country.....

Shri Morarji Desai: May I know if the hon. Member opposes all the charitable institutions?

Mr. Deputy-Speaker: Does the hon. Member oppose all the charitable institutions?

Shri Dasaratha Deb: I am not opposing all. I am only saying that you are providing so many loopholes to the rich who may take shelter under such institutions to evade income tax. Ultimately, Government should have to take the responsibility to educate the people and to do other things. That is why I oppose to exempt tax on gift to charitable institution.

Another point which I want to raise here is about the spouse. You are going to exempt the money which has been donated to the wife or the husband to the extent of Rs. 1 lakh. In India, in our society, we know that the husband and wife live together and it is not expected that there should be some separate arrangement or something like that. If you exempt Rs. 1 lakh from taxation, it means that you are taking away a good amount of taxable money. Under cover of this spouse, we are allowing the rich people to evade taxation itself. I do not think there is any necessity for this.

In our country, generally, wife is one of the inheritors of the husband's property and the husband also gets from the wife after her death. So, there is no necessity to give such facilities to the spouses. I plead that this clause should be totally dropped from this Bill; it should not find a place here.

I want to stress another point regarding prizes. There is one sub-clause (xvi). It says:

“out of the sums, if any, guaranteed or assured by the Central

[Shri Dasaratha Deb]

Government as his privy purse, if the gifts are made for—

(a) the maintenance of any relatives dependent on him for support and maintenance;"

I think this clause should not be there. You have given the privy purses to the princes. Then you allow them to be exempted from paying the tax. We are opposing that. We are opposing even the privy purses which are given to the princes and we say that they should be reduced. But, instead of reducing them, you allow them not to be taxed. If you exempt all these from taxation, then, our country will not get much money to meet our requirements.

14.00 hrs.

Now, we have embarked on the Second Plan and we want to fulfil our targets and more of development. We must collect more money. When this Bill came up, I hoped that we might get some resources. But exceptions and concessions and exemptions are provided so much in this Bill that ultimately we will find that the spirit of the Bill will be made ineffective and there will be no money at all. Shri Kaldor has said that Rs. 30 crores might be collected out of the Gift-Tax but our Finance Minister himself said this morning that he was not sure whether he would be able to collect more than Rs. 2 crores, if I understood him correctly. Then where from will you get the money?

Where money has been donated by a donor to his relative for the purpose of a marriage, Rs. 10,000 is exempted from the taxation. This should not be so. If a man can donate Rs. 10,000 to his relative, that man has got sufficient capacity to pay the tax also and so it should not be exempted.

All these clauses are, I think, only to give some pretext or cover to the rich and well-to-do people to evade the tax. That is the whole idea of this matter. Otherwise, I do not find any reason why these people should

be exempted and why all these clauses should be brought in here.

Then, there are certain exemptions given in clause 45. Item by item these exemptions are provided for. You have provided for general exemption of Rs. 10,000 per year. Why? I do not find any reason. It should not be there. This Rs. 10,000 should also be dropped. Our Party has suggested that this exemption should not exceed Rs. 5,000. Rs. 5,000 is a considerable amount. I plead that the hon. Finance Minister will consider this matter and also accept our suggestion.

So, I want to say that these exemptions should not be there, namely, the exemption on marriage gifts, exemption of a lakh of rupees given to the wife, etc. Otherwise, the whole purpose of the Bill will be defeated and ultimately our country will suffer as the money will not be collected. That is why I oppose all these clauses which I have already mentioned in my speech.

Mr. Deputy-Speaker: Pandit K. C. Sharma. I think he was not a Member of the Select Committee nor did he speak in the first reading.

Pandit K. C. Sharma: No, Sir. I was rather taken by surprise by the observations of my very esteemed friend to my left that the provisions of this Bill were in the nature of a penal measure. My conception of property is that all sorts of property are a social institution and it is much more so in the present set up of things because it is not only the limbs that work to produce the property. It has a certain environment, a social structure, sustained and guaranteed by the State and that provides facilities to produce the property. The whole social organisation is behind that production and in order to maintain that social organisation a part of that production must be parted with.

Religious scriptures have been cited that it is good to part with money

and give away money as gift. These are old ways of doing charity: that is, giving the due to those who deserve it. But after the establishment of the modern State, the State structure devises means to take its share. For the information of the hon. Member, I may say that it is the highest virtue not to possess. It is the highest virtue so far as the individual's religious development is concerned. By possession, you exclude somebody who may have a right to that possession or the right to benefit from that property. Therefore, to the extent a man is in possession of property, to that extent the door of heaven is barred to him.

Mr. Deputy-Speaker: Only he is not entitled, who possesses.

Pandit K. C. Sharma: So, let us come to the tax structure. This Gift-Tax Bill was devised as a means to plug the loopholes in the tax structure. In the present conditions of our country, more money should be got from those who would benefit from the development programme and get richer because the money spent by the State will go to somebody who does the contract work, or this service or that service. Those who are rich are to get much more from the benefits of the expenditure. The poor man will simply get the wages. Let us, for instance, take the bridges. Bridges worth crores of rupees are being built. Who is getting the profit? The big companies get some part of the profit. I do not understand what logic there is. On the other hand, I may quote an American millionaire who says: "To die rich is to die a wretched death."

Mr. Deputy-Speaker: Why quote them as authority?

Shri Braj Raj Singh (Ferozabad): That is the pattern.

Pandit K. C. Sharma: Sir, the estimate of Rs. 3 crores from this tax is likely to be reduced by about 33 to 50 per cent on account of so many exemptions that have been provided in

this Bill. I do not understand why so many exemptions should have been provided for, because what strikes me is that it is just a case of making a law and at the same time making it ineffective or, I would even go to the length of saying, insulting the law. It is all right if you do not make any law, but if you make a law the full implications of it should be carried out. If you decide that gifts are to be taxed, they should be taxed and a substantial amount should be raised. If you do not want to have such a tax, do not have it; but if you pass this Bill you should know what it means. What is the use of passing a law and then negating its effect by the back door?

Item (vii) under exemptions given in clause 5 says: "to any relative dependent upon him for support and maintenance, on the occasion of the marriage of the relative". I beg to say, this is a responsibility of the man concerned. If a young boy or girl is related to me and I am charged by the constitution of the family for the expenditure of his or her marriage, it is not a gift; I am only discharging my responsibility. Where does the question of exemption of gift arise? As a matter of fact, it is not a gift, it is an expenditure, it is only discharging one's responsibility under the family structure. Therefore, it would only be giving it the name of gift simply to avoid tax.

Shri C. D. Pande: There is the expenditure-tax also.

Pandit K. C. Sharma: Then there is the aid given to wife up to Rs. 1 lakh. Sir, in all societies husband and wife make parts of one body. Therefore, parting Rs. 1 lakh in the name of one's wife means avoiding the tax by possessing what one possesses. What does it matter if the money is in my pocket or it is deposited in the name of my wife? I am not only in possession of the money deposited in the name of my wife, but I have got possession over the wife herself. What does it matter if the money is in my name or in my wife's name, I do not really understand.

Mr. Deputy-Speaker: Is that a fact even in the modern developed society?

Pandit K. C. Sharma: Sir, modern man does not think of tax evasion. My friend says that we do not commit so many crimes because we are not so well educated and intelligent. I will tell my friend the philosophy of crime. A people get the Government that they deserve and society gets the crime that it deserves. Intelligent people are more sensitive and more liable to crime. A stone does not commit crime. Crime does no good at all. You do not commit a crime because you have not got intelligence, frustration and sensitiveness. The modern man does not try to evade taxes. He has got social responsibilities. It is the sign of primitive thinking to say that I part with Rs. 1 lakh in the name of my wife simply because I do not want to pay tax. Sir, I undertook certain studies. In certain classes, young girls who fall ill are not taken proper care of simply in the expectation that another wife will get a lakh of rupees more. That is the state of society. You love your wife so well.....

Shri Morarji Desai: Sir, the gift tax is coming into force only now. How, then, could there be such cases even before, as pointed out by the hon. Member?

Pandit K. C. Sharma: Sir, my respectful submission is that this parting with of Rs. 1 lakh in the name of one's wife means simply avoiding the tax, to possess what one possesses, of course, in a roundabout way.

Shri Narayanankutty Menon: Showing affection.

Pandit K. C. Sharma: There are other ways of affection. Item No. (xiv) under this clause says:

"in the case of carrying on a business, profession or vocation, to the extent to which the gift is proved to the satisfaction of the Gift-tax Officer to have been made *bona fide* for the purpose

of such business, profession or vocation;"

Sir, supposing my son takes to business, it is my money that I give to my son. I do not understand where the question of exemption of gift-tax arises. It is used for the purpose of the family and I do not understand why the tax should not be paid on that. What is the fun in not levying the tax? I see no logic about it, nor do I find any sentiment. I may see some sentiment in the case of the wife, but what is the sentiment in giving money to one's son or relation for business purposes?

Then, Sir, it is very strange that there is item (xvi) which says:

"out of the sums, if any, guaranteed or assured by the Central Government as his privy purse, if the gifts are made for..."

Whoever knows a prince, Sir, knows that a prince is not a person, it is an institution. Therefore, a prince is given large sums of money not to meet the expenditure on himself or his family, but for carrying out the functions of the institution—good or bad—because he cannot divest himself of the responsibility which for ages his family has been carrying on. I see no logic, no argument in exempting such an expenditure from the gift-tax.

Lastly, under clause 45 of this Bill the private companies have been exempted. It has brought in, in a new way, all sorts of loopholes for evading taxation and the State would be deprived of its lawful dues.

In the end, I would suggest that too many exemptions have been made and the State's dues have been very much reduced. In a way, I think we have not been very fair to the spirit and purpose of the law. I would have been only too glad if there would have been no gift-tax at all, but once we pass the law we should see that the law is respected and its purpose is carried out. I do not like passing a law and then defeating its very purpose by back-door methods.

Shri Subiman Ghose: Mr. Deputy-Speaker, Sir, I only want to touch upon the legal aspects of this Bill. Measures like this are brought with the intention of finding substantial revenue for the State and for reducing inequalities in wealth.

This Gift-tax Bill, which has been brought into being, has also a third function, to discharge, namely, to plug the loopholes if there be any in the Estate Duty Act. With that purpose also this Bill has been brought before the House.

So far as the clauses of the Bill are concerned, I think the Bill as it is will not be able to fetch anything, although the Finance Minister might say that he expects Rs. 2 crores on the basis of the present provisions. I think he is too optimistic.

I refer to clause 5 (1) (xii), (xiii) and (xiv), that is, gifts made for the education of children, and for other purposes. Sub-clause (xii) says:

"for the education of his children, to the extent to which the gifts are proved to the satisfaction of the Gift-tax Officer as being reasonable having regard to the circumstances of the case;"

Then, again in sub-clause (xiii), it is said that it must be proved to the satisfaction of the Gift-tax Officer. In sub-clause (xiv) also, the gift is to be proved to the satisfaction of the Gift-tax Officer. Thereby, you put a limitless discretion, and you give that limitless discretion to the Gift-tax Officer. I can give a concrete case. For example, a man makes a gift to his child and it is to the extent of Rs. 1 crore. The Gift-tax Officer finds that it is reasonable. But the State thinks it is aggrieved. Then, where is the remedy? That is one thing which I want to be clarified from the Finance Minister.

Shri Morarji Desai: Under clause 24(2), there is scope for revision by the Government.

Mr. Deputy-Speaker: Under clause 24(2), there is a revisionary function for Government.

Shri Subiman Ghose: Clause 24(2) says:

"Without prejudice to the provisions contained in sub-section (1) the Commissioner may call for and examine the record of any proceeding under this Act, and, if he considers that any order passed therein by a Gift-tax Officer is erroneous in so far as it is prejudicial to the interests of revenue, he may, after giving the assessee an opportunity of being heard, and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling it and directing a fresh assessment."

I think that is a poor substitution, because if the Commissioner, without prejudice may call and examine the records, it may be all right. But if the Commissioner does not do it, where is the remedy of the State?

Mr. Deputy-Speaker: When the Commissioner has authority, anybody can move him and request him to move in the matter.

Shri Subiman Ghose: So far as my impression goes, no remedy which will be available to the State has been provided.

Pandit Thakur Das Bhargava: Every day, the State prefers appeals. Even now an appeal is pending against me in the Supreme Court.

Shri Subiman Ghose: If there is any appeal, there must be some specific provision. But here there is no specific provision to the effect that the State can carry on matters in appeal. If there is a discretion that is to be used by the Gift-tax Officer, that is illegal.

[Shri Subiman Ghose]

Then I refer to clause 45 in which an exemption has been given. Sub-clause (c) of clause 45 says:

"any company, if the Gift-tax Officer is satisfied that the donee is not a director. . ." etc., "is not a relative of any of the persons aforesaid by blood or adoption".

The question that arises in my mind is the relationship of wife to the person concerned. For instance, is the brother of the wife a relation by adoption or by blood? That is a loophole. I am doubtful whether wife is related by blood or adoption. She is not a relation either by blood or by adoption, but by some other process.

An Hon. Member: By wedlock.

Shri Subiman Ghose: In such cases, an exemption has been given. A long rope has been given to avoid the rigours of this law. A director or the managing agent can transfer the property in the name of the wife or wife's brother and this Bill has nothing to do with such cases. Not only is there an exemption but the exemption is so great. There is a great deal of exemption.

Then I come to clause 4. Sub-clause (a) of this clause deals with property when transferred otherwise than for adequate consideration. What I would submit is, after all, a transfer is made by the father in the name of his son with an adequate consideration, and the consideration is placed before the sub-registrar, by the son, and the father takes the consideration. If that consideration is adequate, according to the market value, what is the remedy? There is absolutely no remedy. That is also a loophole that has crept in in this Bill.

As I have already said, in this case charity begins at home. Not only is this saying relevant here, but there is one saying in Bengal. When a man asks the house-owner to be on his guard lest there should be theft in his

house, at the same time, he gives the thief the tactics as to how to steal in the house. It seems that this is the intention with which this Bill has been framed. It has been framed in such a way that I am apprehensive whether any substantial sum of money, say, Rs. 2 crores as is supposed now, will be realised by the levy of this gift-tax under the present provisions of the Bill.

Then I refer to the definition of gift itself. Gift means "the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth" etc. It is "voluntary and without consideration". These are the two concepts. As it is, these are not disjunctive. Supposing a father gives away his property to his four sons and writes a deed in order to establish a family business. Supposing I have gifted away the property to my sons much against my will. I do not know what is in store for me. Much against my will I have given the property to my sons. If that is written in the deed, can it be said that it is a voluntary transfer? It is said here that the gift must be voluntary and without consideration. But is the one which I mentioned voluntary and without consideration? As it is, two conditions must be fulfilled. Therefore, the Bill suffers from infirmities, and in a majority of cases, the gifts cannot be brought within the scheme of this legislation.

Therefore, I submit that even if the spirit is there, the Government will not be able, with the best of intentions, to realise anything if the Bill remains as it is. The Bill suffers from various infirmities and various lacunae are there, which will absolutely disable the Government from realising anything on the basis of the present provisions of the Bill.

As regards the gifts of a lakh of rupees, much has been said about it by many hon. Members. It is too

much and it should not have been brought in. Practically it is a paper transfer. If I have got a lakh of rupees and if I make a gift of it and transfer it in the name of the wife, it cannot be brought within the mischief of this Bill, only by a paper transfer. If that be the state of things, I submit that this Bill is absolutely worthless. So far as the intentions of the Bill are concerned, it will not be able to fetch a pie if all these lacunae and all these loop-holes are not plugged.

Kumari M. Vedakumari (Eluru): I do not think I can over any novel point here. But I should like to stress the point which has already been stressed by some of the Members here. If there is any term which is uttered by everyone, I think that is the word "socialism" and the term "planned economy". Socialism has become a fashion and I think it has actually ended into a fad. That is why Joad has described it as a hat which everybody likes to wear; a hat whose shape has already gone, because everyone likes to wear it. It is easily prescribed and it is easily attempted, but has not been attained.

Now this gift tax is part of the integrated system of tax structure and it is intended to plug the loopholes in the tax structure. A major loophole in our tax system is in the way of gifts. So, in order to plug the loopholes and to make the tax structure an integrated one, we are introducing this Bill.

The gift tax may be introduced as a supplement to the estate duty or completely for the replacement of the estate duty. Because, as Mr. Kaldor has recommended, the other alternative may be to amend the Estate Duty Act. Our aim is only to plug the loopholes there. But in order to plug the loopholes in the tax structure, we are bringing in some measures which are quite opposite to Hindu philosophy or Hindu sentiment. So the basic justification for introduction of this Bill is that society has

a right to limit one's own individual property and he has no freedom to pass on his property beyond a certain limit. So, we wanted to differentiate that portion of the property which is inherited by gift. Here we do not argue on the principle of equity, because if we go on transferring the property on the basis of gift or inheritance, we have got every right to tax it, either as estate duty or as gift tax. But Kaldor wanted to tax the donee, not the donor. Because, whatever a particular person possesses as estate, the tax is not levied on the title of the estate but on the interitor. The tax on inheritance does not fall on the estate of the deceased. The rate of progression should depend upon the beneficiary who has already got the property.

In Netherland also, if an amount is given to the children or wife, the tax will be lower. It will be higher if the blood relationship is remote. Even that particular concession is not given here. Only Rs. 1 lakh is given to the wife. There is no difference between a remote relation and the wife. Then, in the matter of children, we call even the amount spent on the education of the children as gift. If we spent Rs. 10,000 for educating our children, we call it gift and tax it. So, I do not understand the real meaning of the Gift-tax Bill. If you just transfer property from one man to another and the amount exceeds a particular amount, it is called gift.

Shri Narayanankutty Menon: Money spent on education will not come under this Act.

Kumari M. Vedakumari: That is already covered. I agree. But a lump sum exceeding Rs. 10,000 is not allowed. That is taxed, because there are some people who are evading tax on some pretext. So, when we are taxing the donor of the gift, we are not making any distinction between the children or wife or the charities or an institution or anything. That is my main argument.

[Kumari M. Vedakumari]

The basic idea is not to allow anybody to transfer property beyond a certain limit without the permission of the Government. In order to annihilate the accumulation of property within one's own kith and kin, we are attacking a very good thing of the country, that is charity.

That, I think, is the most uncharitable thing. As far as charities are concerned, section 15B of the Income-tax Act which exempts donations made to charities excludes charities which are for the benefit of members of any particular religion or community. Now, under our Constitution we are pledge to a secular State. But, on the contrary, it also gives us freedom to adopt, worship or practice any religion of our own choice. Here I will quote one big sentence about Hindu philosophy by our renowned philosopher, Dr. Radhakrishnan. He says:

"The Hindu attitude of religion is interesting. In our belief in religion, intellect is subordinated to intuition, dogma to experience, outer expression to inward realisation. Religion is not the acceptance of academic abstractions but a kind of life or experience. This experience is not an emotional thrill, or a subjective fancy, but is true response of the whole personality, the integrated self to the central reality. Religion is a specific attitude of the self itself and no other, though it is mixed up generally with intellectual views, aesthetic forms and moral valuations."

Here the intellectual argument which is presented to the people is this. If a man is prepared to give some charity, why not he also be charitable enough to pay tax to the Government? That is the intellectual argument to this. Here we are not bothered about the taxation as such. But we are worried about the principle that is behind it. If a man gives charity to people, we tax him and

then we call our Government a people's Government. When they are doing a part of the job of the Government, why should they pay tax to the Government? What is the logic behind it? You can take any amount of money from the people. I do not object to that. But when a man wants to give some money as charity, if you make him pay tax on that particular portion, certainly our Hindu religion will object to it. That is the most uncharitable tax. Here the sanctity of the principle is being attacked.

Mr. Deputy-Speaker: Could any tax ever be charitable?

Kumari M. Vedakumari: I think it a bit uncharitable. The sanctity of the principle is attacked, the finer and Godly nature is attacked and the sentiment of Hindu philosophy is humiliated. I hope Government will be a bit kind enough to our religion and be charitable to our religion and to our people. We claim that our's is a people's Government. But we are doing a thing which the people's Government should not do. Government has no right to ask the people to pay tax, because they are doing some good to the people. If the Government is prepared to give the people all the social securities from the cradle to the grave, then let them come to the people and ask them to pay these taxes.

There are lots of institutions,—colleges, universities etc.—started by charities. Now you are allowing them only Rs. 100 or Rs. 500 at one time. How can they maintain these Universities with this meagre amount? Today people who inherit large properties are maintaining these institutions. Today in Andhra there are a lot of affiliated colleges. We give them only Rs. 10,000, which is a very little amount for the bigger institutions. In our area we have started a lot of affiliated colleges purely out of donations. There every district has two colleges and they are all being

developed out of donations. My submission is that they should not be annihilated.

I will now come to the argument which is raised in the Select Committee. They wanted to reduce the amount given by a husband to the wife from Rs. 1 lakh to Rs. 25,000. If this is socialism, I can only quote the words of Joad again, as I quoted in the beginning. If a husband gives Rs. 1 lakh to his wife and if, unfortunately, she becomes a widow, she has to feed a big family and educate her children. But when we are trying to improve the conditions of society we should not try to bring misery and suffering to the people. We are not attracting the people who are having to a lower people but we are attracting the have-nots to the haves. We are distributing the misery and the humiliations. So, in giving some concessions to the people, I think we should be a bit liberal and a bit careful and not attack the sentiments of Hindu philosophy.

With these words, I would like to quote some of the words of the Father of the Nation, Mahatma Gandhi, whom we always value.

"I look upon an increase in the power of the State with the greatest fear because while apparently doing some good for the people by minimising exploitation, it does the greatest harm to mankind by destroying the individuality, which lies at the root of progress."

Mr. Deputy-Speaker: Shri Ajit Singh Sarhadi.

Some Hon. Members rose—

Mr. Deputy-Speaker: Should I consider that all those hon. Members who are rising in their seats have not spoken in the first stage?

Shrimati Ila Palchoudhuri: Neither in the Select Committee.

Shri Bimal Ghose: May I know whether those hon. Members who

were in the Select Committee will be allowed to speak?

Mr. Deputy-Speaker: Not including any possibility. The only difficulty that I might put before the House is that we started at 12.20.

Shrimati Renuka Ray (Malda): One hour was lost.

Mr. Deputy-Speaker: That was taken by that point of order. That is always included in the discussion.

Shrimati Renuka Ray: That should be left out.

Mr. Deputy-Speaker: That cannot be left out. That must be included. It is for the House whether it wants to extend by the time taken by this discussion. That is a different thing, but the hour cannot be left out.

Shri Supakar (Sambalpur): Points of order should be banned.

Mr. Deputy-Speaker: The House decided to have only three hours for this discussion.

Some Hon. Members: Four hours.

Mr. Deputy-Speaker: Three hours.

Some Hon. Members: Three hours excluding the hon. Minister's reply.

Mr. Deputy-Speaker: I stopped Pandit Thakur Das Bhargava on that account. An hour had already been taken and two hours were left. However, if the House desires that another hour should be included in this discussion, I have no objection.

Some Hon. Members: Yes.

Shri D. C. Sharma (Gurdaspur): Those who spoke when the Bill was referred to the Select Committee should be given a chance.

Some Hon. Members: No.

Mr. Deputy-Speaker: There cannot be a general rule that nobody would be allowed, but perhaps the hon. Member may not have any chance.

Shri Narayankutty Memon: I submit that those members of the Select Committee, who have appended minutes of dissent, should at least be given a chance.

Mr. Deputy-Speaker: Not all of them. Some of them would be allowed.

Ch. Ranbir Singh (Rohtak): They have already expressed their views in writing.

Shri Ajit Singh Sarhadi (Ludhiana): Mr. Deputy-Speaker, the Bill under discussion has two aspects—one is legal and the other pertains to merits. So far as the legal aspect is concerned, I need not discuss it, but I do believe that the Government is assured of the correctness of the position, i.e., it is absolutely a legal Bill and would stand the test before the Supreme Court. It would be very dangerous, rather a waste of time, if we enact a legislation which later on is declared *ultra vires*. Therefore, the Government must be assured by its law officers and must convey that assurance to the House that it is a correct legislation.

Coming to the merits of the Bill, there is no doubt that it is a natural sequel to the Estate Duty Act. It is a link in that tax structure which we have already approved of. But, as it has emerged from the Select Committee I find that all those provisions which relate to exemptions are retained. They are not only retained but they are liberalised to a great extent. The restrictions in regard to charity have been further tightened. You will find from the provisions, as it has emerged from the Select Committee, that the amount of Rs. 1 lakh as gift to the wife has also been exempted. The amount of Rs. 10,000/- to a dependent relative has also been exempted. The definition of relative is not clear in the Bill at all, which postulates that however remote the degree be of the relation, yet the gift of moveable or immovable property would be perfectly justified and would come within the exemp-

tion. Not only this, but it has been further liberalised in the case of section 45(c) and also in the case of other exemptions. But, unfortunately, the provisions pertaining to charities have been restricted.

Mr. Deputy-Speaker: I do not know whether I should repeat my request every day that hon. Members should not try to come to the Chair. That is rather exercising undue influence and might adversely affect the right of the hon. Member to speak.

Shri Naushir Bharucha: You are speaking to an almost vacant House. May I suggest that it should be inserted in the bulletin?

Mr. Deputy-Speaker: That will be done. I will ask the office to do that.

Shri Ajit Singh Sarhadi: I was submitting that so far as the provisions pertaining to the charities to educational or religious institutions or cultural institutions are concerned, they have been brought within the ambit of this Bill. I am afraid, the Government and the Select Committee have not seen or have not applied their mind to certain provisions which we have already got in the Constitution. I will particularly draw your attention to Articles 29 and 30. The Constituent Assembly, in its great wisdom, had laid down—
—I am reading Article 30—

“All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.”

You will appreciate that when the Constitution in the secular set-up of the country allows the minorities the right to have, establish and administer educational institutions of their choice, then it means you want to tax the feeders thereof, i.e., the donations and gifts, to such institutions thereby incorporating a principle

which will be very dangerous later on. Today, the amount of tax may be small. Naturally, we will not expect more. Yet, we are laying down a certain principle, by which—who can foresee—a future Government keeping the Constitution as it is might tax cent per cent. a gift or a donation to a religious or a cultural institution thereby making the provision of article 30 redundant, ineffective and infructuous. That is a danger, which I believe the Government must apply its mind to and appreciate.

Again, we have article 29 saying:

"Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

which means that one can spend any amount or adopt any means for the conservation of his distinct culture, language or script. If you have got these provisions in the Constitution, I would submit that it gives a certain safety to a certain section. Then if you tax the donations and gifts to such institutions, you are laying down a principle which I personally feel may not prove very healthy. Leaving that aside, it has got not only a moral and equitable respect, but it has got a legal and constitutional aspect. We are not concerned with the quantum of taxation or the amount of taxes that you impose. We are concerned at present with the principles of taxation on gifts and donations to religious donations and to cultural institutions. But leaving that aside, which is a constitutional and legal aspect it has a moral and equitable aspect. There is another aspect also. Situated as we are in this country with the instinct of religion a certain faith with lack of materialism that we have got everybody may donate to religious institutions. I would submit, in that light too, it should be taken. I do not want to take more of the time of the

House. I would only submit that it is one of the issues that I place for the consideration of the hon. Minister. There are also amendments which require that such donations and gifts should be exempted. I hope the Government will find their way to accept these amendments and exclude those donations which are *bona fide* for the purpose of religious institutions or cultural institutions. I also endorse the minute of dissent appended by Shri Naushir Bharucha.

Mr. Deputy-Speaker: Shri Braj Raj Singh: He has not spoken earlier?

Shri Braj Raj Singh: I think I have.

श्री० रणबीर सिंह : उपाध्यक्ष महोदय हमें बड़ी आशा थी कि इस पेचीदा कानून की पैर दगियों को कुछ कम किया जाएगा लेकिन जब ऐसा नहीं हुआ तो वह हमारी आशा कुछ निराशा में तबदील हो गई और पेचीदगियों कम होने के बजाय कुछ बढ़ अवश्य गई है।

पहली पेचीदगी तो यही है कि आय का सदन का अधिकार है या नहीं, जैसा कि भूतना साहब ने कहा कि जर्मन के तवादले के बारे में कानून नहीं बना सकते। अच्छा होता कि एंग्लो चीजों के बारे में जिन के बारे में कुछ सबूत हो सकता है उनको छोड़ दिया जाता जिनकी जितनी महत्त और जितना वक्त और जितना रुपया हम देश का इस कानून के बनाने में खर्च किया जाएगा वह शायद फिजूल जाए। हो सकता है कि हिन्दुस्तान की अदालतें उसको रद्द कर दें और सब रुपया फिजूल खर्चों में तबदील हो जावे।

दूसरी चीज जिम के बारे में मैं अर्ज करना चाहता हूँ वह यह है कि इस देश के अन्दर जल्दी या कुछ देर के बाद हमें एक बात माननी पड़ेगी और वह यह कि यहाँ पर हम जिस तरह का सामाजिक ढांचा चाहते हैं। एक तरफ हमारा अंदाजा है कि इस देश के अन्दर जो खेती की पैदावार से आमदनी हासिल करते हैं उनकी आमदनी ज्यादा से

[बो० रणवीर सिंह]

ज्यादा ३६०० रुपया साल हो। उस ३६०० सालाना आमदनी के अन्दर ही हम उनके बच्चों की शादी चाहते हैं, उसके अन्दर ही हम चाहते हैं कि उनके बच्चे पढ़ें और दूसरी तरफ हम यहां ३६०० से ज्यादा आमदनी की ही इजाजत नहीं देते बल्कि टैक्सों के अन्दर भी उनकी रियायत करना चाहते हैं कि वे १०,००० रुपया शादी पर खर्च कर सकते हैं और इस पर उनको छट मिल सकता है। साथ ही साथ हम उनके बच्चों की तालीम के लिए किये जाने वाले खर्च में भी उनकी रियायत करना चाहते हैं। मैं यह भी अर्ज करना चाहता हूँ कि जो चैरिटेबल इंस्टीट्यूशंस हैं उनके बारे में अर्थात् एक एग्जेंम्पशंस का ताल्लुक है मैं समझता हूँ कि या तो हम यह मानते हैं कि देश के पास जो पया आता है उसका खर्च सही तौर पर नहीं हो सकता या उसका उतना फायदा नहीं उठाया जा सकता है जितना कि चैरिटेबल इंस्टीट्यूशंस की मार्फत उठाया जा सकता है जो भाई इस तरह का खयाल करते हैं या जिन की राय है उनसे मैं सहमत नहीं हूँ। अगर एक मिनट के लिए इस चीज को मान भी लिया जाए कि शायद नान-आफिशल एजेंसीस की मार्फत हम ज्यादा काम कर सकते हैं तो मैं समझता हूँ कि बजाय इसके कि उनको छूट दी जाए यह अच्छा होगा कि हम टैक्स में और टैक्स ले करके उन इंस्टीट्यूशंस को छांटस दे दें। इससे कानून की जो पेचीदगी है वह कम हो जाएगी।

पंडित ठाकुर दास भागव जी जब बोल रहे थे तो उन्होंने यह साबित करने की कीशिया की कि कुछ पोस्ट कमिश्नर होते हैं जो गैर-हाजिरी में कुछ करते हैं। अगर इसको सादा शब्दों में कहा जाए तो यों कहा जा सकता है कि यह जो कानून है जो यह पेचीदा कानून है इससे दो वर्गों को फायदा पहुंचा है। एक वर्ग

तो अफसरान का है जिन को बहुत ज्यादा अधिकार इस कानून के मातहत दिये जा रहे हैं कि जैसा वे चाहें और दूसरा वर्ग बुकला साहिबान का है, लायर्स का है, जिन को अपनी आमदनी बढ़ाने का एक और जरिया मिल जायगा हमारा खयाल था और हम सोचते थे कि आजाद होने के बाद इस देश में सादा कानून बनेंगे और एक ऐसा निग्राम होगा जिस के अन्दर वकीलों की कोई बहुत ज्यादा पूछ ताछ नहीं होगी। लेकिन आज भी हम देखते हैं कि जो भी कानून बनता है वह इतना पेचीदा बनता है कि किसी को सुप्रीम कोर्ट की शरण लेनी पडती है तो किसी को हाई कोर्ट की और इस तरह से वह वकीलों की आमदनी को बढ़ाने वाला सिद्ध होता है, उनके धंधे को चमकाने वाला सिद्ध होता है।

श्री रघुनाथ सिंह (वाराणसी): आजकल बहुत डिप्रेशन है।

बो० रणवीर सिंह: दूसरी बात मैं यह कहना चाहता हूँ कि बजाय इसके कि इस कानून का नाम गिफ्ट टैक्स रखा जाता, यह अच्छा होता कि इस कानून का नाम हम जायदादों का तबादला टैक्स बिल रखते। यह सीधी सी बात है कि जिस किसी ने भी जायदाद इस देश में बनाई है या रुपया कमाया है वही किसी दूसरे को दे सका है। इस प्रकार की चीज तभी सम्भव हो सकी है जबकि इस देश में कानून का राज्य रहा और उस कानून के राज्य को कायम रखने के लिये बहुत ज्यादा रुपया देश को खर्च करना पड़ा। उस रुपया का जो भार है वह उन्हीं को उठाना चाहिये जिन को उससे फायदा होता हो या हुआ हो। इस वास्ते मैं चाहता था कि आप साधारण मा कानून बनाते और उसमें आप कुछ भी लिमिट रखते मुझे एतराज नहीं था। मेरी राय में यह लिमिट ३६०० से ज्यादा नहीं होनी चाहिये थी। आप देश को एक बहुत बड़ी आबादी को ३६०० से ज्यादा आमदनी करने की इजाजत नहीं देते। जब

उनको आप इजाजत नहीं देते तो दूसरों को आप क्यों देते हैं चाहे वे प्राइवेट कम्पनियां हों या पब्लिक लिमिटेड कम्पनियां हों कि कम्पनियों के नाम से वे जो चाहें कर सकते हैं। मेरी अभी राजा साहब से बात हो रही थी। जो बड़ी बड़ी कम्पनियों वाले हैं वे कोठियां बनाते हैं, मकान बनाते हैं और यह सभी कम्पनियों के नाम से होता है। बात कोई दूसरी नहीं होती है, प्राइमी वहीं रहते हैं, कम्पनियां भी वहीं होती हैं और कम्पनियों के नाम पर वे छूट पा लेते हैं खुद ही उनमें रहते हैं। क्यों कम्पनियों के नाम पर छूट दी जाती है, यह मेरी समझ में नहीं आया है। चाहे कम्पनी हों, चाहे इंडिविजुअल हों और चाहे इंस्टीट्यूशन हों, मैं समझता हूँ कि सरकार के पास जो रुपया जाएगा उसका भी तो देश के लिए ही उपयोग होगा। आज की जो सरकार है वह लोगों की नुमाइदा सरकार है और जो खर्चा वह करती है, उसकी एक एक पाई के ऊपर इस हाउस का कंट्रोल है और यह हाउस उस पर टीका टिप्पणी कर सकती है। जब ऐसी बात है तो फिर हम क्यों न विश्वास करें कि जितनी भी इंस्टीट्यूशंस हैं उनसे ज्यादा अच्छे ढंग से यहाँ पर रुपया खर्च होगा और सरकार के पास भी रुपया आएगा वह सारे का सारा देश की भलाई के लिए खर्च होगा और ज्यादा से रुपया सरकार को मिलाना चाहिये। जैसा मैंने कहा कुछ लिमिट रख दी जाती और उस लिमिट से ऊपर जो भी रुपया ट्रांसफर होता चाहे भरने से कुछ दिन पहले होता, दो साल पहले होता या किसी भी वक्त होता, उस पर टैक्स लगता फिर चाहे वह लड़की की शादी के लिए हो, चाहे बच्चों की तालीम के लिए हो, चाहे बीबी को एक लाख रुपया देने के लिए हो। होना यह चाहिये था कि कोई भ्रष्टाचार कायदा होता। श्री अजीत सिंह सरहदी ने कुछ संस्थाओं पर जो रोक लगती है उसका खिच किया है। मैं नहीं समझता हम इसके जरिये से उन संस्थाओं पर कोई रोक लगा रहे हैं। वे संस्थाएँ आज की तरह से चलती रह सकती हैं। हाँ, एक बात जरूर है। उनके पास

जो पया जाए वह टैक्स पे करने के बाद ही जाए इतना सा ही इस कानून की मंशा है। मैं किसी खास सस्था की बात नहीं कर रहा।

मैं चाहता था कि यह कानून इतना सादा होता कि कोई इसमें पेचीदगी न होती। हम कह सकते थे कि इसके बाद जितना भी तबादला होगा, चाहे वह जायदाद की शकल में हो, चाहे रुपये की शकल में हो, उस पर इस दर से, इस प्राग्रेसिव रेट ग्राफ टैक्स से, टैक्स लिया जाएगा तो उस सूरत में न किसी वकील की जरूरत होती, न घोस्ट कमिश्नर होते, न किसी अधिकारी के पास यह अखत्यार होता कि वह जिस किसी के साथ चाहे रियायत करे और जिस किसी के साथ चाहे न करे। पंडित ठकुर दास भागव ने कहा कि उनके खिलाफ स्टेट ने एक अपील सुप्रीम कोर्ट में की। इस तरह की अपील की जरूरत ही नहीं होती अगर कानून जिज्ञाने ज्यादा सादा से सादा हो सकते थे उतने सादा आप बनाते और आपको चाहिये था कि आप उस कानून को भी जितना सादा बना सकते, बनाये।

15 hrs.

Mr. Deputy-Speaker: Dr. Krishnaswami. Now I come to those who have appended Minutes of Dissent.

Dr. Krishnaswami: Before I plunge into controversial topics, I should like to pay a tribute to the Members of the Select Committee who helped to educate me and helped me to acquire a keener appreciation of many aspects of this legislation. Even where I did not happen to agree with them, I found it necessary to re-think my position and state my arguments with greater precision.

Now, what is all this trouble about, this trouble about liberal exemptions and strict exemptions and about the rule relating to plugging of loopholes. I do not myself like that phrase, but it has been used frequently in this House, and I think the time has arrived when we should see what plugging of loopholes means.

[Dr. Krishnaswami]

During the past 20 months we have succeeded in achieving the destruction of the inherent balances emphasized by Mr. Kaldor, and it would have contributed to the strength and resilience of our tax system if we had adopted his proposals, or failing immediate adoption, had made arrangements to overcome the difficulties of the transitional period.

Mr. Kaldor laid down as an essential condition of his proposals that income-tax should not exceed seven annas in the rupee and that a wealth tax should be levied. The expenditure tax was to be a substitute for the super tax; the gift tax was to be a substitute for the estate duty. We have drafted all these taxes on the existing tax structure. By disturbing the balances we have forced ourselves into a position where we have to give more generous exemptions than what Mr. Kaldor would have deemed appropriate. In fact, if we consider it logically, every exemption is a loophole, but if we start plugging every loophole the whole structure would become unworkable and more illogical than what it is now.

As soon as more exemptions are given, some of us hon. Members who are lineal descendants of Cato begin to fume over such grant of exemption and say that there has been a whittling down of the tax measure, that this is taking us away from what is known as the socialist pattern of society. Their intentions are excellent, but to the extent that they succeed in reducing exemptions, the more unworkable does this tax structure become.

Mr. hon. friend Pandit K. C. Sharma in the course of his remarks pointed out that so far as this allowance to married women was concerned, it was far too liberal. I take it that the House is not only interested in the welfare of bachelors and spinsters, but that it is also interested in the welfare of married men and women. If the principle is

accepted that there ought to be some provision made, we ought to consider what is the reasonable provision that should be made; we ought to take into account what is the annual income that is likely to be yielded by the amount of saving that goes to make a provision of Rs. 1 lakh which is only to be during the life-time, and possibly only once in a life-time.

I want also that the House should go into this very much more carefully and consider some of the tax evasions that we have in other parts of our law which would throw some light on this matter. We have in the income-tax law for instance a provision that insurance policies taken to the extent of either one-fifth of the income or Rs. 8,000 premium, whichever is less, would be exempted from income-tax. The amount on which Rs. 8,000 premium is to be paid works out to about Rs. 75,000 to Rs. 80,000, but I am on an entirely different matter, and I should like to go into the consideration of some of these other matters on which there has been considerable difference of opinion.

The main difficulty with our recent spate of legislation, and more particularly the tax legislation during the last 20 months, has been that we have plunged in favour of all manner of taxes without troubling to find out whether we have the necessary administrative machinery to assess and collect such taxes expeditiously. The consequence is that the taxes yield much less revenue than one would expect. This immediately raises the temptation to plug the loopholes. And since the legal process of plugging loopholes would increase the expense too much, expediency dictates all kinds of exemptions. Thus, we are in an apparently vicious circle, and I wish to emphasize this point. We pass more stringent laws to prevent avoidance, and grant more liberal exemptions in order to prevent avoidance, and grant more liberal exemptions in order to prevent the tax system from becoming completely unworkable.

One of the curious features of our recent tax legislation is that whenever tax yields have been less than were anticipated, blame has always been laid on the original tax legislation. Up to the present moment no responsible Minister, no responsible official has ever publicly admitted that the reason for lower yields can be that the administration has not yet been able to attune itself to the sudden increase of its responsibilities. Because we have refused to face up to the understandable deficiency in our administrative structure, we have concentrated attention not on improving the administration, but on changing the tax laws altogether. Thus, the smaller collections from estate duty or the wealth tax from individuals are attributed to avoidance of this tax through gifts. In reality, it seems much more likely that with some experience the administration would be able to collect much more from the existing taxes, but we are not prepared to be patient even for a year or two. Instead, we must rush to the statutory anvil to forge new instruments without caring unduly about the total effect of new and existing legislation. If we have to introduce the gift tax even without waiting to learn from the experience of the implementation of the Estate Duty Act or strengthening adequately the administrative machinery during these three or four years, then the least that commonsense dictates is that the gift tax proposals should be limited to those who have a stake in the estate. Instead, what have we done? What we have done is to rope in all gifts irrespective of their relevance for estate duty purposes, and this is sought to be justified by arguing that it is also a revenue-earning measure.

If one settles down to find revenue-earning measures, then all kinds of taxes which yield revenue can be found. But then let us realise that just because they are revenue-earning, we do not think of them as suitable to be imposed. Why, if we wanted a revenue-earning measure,

we can impose a toll tax and have a very large flow of revenue into the coffers of the State. Or again, if we wish to have a special law passed whereby we collect money from people who wander after nine in the night, we can get revenue from them, and that would be a revenue-earning measure. But socially . . .

An Hon. Member: Probably they would keep their pockets empty and roam about.

Dr. Krishnaswami: That is exactly what is going to happen even in respect of the gift tax. I am glad my hon. friend has taken the words out of my mouth. It is not merely enough to take into account the revenue-earning criterion. We have to take into account other social criteria. It is important that, when my hon. friends talk of the figures that Mr. Kaldor has put forward, they must understand that we have made a hash of Mr. Kaldor's proposals and therefore the original estimate of Rs. 20 or Rs. 30 crores cannot be achieved at all. If we are giving exemptions, it is precisely because we have been absolutely illogical during the past 20 months, even as John Gilbert treated the horse which he was given to ride. Therefore, I think we must think of this pattern much more deeply.

Now, it is a reflection of the confused times that we are living in this country that we in this country who lay so much store on the virtues of charity, where every religion exhorts the public to give, should rush to tax all charities save certain pres-

In this connection, I should like to quote the relevant provisions in Australia and America. The Members of the Select Committee did consider many of these things, and I am not revealing any secret when I suggest that notwithstanding the consideration of all these matters, we came to the conclusion that we should not be very liberal in our exemption of charities. None the less, I hold a

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view which is different from that of the majority of my colleagues, and I am only placing my point of view before the House for its consideration. In Australia, it is suggested that a gift is exempted if it is a

'gift to, or wholly for the benefit of, an institution, organisation or body of persons, whether corporate or unincorporate, not formed or carried on for the profit of any individual.'

Similarly, in the United States of America, it is stated—and I should wish my hon. friends who are very anxious to tax all manner of gifts to bear this particular exemption clause in mind—

"any gift to a corporation or trust or community chest, fund or foundation organised and operated exclusively for religious, charitable, scientific, literary or educational purposes including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence, legislation is exempted".

These are very wide definitions, and these give you an idea of the manner in which gifts are exempted, because it has always been held as part of our ethical tenet of our life—no matter whichever religion we might profess or no religion that we might profess—that men should give to their neighbours, but men should not be given the unlimited right to give to those who are near and dear to them, because that might possibly increase the non-functional accrual of wealth in our society. What socialism is this which says that we shall place outsiders and those who have a stake in the estate on the same footing? I had read Rignano on the Law of Death Duties and Inheritance, and Rignano had pointed out that

the more there was dispersal of wealth to outsiders, the better it would be from the point of view of society. But after having heard what some of my colleagues in the Select Committee said, and also read some of the provisions of the Gift Tax Bill, I seem to have acquired a new and different understanding of what socialism is in this House. I, therefore, want to go into this matter a bit more at length.

It is indeed a reflection of the confused times that we are living in that while we are very strict on charities, we have not been so strict in the case of companies which give gifts to political parties or other organisations. I do not want to enter into this matter at great length, but I want to point out to this House that if logically we are going to deny men giving charities without let or hindrance to those objects which do not fall within section 15(b) of the Income-tax Act, and if there is going to be any difficulty about that, I see no reason why we should be particularly tender on political parties. If we have been hard on charities, we have been soft on companies which make gifts to political parties. If any curtailment is to be made, then gifts given to political parties should be taxed. The political justification for such a tax, particularly, when it is progressive, is that it will discriminate in favour of parties or causes which receive a large number of small donations, while it would bear heavily on those that depend on a small number of large companies.

Of a similar piece was the proposal of some my colleagues in the Select Committee to adopt aggregation of gifts for assessment purposes. From the beginning, I had felt that this was wrong in principle. It was not logically correct; it was not ethically desirable, and it should never have found a place in the original Bill at all.

Shri Narayanankutty Menon: That has gone now.

Dr. Krishnaswami: I am glad that the Select Committee rightly frowned on this principle, and it does not find a place in the new Bill. But I should like to point out to my hon. friends who are very much moved on this matter and who seem to think that the very future of this Gift-Tax Bill depends on our adoption of this principle that they are making a very profound mistake.

Under the new Estate Duty (Amendment) Bill, a valid gift is one which is made five years before the donor's death. And how many are there who will space out their gifts? How many are the owners of property who will run the risk of divesting themselves of their property to others, trying to avoid taxes? I think they would be very few. Moreover, the administrative troubles would be much greater than the possible benefit that will accrue to the exchequer. Instead of proceeding so fast in this matter, we might as well do the sensible thing of introducing this provision only when the gift tax is a substitute for the estate duty. Then, there is a principle about it, because there is no residue for the State to tax once the donor dies, if there is no estate duty. But now, as it is, the main thing from which income should come should be the estate duty for the exchequer. I, therefore, feel that the most sensible thing would be to adopt the principle of aggregation or cumulation only when we have decided definitely and as a matter of policy and principle to step into the Kaldorian world, namely the world where the estate duty is not in evidence and where the gift tax is only a substitute for the estate duty. I have only one or two observations to make on a very general matter. If we look at every tax legislation as a revenue-gatherer, we are prone to lose our sense of perspective in the formulation and implementation of our economic policies. This type of approach may give satisfaction to some of my hon. friends that we are advancing on the road to socialism.

But, there is, let me point out to them, no moral or social justification for preventing all gifts, which is what we are attempting to do by this type of legislation. Strictly speaking, even gifts made out of income to those who have no stake in the estate are taxable. In truth, all that we will be doing is to bring that tax system into contempt because there are large portions of this legislation which would be totally unworkable and would be drying up those very sources which by creating wealth enable a wider dispersal of wealth, income and opportunities.

In conclusion, I should like to place on record my deep appreciation of the Minister's tact and consideration in piloting this Bill. It was a great contrast to his predecessor, and many of us welcomed it.

Shri T. N. Singh (Chandauli): I think rather undue compassion is being shown to the very small number of people who will be affected by this measure. My own estimate is that the maximum number of people who are likely to be affected by this tax will not exceed 10,000 in this country of 360 million people. I wish a little more of our kindness, compassion and desire were extended to help our people in difficult circumstances, especially in cases of measures of taxation where the poorest of the poor will be affected or have been affected in the past.

Therefore, I would urge that the holy names, the fine concepts of charity, *dan*, etc., should not be abused for the purpose of extending the concessions and exemptions from this tax. That is very important. Otherwise, we shall be showing an imbalance and a wrong appreciation of the circumstances which have led to this taxation measure.

Now, what were the circumstances in the past? Ever since the taxation

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rate has been going up during the war and after the war, the evil of evasion of tax has been growing. An estimate made, I think, by Shri C. D. Deshmukh when he was Finance Minister, was that about Rs. 200 crores are being yearly evaded in the shape of income-tax.

Shri Bimal Ghose: That was Kaldor's estimate.

Shri T. N. Singh: That was also Kaldor's. In any case, that is one estimate. Another estimate put it at Rs. 150 crores. A third estimate said it was Rs. 300 crores.

Now, what is the result of evasion of these taxes? The result is that more and more indirect taxes have to be levied because the Five Year Plans—Second Five Year Plan and Third Five Year Plan—must be implemented, and we must go ahead with many of our development schemes, cost whatever they may. Therefore, if we allow this system of tax evasion to go on, the result will be that the people will have to be taxed. Our millions will have to be taxed, because we cannot allow the country to remain stagnant, where it is. It must progress. So I think this system of income-tax expenditure-tax, estate duty, wealth tax and gift tax was evolved. It was supposed to be an integrated system of taxation. This is the last of the measures before us.

I have felt rather strongly about certain changes made in the Select Committee. I am sorry, despite my desire to agree with my colleagues in other Committees—I have been able to agree with them and come to unanimous conclusions; I was subordinating my wishes, desires and feelings so that we may be united, and this was the same approach which I applied when I was on this Committee—I found to my great dismay that whereas it was possible for me to agree to certain

exemptions, extensions and concessions, it was not possible for my colleagues, despite my request, to retain at least certain aspects of the original Bill itself. Even that was not agreed to. That is my grievance. Therefore, I come to the Bar of this House and appeal to them that the original clauses of the Bill which were in many respects very well thought out and deserved the support of the House should, if possible, be accepted.

First, my contention is: why should of all things, as I have said in my note of dissent, private limited companies which are, for all practical purposes, just family concerns or concerns comprising one or two or at the most three families, get any favoured treatment so far as gift tax is concerned? I know—and it is not unknown to those who have any idea of the taxation system—how things are managed by those who have to pay tax. These companies owned by certain important families are utilised as a tool for evading tax in various ways. The entertainment allowance is always misused in these concerns.

Shrimati Ita Palchoudhuri: Not a ways.

An. Hon. Member: Generally.

Shri T. N. Singh: Generally means always. That is the difficulty. Then there are TA and DA. All these things are made use of in order to evade tax. Are we going to allow an extension of that opportunity in the matter of this gift tax? That is one of my very humble requests, namely, for God's sake, let this House agree to depriving the private companies of the concessions which have now been allowed in the amended Bill. That is the very limited ambition I have got in this regard. I would have liked to go much further, but I want as far as possible, complete unanimity in this House on this measure. After all, the object is the same, to whichever party

we may belong. The object is that there should be a reduction or no evasion of taxation. We should get enough money to implement our Plans. I think we are all unanimous on that. So this is my very humble suggestion. At least in this regard let us agree unanimously to get this amendment made.

There are one or two other amendments I would like to suggest. But I wonder whether it is possible to do so now. My own complaint is this. Though there were colleagues of mine in the Select Committee who were advocates of not giving the wife an exemption to the limit of Rs. 1 lakh, did any one care to care to apply to the President for permission in regard to the omission of that clause?

Shri C. D. Pande: That was the difficulty.

Shri T. N. Singh: At this late stage, I feel that will not be possible. Much as many of us would desire, there is a feeling that we should not allow this excessive concession of Rs. 1 lakh being given. I hope hon. lady Members will excuse me for saying so. The provision relating to that, namely, clause 5(1) (viii) in the Bill, is, I think, an unhealthy provision. It should not have been allowed to continue. But at this late stage, there is no way out. I would be content if the Finance Minister—I am sure he will agree with me—watches the legislation in operation and in time to come finds a way out to meet the wishes that we on this side of the House are expressing. We have little time today; we have to pass this un-animously. So I would urge that something like that will probably give some solace and satisfaction to us so that if not today, tomorrow evasion of tax will be stopped. Whatever happens, an amendment of the Bill on those lines will give us some satisfaction.

Now, there is that controversial clause regarding aggregation. I have my views on that. We were rather sharply divided in the Committee on

this point. Even people holding very strong views on tax evasion were rather divided on this issue. I would personally have favoured the original clause. Even now I feel so—I say this very frankly. If it is no hardship in a country where there are very much larger number of people giving gifts, etc. like America—where whole gifts are being aggregated from 1932 onwards upto now, that is, aggregation of 26 years for the purpose of this tax—why should it be hardship here? Who is here who gives such huge charities or gifts as in America? In America, they are not perturbed and they are not affected by it. Will the heavens fall if it is aggregated here? I personally do not see any force in the argument used by friends who are opposed to aggregation.

But I would only urge again this. We have got very limited time. We want to get this Bill through as soon as possible today so that it can be passed by the Upper House also. For that reason, I would again request the Finance Minister to see his way to accommodate this school of thought if not today, if not tomorrow, at least in the near future.

Shri Bimal Ghose: Why does he say that?

Shri T. N. Singh: I have a doubt, seeing the sharp division of opinion in the Select Committee, whether we shall be able to get it through. For that reason, I am saying this. Unfortunately, even Members on the Opposition side—and I am not disclosing any secret when I say that—seem to be very sharply divided. We are also sharply divided. (*Interruptions.*)

Shri Khadilkar: Even the Finance Minister did not take your suggestion.

Shri T. N. Singh: But what I am saying is that even if it is possible to do it at this stage, none shall be more happy than I. But, as it is said, wise men at times try to salvage whatever is possible. If we cannot have it today, let us try to live on the hope that it will be accomplished very soon. That

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is what I am trying to do; and I may say that it is trying to be practical. You may question that.

I am reminded of a story. I hear so many things about gifts and acts of mercy; this and that. The great Shukracharya was very anxious to protect the interests of his ruler. Therefore, when the king started giving the *dan* of his entire rajya, he entered the pot from which water was poured. Somebody mischievous enough, said, all right put a straw into it and water will come out. A straw was just inserted and the poor man lost his eye. Therefore, I say, here is a question of money required for the State and here are 10,000 people. Please do not stand in the way of the State—between the State and the people who ought to pay the tax and lose your eyes in the bargain.

Shri C. D. Pande: Take care of your eyes.

Shri T. N. Singh: So, I would like to be practical and protect my eyes, my heart and everything so that the country may exist. I would appeal, let us get as much. After all, what is this individual charity? The greatest and the most noble charity is to the State and to the millions of people. Why should a handful of people stand in the way of the people getting that money so that they can help themselves and improve their prospects in future?

These are the small considerations which I would like to urge before the House. I want that the clause regarding aggregation may be restored. Let me say this again. In all committees I have tried myself to be unanimous. The Public Accounts Committee with which I have been associated for so many years has done that fortunately. I want this measure to get through as soon as possible with the greatest measure of agreement.

Shri Mulchand Dube: Mr. Deputy-Speaker, Sir, I should like to say a

few words on the points of order that were raised to the introduction and passing this Bill, before I come to the Bill itself.

The points of order were based on the ground that this Parliament had no jurisdiction to pass this Bill and that it should not be introduced here because of item No. 18 in the State List and also of items No. 46 to 49. The point raised was that the Bill relates to agricultural land also which is a State subject and his Parliament has no right to pass any law with regard to taxation of agricultural land.

My submission with regard to this is that this Bill does not levy any tax on any agricultural land. The tax is on the donor and if there is any difficulty in the realisation of the tax, then, on the donee as well. The tax is made a charge on the property in case it is not realised either from the donor or the donee. The charge does not mean a transfer. Therefore, the point of order raised with regard to this Bill on the ground that it is *ultra vires* the Parliament has no force.

Mr. Deputy-Speaker: The hon. Member may move a little forward; he is not distinctly audible to the reporters.

Shri C. D. Pande: A little louder also.

Shri Mulchand Dube: It was argued that the Bill is *ultra vires* the Parliament for the reason that the subject-matter is covered by item 18 as well as items 46 to 49 of the State list. It was said that it imposes a tax on agricultural land and, therefore, it was *ultra vires* this Parliament to pass it unless a resolution to that effect was passed by the State Legislatures.

My submission is that this Bill does not impose any tax on agricultural land.

In that connection, I may refer to clauses 29 and 30 of the Bill. Clause 29 definitely says that the tax will be paid by the donor; it also says that if it is not possible to realise the tax from the donor, then, it will be realised from the donee. It is nowhere said that the tax will be realised from the property that is the subject-matter of the gift.

Pandit Thakur Das Bhargava: It will be a charge on the property.

Shri Mulchand Dube: All that is said in clause 30 is that it will be a charge on the property. Now, a charge does not mean that the property has been transferred. A charge does not imply any transfer of the property. The tax is payable either by the donor or by the donee; and because the donor or the donee happens to own the property, the tax is realised from the property also. But, for that reason, it cannot be said that the Bill is *ultra vires* the Parliament.

Another point was raised by Shri Gounder that it was an Estate Duty. With regard to that, I may submit that the State Legislatures had already authorised the Parliament to pass the law with regard to the imposition of an Estate Duty. That had been done before 1953. The question, therefore, is whether the present amendment that was sought to be made either by the Estate Duty or the Gift-Tax Bill in any way goes beyond the scope of the resolutions that were passed in 1953. If they do not go beyond the scope of those resolutions that were passed in 1953, the Estate Duty (Amendment) Bill and the Gift-Tax Bill would be perfectly valid.

With regard to these Bills the only way in which Parliament can exercise jurisdiction to pass the law is either by a resolution of the Council of States or by a resolution of the State Legislatures. With regard to the Council of States, it is clearly stated in article 249 that the resolution will remain in force only for one year. But, where the resolution is passed by the State Legislatures, there is no limit and it is not said that it will remain in operation only for a

year or for any particular time. Therefore, my submission is that it does not in any way take away the jurisdiction of Parliament to pass either the Estate Duty Bill or the Gift-Tax Bill.

With regard to the provisions of the Bill, I have got only one or two observations to make. The first is in the definition of 'gift'. There is no mention of the gift being accepted by the donee. Under Section 122 of the Transfer of Property Act, it is definitely said that the gift shall not be valid unless it is accepted by the donee. That acceptance may be express or implicit but the acceptance is to be there. That acceptance here is necessary for the other reason also that we have made the onerous gifts also chargeable to gift tax. The gift may or may not be accepted when it is coupled with a burden. Therefore, so long as the acceptance is not there, I do not think that the definition of 'gift' is complete.

In the definition of 'person', it is expressly stated that it includes a joint Hindu family. There it is not possible for any one to make a gift. A transfer can be made only if it is for legal necessity or for the benefit of the estate. Now in a gift neither of these things can be there. For that reason, any transfer made by a joint Hindu family in the nature of a gift would be invalid. Therefore, when it is said that a 'person' includes joint Hindu family, my submission is that it is incorrect and it should not be so.

In clause 12, it is said that the Gift Tax Officer shall be subject to the directions or instructions given by the higher officers. Either he is administering the law as it stands or he is acting under the orders of the superior office. My submission is that clause 12 is unnecessary. It should not have been included in this Bill. I am simply surprised to note that the Select Committee which went so thoroughly into the Bill did not look into clause 12 but allowed it to stand probably because such a clause also finds a place in the Income-Tax Act. Be that as it may, the Gift-Tax Officer

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has to deal with the matter according to the law as it stands and not according to the directions by any superior officer.

Shri Narayanankutty Menon: Mr. Deputy-Speaker, when the Bill has passed the trials and tribulations at the hands of the Select Committee and the report has been presented to this House, it has been made clear that both the intentions and objects of the Bill have been frustrated.

You may either accept the proposals of Shri Kaldor *in toto* or in part. This tax has come from the brains of Shri Kaldor himself and this is one of the taxes proposed by him as part of an integrated tax structure. The object of this Bill is to plug the loop-holes in the disintegrated tax structure today. Secondly, the intention was to get some revenue as otherwise no revenue would come from them. Thirdly and primarily, it was thought that this tax would act as a levelling force in the economy of today so that by legislation and taxation the proposed socialist pattern of society may be brought in at least in shadow. It shall be my duty to analyse whether any one of these intentions had been fulfilled.

First of all, the Bill does not plug any loophole in the existing tax structure. On the other hand, it contains very many leaking loop-holes through which the already leaking tax could come out. Exemptions were many when the Bill was introduced and the Select Committee has given more exemptions with the result that more clauses there are about exemptions than substantive clauses themselves.

When the Bill was originally introduced, it is common knowledge that the whole idea of the Bill took shape when the Budget for 1957-58 was presented. Advance notice to the people who may be affected by this measure was given that the Government was coming up with a gift tax. The original draft had to be radically changed with the connivance of the Govern-

ment which was a party to the drafting of the Bill and the Finance Minister who was a party in seeking the opinion of the House at the time of the introduction of the Bill and at the time of sending it to the Select Committee. I fail to understand why such radical change in the Government's policy as far as certain fundamentals are concerned was there just because one Finance Minister went away and another Finance Minister took his turn. The report of the Select Committee reflects the radical change in the already halting policy that the Government is following as far as these taxes hit the richer sections of the people.

When Prof. Kaldor made the recommendation, he cannot go wrong as far as the facts are concerned. He made a positive statement and has said that it is essential that the additional burden that will be inevitably imposed either through taxation or through the inflationary rise in the prices on the broad masses of the population should be supplemented by an efficient system of progressive taxation on the small minority of well-to-do in India who number only about one per cent. of the population. Why do the Finance Minister and some of the hon. Members of his Party fight shy when they bring these taxation measures affecting the richer classes of the population. The revenue should come. There will also be a systematic levelling down but they are fighting shy and they are also deliberately trying to sabotage the very intentions of the Bill. That will be seen from the hundreds of suggestions and the various loop-holes in the Bill.

Prof. Kaldor estimated the revenue at Rs. 30 crores from the gift-tax. What radical change came into the social structure and in the economic sphere in order that the calculation made by him on statistics supplied by the Board of Revenue and the Government of India goes wrong? Rs. 30 crores could not in any way come

down to Rs. 3 crores unless there is something wrong as far as the Bill is concerned. When he moved the Bill, his estimate was Rs. 3 crores and now as a result of the changes made for which he himself is a party, the Finance Minister expects that it will be only Rs. 2 crores. But I am not very optimistic. I am pessimistic. Even these Rs. 2 crores will not come because a substantial section of those people who are affected by this Bill have been exempted by the provisions of this measure. I will now deal with some exemptions.

The first exemption is the charitable institution. Very fundamental ideas of philosophy were raised on the floor of the House as far as charities were concerned. Those people who pay the charities will want to control those charities. Then again certain functions which the charities had been doing in the long past had already been undertaken by the State. In a planned economy, what is the place of these charitable institutions, especially when charity wants to prosper at the cost of exemption from taxation. As far as educational institutions, hospitals, etc. are concerned, the State has undertaken that responsibility. If some body wants to donate his own money in order to build a building for his own community or in his own locality, why should that be at the cost of the general Exchequer.

Sir, as far as charities are concerned, even though some charities work in some considerably good way many a charity is working not in a satisfactory way, and the whole Trust that has been created is only in the name of charity but the beneficiaries are a few people. Therefore, in a socialist pattern of society, when there is planned economy, it is not for the State or this Parliament to encourage charity, because what you create by a tax-free charity given is only anarchy in the economic sphere and the wealth of the economy is not controlled by the State. I, therefore, suggest that there should not be any leniency, generally, as far as charity is concerned, when we consider whether a tax exemption should be given, and the

exemption given as far as charities are concerned is quite unwarranted.

Next, I come to the gift to the wife. Much has been said about the gift to the wife. Sir, the very purpose of this taxation is to tax those people whom this particular section wants to exempt. When a man out of his devotion or love or affection towards his wife wants to give a lakh of rupees as a recognition of his affection, why should the State take care of that affection and honour that affection by means of exempting that particular transaction. As my hon. friend has pointed out, it is high time that we think of other ways of giving recognition to this sort of affection than by recognising giving gifts of Rs. 1 lakh tax-free. Let them find some other way of showing their affection than by giving Rs. 1 lakh simply for the purpose of avoiding Estate Duty. If the evasion of Estate Duty is to be plugged by means of this measure, what is the justification in giving exemption up to Rs. 1 lakh as far as this gift is concerned. When a husband makes a gift, in 99.9 per cent cases it is only to avoid Estate Duty, because the wife has to wait till the husband dies and on that Rs. 1 lakh there is no Estate Duty. Therefore, in almost all cases when this manifestation of affection of the husband to the wife or the affection of the wife to the husband comes ...

Mr. Deputy-Speaker: The wife can wait, but the husband is not prepared to wait.

Shri Narayanankutty Menon: Then it is only that we are not preventing giving this manifestation of affection. What we are saying is, if you want to show your affection in such a manner, pay to the State also. Therefore, this section is quite unwarranted and is not in consonance with the statement of Objects and Reasons of the Bill.

An Hon. Member: What is the guarantee that the husband will die earlier?

Shri Narayanankutty Menon: Both can happen. In the original Bill the exemption given was only as far as the gift from the husband to the wife was concerned. Later on, it was

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changed in the Select Committee and the word "spouse" was introduced. Therefore, there is a two-way traffic and the wife can also give a gift to the husband tax free. That also I cannot understand.

Shri C. R. Pattabhi Raman (Kumbakonam): It may be gift-tax free; I do not know whether it is technically tax-free.

Shri Narayanankutty Menon: There is no other transaction in that. It will not come under the expenditure-tax or any other tax. Gift-tax is the only tax that would be given on that money. Income-tax is for the husband and not on the transaction of gift.

My next point, Sir, is regarding the companies. Originally, the Statement of Objects and Reasons of the Bill said that the Bill was intended to tax individuals including companies, but a *volte-face* was made in the Select Committee and the companies were deliberately exempted. Why should companies be exempted, when the companies make gifts for the furtherance of their business, when the companies make gifts as far as political parties are concerned

Mr. Deputy-Speaker: Such hard words should not be used in relation to the Select Committee—I mean "volte-face".

Shri Narayanankutty Menon: I did not refer to the Select Committee. I said "in the Select Committee".

Mr. Deputy-Speaker: Even then we should not use them.

Shri Narayanankutty Menon: Sir, I correct myself. I will say, a change of attitude was made in the Select Committee as far as this particular provision was concerned. The ultimate result was that all the companies could pay in the name of gifts large contributions to political parties—whatever might be the political party. I fail to see the morality behind it. We are not legislating here now to prevent companies from giving gifts to political parties, but whether such gifts given by the companies to political parties should also be tax-

free is the question before us. It is quite obvious. When large contributions were made by big business houses to political parties, the question was referred to High Courts and, regarding the morality and justification of this, the High Courts have categorically stated that suitable legislation will have to be brought in respect of the public and private companies making such contributions to political parties. Taking the cue and direction from the morality and basis of these judgments, by enacting this exemption clause Parliament will be giving a statutory recognition of what the High Courts said is not proper to do.

Sir, the other day the Commerce and Industry Minister said it is true that the Congress Party is getting large number of contributions from business houses. But, his argument was that because they were receiving such contributions from those business houses they were not showing any favour as far as those business houses were concerned. Is it a logical, a reasonable argument? When a public official takes some money from some people who stand in some pecuniary relationship, he is charged for corruption. When he is charged for corruption, is it open to that public servant to say that he has only received the money but he has not done any favour to the other person? Is that the morality behind it? Therefore, this mass exemption, this blanket exemption given to companies should be deleted and that exemption should not be enforced. If that exemption is given, firstly, there will be a reduction in revenue; secondly, it is liable to misuse; thirdly, there will be a large loophole as far as these companies are concerned to avoid all sorts of taxes.

15-57 hrs.

[SHRI C. R. PATTABHI RAMAN *in the Chair*]

Sir, there are so many other clauses, but due to want of time I am not taking up all of them. There is a gift exemption in contemplation of death. If this particular Act is to stop

evasion of Estate Duty, why should a gift made in contemplation of death be exemption? There is no point in that. A man may contemplate death almost at any moment. It is not necessary for the purpose of this Act that the man should die. He may make a gift and at the contemplated period the man may refuse to die. What happens is that the gift is tax-free, the Estate Duty is not paid and the gift passes on to somebody to whom it has been made. There is also a loophole as far as that point is concerned.

There is also the accumulation clause. I do not see why the accumulation clause has been taken away. Advance notice has been given as far as this taxation is concerned that this taxation measure will be with retrospective effect. Then, the accumulation clause has been taken away. That also gives another loophole. I find that there is no principle involved as far as this measure is concerned.

Then, from April no tax is applicable for charities made before 1st April, 1958. Large numbers of charities have been made with the full knowledge that a Gift-tax Bill is coming, because the announcement has been made early in 1957 that this tax is coming. If in principle those charities could be taxed now, why not those charities made in 1957 be also charged, because we all know that when charities are made they are not made with the intention of charity but with some other intention.

Therefore, Sir, the ultimate result of the Bill is that the expected revenue does not come up, the intention of both the Government and Parliament does not come up, because there are still many many ways of evasion and with all these exemptions the whole Gift-tax Bill has been reduced to only a name-sake of the Gift-tax Bill.

16:00 hrs.

In this connection, I wish to submit that in measures of taxation when the Government comes with a positive policy, such kind of halting policy which they are doing with shyness

will not advance us even one step further. If you wish to tax the rich, if your *bona fide* intention is to tax the rich people, tell them that we are going to tax with all the boldness that we have got. If you cannot take courage, do not put in all these words that you are bringing a gift-tax which is heralding an era of socialist pattern of society. Do not say: "We have brought the gift-tax, we have brought the expenditure tax, we have brought the wealth-tax; the entire flaberdashery of socialism is coming before us." If your real intention is that because of the gift-tax there should be a levelling down of the society, because of the taxation measures like this the accumulation of wealth in a developing economy should be effectively prevented, because of these taxation measures you want to get additional revenues, simultaneously with your announcement that your quota of deficit financing has increased, certainly this Bill will have to undergo many, many changes, and the exemptions that have been conceded by you will have to be withdrawn. Unless those exemptions are taken away, unless an honest effort is made that when a gift-tax is introduced all the gifts made are universally taxed and some considerable revenue comes out of that, all your professions about the nature of the gift-tax and the bold venture that you are making will be in vain.

One word regarding the collecting machinery and also the process by which the improvements could be effected. In taxation cases, apart from the large number of evasions, a large amount is locked up in evasion cases. The Finance Minister knows and he might understand that large amounts of State money are locked up both in the Supreme Court and in the High Courts and in the various tribunals. I am not for a moment submitting that the assessee should not get a right of appeal or revision by some reviewing authority. But the time has come to consider whether the assessee should go through all the trials and tribulations—going to the Appellate Commissioner from whom a reference is made

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to the High Court under the Act and then after that, filing a writ application before the High Court, which is his right under article 226 of the Constitution, and then getting another right of appeal to the Supreme Court and another right of original jurisdiction of the Supreme Court itself. As a result, a large amount of money preciously required for the Plan is being locked up before all these courts. Therefore, it is very necessary that the collecting machinery and also the other reliefs and procedure given to the assessee should be very good. The assessee should be given authoritative competent reviewing machinery so that the assessment may be reviewed for the better or worse. It must be seen that the machinery is not too long—a High Court jurisdiction or a Supreme Court-jurisdiction is there under the Constitution—and it must be seen that you do not create many more authorities for reviewing the assessment. Cut down the authorities to the minimum possible, so that there may not be any delay and so that the collections which according to the year's budget must be done are not collected years and years after these laborious processes of litigation. The time has come for speed. I appeal to the Finance Minister to reconsider the whole machinery of collection and also the other reliefs available to the assessee to go to the various courts of law.

Finally, as my hon. friend Shri T. N. Singh said, he tried to get unanimity or as much unanimity as possible. We were also prepared for it, but there was no ground for unanimity as far as these things were concerned. If the Finance Minister could have accommodated, and if all his fancies had been restrained to some extent and if he had reserved some points for accommodation and had other viewpoints been considered, then, possibly, and certainly unanimity could have been reached. On certain exemption which he thought fit and proper in the circumstances we would have been prepared to agree with him, but when from his very mouth, only exemptions

after exemptions were coming, then his idea was to encourage the already numerous exemptions which have been granted in the Bill. There was then no common ground between the Finance Minister and the other hon. Members from this side. Therefore, I appeal to the Finance Minister that though there was a *fait accompli*, that the Select Committee's recommendation would be accepted and the Bill passed as recommended by the Select Committee, that he will realise that time will tell the Finance Minister that a great flaw and folly has been done with one year's working of this Act and when one year's working has been reviewed by him. With better experience of the working of this Act, and the large amount of evasion that goes through all these loop-holes, I hope that the Finance Minister will come forward with amendments to close all the loop-holes which he says, is the intention of this Bill.

Shri Morarji Desai: Mr. Chairman, Sir, in all the arguments advanced during this debate, I am afraid there is nothing new which has been brought forward, at any rate nothing more than what was said earlier when the Bill was first considered or when it was referred to the Select Committee. But before I speak about some of the points I should like to refer to a point raised about the right of minorities or discrimination which was said to have been indulged in, in not giving exemption to religious charities or charities of minorities as they were called. Sir, there is no question of any discrimination in this matter, because when the exemption is not given, it is not given to all of them. It is not a question of setting apart one religion and giving it exemptions and not giving exemptions to other religions. As a matter of fact, discrimination is made by these very charities themselves. They are for only one section and not for all, and therefore, if they are taxed, I see there is nothing wrong in it, and there is nothing which is against the Constitution in this particular subject. Then those who argued this, forget that section

15B of the Income-tax Act has been enacted by this hon. House and this very question was considered in 1953 when it was enacted, and it has the stamp and seal of this hon. House. Therefore, there is no question of there being any discrimination in this matter.

Then I would come to the general question of officers raised by my hon. friend Pandit Thakur Das Bhargava. He said that the income-tax officers who are going to deal with this matter have not sufficient experience. I must readily admit that they would not have experience of this tax no doubt because it is a new tax, but to say that income-tax officers have no experience or that they are not being trained would not be right. We have now a training college at Nagpur. We are giving them training in various other ways. Young officers are attached to senior officers so that they are trained and as much comprehensive training as can be given is being given to the income-tax officers at present. They are already given training in two languages other than the mother-tongue of the officers. It is being seen that they are posted to places where they can utilise those languages.

He had also objected to the question or rather to the personnel of the Appellate Assistant Commissioners saying that these should not be under the control of the Board. This matter was gone into by the Taxation Enquiry Commission in 1953-54 and after carefully going through the whole question they said:

"We are, therefore, of the opinion that all things considered the balance of advantage lies in leaving the existing structure unchanged. The demand for transferring the Appellate Assistant Commissioners away from the control of the Central Board of Revenue arises, in our opinion, from lack of a proper appreciation of the crucial fact that the assessment proceedings before the income-tax officers are not of the nature of judicial proceedings, and

that the Appellate Assistant Commissioner, so-called, is in essence not, and was never meant to be, anything more than a reviewing and revising departmental authority within the Income-tax Department".

It will thus be seen that this matter has been considered from time to time by Government and if the same system has been maintained it is maintained for very good reasons. This question need not, therefore, be raised from time to time as it is raised, though I cannot say that it must not be raised because it is always open to the hon. Members to raise such questions whenever they like, but when questions have been considered very properly and thoroughly nothing much is gained by raising those questions from time to time.

There is a general argument that the exemptions are far too many and then it was sought to be made out that in the Select Committee the exemptions have been widened and that the Bill has been sabotaged. I do not see how the Bill can be sabotaged by the persons who made it. Otherwise, why should it have been brought, if there was no need for it? There was no necessity to do it. And we do not lack courage in accepting a fact, if it is a fact. If we wanted to withdraw the Bill, we could have withdrawn the Bill. That is not the question.

If some points were accepted, they were accepted because we found that there was a consensus of opinion. It is not possible to see that everybody agrees on every question. I wish that could have been possible. Then I should have been very happy. But I do not think that it would have been possible to reconcile completely contradictory views in some matters when they flow from definite philosophies of life which cannot be reconciled with each other. Therefore, on some points it is not possible to have a complete unanimity of opinion. Yet, I was happy to find in the Select Committee that there was a smooth working of the whole Committee, there were no

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tempers frayed and the whole thing was carried on in a very pleasant manner, thanks to our Chairman and to the reasonableness of all the members even including my hon. friend, Shri Menon, who now says something else. There he was all the while in a smiling mood and never appeared to be in any unpleasant mood during the whole proceedings of our debate.

Shri Asoka Mehta: He has now been cooled down.

Shri Morarji Desai: It is wrong to say that exemption to companies has been given in order that donations may be given to political parties. That is not the purpose of it. But if donations are given, I do not see what the immorality in it is. There is no immorality if my hon. friends can get money in a clandestine manner without acknowledging it. Then there will be no immorality. But if money is taken in an open way, acknowledging **them in the proper way**, then it is immoral. I do not understand it. If it is shown anywhere that any money has been taken by the Congress at any time and anybody has been obliged as a result of it, I shall be prepared to admit that it would be a shameful act.

An Hon. Member: That is very difficult to prove.

Shri Morarji Desai: If it is difficult, it need not be stated in any argument or brought in as an allegation. Of course, an allegation can be made when one is in a privileged position. Even when one is not in a privileged position, when one is outside, one can make such allegations. But that does not reflect any credit on the person who says it. It does not hurt the person against whom it is made, because he is not concerned with the wrong allegation that may be made.

I have already stated that if the House wants, the change that was made in the Select Committee about including the private companies under the exemption will be given up by Government. Government will not

raise any objection to that. Instead of saying this, if people go on saying that Government is particularly wedded to one view, I can only say that it is not a very justifiable inference.

As regards the clause where aggregation of the gift for five years was provided, which was dropped in the Select Committee, I can only say that as there is a very divided opinion in this matter, and as the division is very close, it would not be proper for Government now to change the decision of the Select Committee in any way. We want to accept the decision of the Select Committee in this matter and if after a time we find that it is necessary to change it, Government will come forward with an amending Bill to change that provision. But to say that there will be evasions and these are clauses provided for evasion is something which, to my mind, is not in accordance with facts. One can call an action an action of evasion only when somebody evades it in a manner which is provided by the law. In this matter, when the aggregation clause is taken away, it only means that there will be loss of revenue. That is true. Because, originally there was a higher taxation. But, according to this, there will be less taxation. In any case, tax will be paid for all the gifts that will be given during those five years, but at a lesser rate. We can certainly have a higher rate, whenever we want to do so. That can be considered, when the time comes for it. This is a new tax. Therefore, we cannot say that the tax will be perfect from the very beginning. It will be necessary to watch the implementation of this measure and to go on amending it from time to time so that it becomes quite a proper taxation measure for the purpose for which it has been brought.

Philosophies of life differ and the outlook on the taxation will also differ. The philosophy in which we believe does not believe in the elimination of any people. We certainly believe in taxing the rich, and taxing

others according to their capacities. But taxing the rich does not mean removing them completely.

An Hon. Member: Who says?

Shri Morarji Desai: That is what was sought to be said. There is a different philosophy of life where that is sought to be done. But in that philosophy of life there are incomes of Rs. 25,000 per month which pay only 13 per cent income-tax, and they go on enjoying their income to the best of their capacity as they like without let or hindrance. There are so many things enjoyed by them, which most of the people do not enjoy. This is a matter of history, a matter of day to day fact; people who have seen it have corroborated it. Therefore, there can be arguments on both sides. Why quarrel about them?

If we go against the philosophy in which we believe, then it can be argued that we are wrong or that we are dishonest or that we are not acting up to the philosophy. If we are proceeding and aiming to achieve a society where there is no exploitation, where there is no suppression, and if we work up to that philosophy in a gradual manner, as fast as we can, I do not think that any question arises for saying that we are trying to minimise the taxation measures in one way and trying to bring them in another way. I do not think that argument would be proper, unless it is sought to be made out in order to have an argument against the opponent and to create confusion in people's minds. Well, if that is the purpose, I have no quarrel with it. But I am quite sure that that purpose is not likely to succeed, because ultimately people judge what is right and what is wrong, mostly correctly, when they know both the sides.

The provision which gives exemption up to a lakh of rupees for gifts given to the spouse has come in for a lot of criticism. The original exemption was for gifts to the wife by the husband. Then it was argued why in an age of equality only the wife should have this privilege and the

husband should not have this privilege if the wife is earning and rich in her own behalf. There are very rare cases like that. But if there are cases like that, we do not see why there should be this sort of exception. Therefore, this was accepted. But, it has been made very clear that the gift which is exempted up to a lakh of rupees cannot be used for giving another gift out of it, which can be exempted from tax. All the gifts coming from this Rs. 1 lakh will be liable to tax even if the gift is only Rs. 100 or less, because there is no exemption to this gift, that is, gifts coming from this gift. If it is sought to escape estate duty by giving away Rs. 1 lakh to the wife then the wife will have to pay estate duty on that Rs. 1 lakh, because she cannot give it away. If she gives it away then she will have to pay the tax on the whole of it. Therefore this argument of this provision being utilised for evasion is not quite correct. There may be some truth in it, in this sense that this money can be spent away by the wife and ultimately no tax may be paid on it, but I do not see why that should be objected to if the expenditure is done in the proper way.

As regards income-tax, this will be added on to the husband's income and the income from it will be liable to taxation. It is also liable for wealth-tax. Therefore, there cannot be any evasion of this tax because of this provision.

Then the question of religious charities has been discussed by several hon. Members. There has been a contrary argument from several hon. Members that all charities must be liable to taxation. The purpose of Government is not to dry up all the desire for giving charities or to take away the desire to give gifts which are proper by means of this tax. The purpose for which gift-tax has been brought has been made very clear. When we want to tax people, we also want to see that we continue to go on receiving these taxes and not that the sources of taxes are dried up completely in a short time. If alternate sources of taxation are available and

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we are able to create a society where the income that Government requires is available in the country, then there will be no harm in drying up even this source of taxation, but such a state of society is quite different from the conception which, at any rate, I have. There is no question of being in any way soft to the people who can pay taxes. Those taxes are being taken and there are various taxes which are charged from those people who can give these taxes. If we can increase those taxes and go on getting more and more revenue and go on adding to the productive capacity of the country, there will be no question about it. But if the taxation policy goes on reducing the productive capacity of the country and goes on reducing the taxation possibility and potential of the country, I would say it would be a suicidal step taken by any Government that has got to run the finances of the country. Therefore it is not the attitude which ought to be there in the matter of considering taxation in the present society as we are considering it. If the present society is being moulded, it is being moulded in a philosophy which is not the philosophy of my hon. friend, Shri Menon. Therefore it may not be possible for me to satisfy him on that score unless I accept his philosophy. I am not able to accept that philosophy, at any rate not yet and I do not think in my life time. I do not think he will accept my philosophy either.

Shri C. D. Pande: He is coming nearer.

Shri Morarji Desai: But, perhaps I believe that there is truth in my philosophy, so there is a chance for him to come to my philosophy.

Shri Narayanankutty Menon: So do I believe.

Shri Morarji Desai: I do not have any quarrel about it. So why should he have any quarrel with me? Why should he insist that I must go down to him? There is a possibility of his accepting my philosophy. I have every hope for him. He has given me up for lost, but I do not

give him up as lost because he is as good a citizen of the country as I am. Therefore I have no quarrel with him. He is free to have whatever quarrel he has with me and make himself unhappy over it.

Mr. Chairman: Is Shri Naldurgker pressing his motion for circulation?

Shri Naldurgker: No, I withdraw it.

Mr. Chairman: Does the House permit him to withdraw his motion for circulation?

The amendment was, by leave, withdrawn.

Mr. Chairman: The question is:

"That the Bill to provide for the levy of the gift-tax as reported by the Select Committee, be taken into consideration.

The motion was adopted.

Mr. Chairman: The House will now take up clause-by-clause consideration. Will hon. Members indicate the amendments that they wish to move to clause 2?

Shri Morarji Desai: Before we go to the amendments, may I say that there are certain amendments which are out of order as the recommendation of the President has not been obtained. I wanted to mention those amendments. They are Nos. 12, 16, 17, 18, 22, 29, 30, 62, 65, 71, 72, 73, 74, 77, 78, 99 and 100. These are out of order under article 117.

Then there is amendment No. 104, for which no recommendation was obtained under article 274(1). Therefore that also is out of order.

Shri Bimal Ghose: So far as my amendments are concerned, I applied for permission through the office. I presume permission has not been given.

Mr. Chairman: What is the number of his amendment?

Shri Bimal Ghose: They are amendments Nos. 16, 17, 18 and 19.

Mr. Chairman: There is no permission.

Shri Braj Raj Singh: No steps have been taken to obtain the permission.

Shri Prabhat Kar: May I know whether the amendments which I have to move and which were given to the office this morning, will be considered or not? My amendments are No. 111 to 118.

Mr. Chairman: We are only taking clause 2. His amendments relate to clause 5.

Pandit Thakur Das Bhargava: In respect of clause 2, I propose to move my amendment No. 51, 52, 53 and 54.

I beg to move:

Page 2, line 21—

for "or money's worth" substitute
"estimable in money"

Page 2, line 37—

omit "a Hindu undivided family or"

Page 3, line 28—

add at the end—

"or whom the company or association of persons has appointed the principal officer for the purposes of this Act or otherwise"

Shri Naldurgker: I beg to move:

Page 2—

after line 23, add—

"Explanation.—The term "Gift" shall not be applicable to the transfer of any agricultural land or benefit arising out of agricultural lands."

Shri Naushir Bharucha: I beg to move:

Page 2, line 19—

after "to another" insert "and accepted by such other person"

Page 2, line 20—

after "immovable property" insert
"other than agricultural land".

Page 3, line 30—

add at the end—

"other than agricultural land".

Page 4—

omit lines 1 to 4.

Mr. Chairman: The clause and the amendments are now before the House for discussion. The amendments are 1, 2, 3 and 4 by Shri Bharucha, 51, 52, 53 by Pandit Thakur Das Bhargava and 24 by Shri Naldurgker.

Pandit Thakur Das Bhargava: I wish to move amendment No. 54 also. It was not indicated by mistake. I move the amendment.

Page 3, line 39—

omit "power"

In regard to amendment No. 51, I propose to substitute the words "estimable in money" for the words "money's worth". In fact, the subject of gifts is so complicated, gifts are of so varied a nature, that it is very difficult to say as to what is money's worth of those gifts. There are many things in life which cannot be estimated in money. There is provision in clause 6 which says that where the value of a gift cannot be estimated in money, when it is impossible to do so, it shall be determined as prescribed in the rules. I think that the wording 'estimable in money' will rightly interpret the meaning and the intention of this measure than the words 'money's worth'.

In regard to amendment No. 52, I am sorry I have to make a rather long speech. In regard to Hindu joint family, I am so unfortunately placed that the hon. Finance Minister is quite new to the question. For the last 28 years, this question has been mooted in this House and the treatment meted out to the Hindu joint family by the Income-tax authorities and the Government of the day has been rather unfair. Time and again, every Finance Minister from 1928 up till now has been admitting that so far as the Hindu undivided family is concerned, justice has not been done to

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it. The previous Finance Ministers in the British regime admitted it Blackett Schuster, everybody—I need not quote them. Then, Liaquat Ali Khan, and then our own Ministers have all admitted at the time of the Finance Bill that justice is not being done to the Joint Hindu family. All of them took refuge in the fact that at the time of the Finance Bill, it was not the proper occasion when the question could be considered. They said that the matter may be raised at the time when the Taxation Inquiry Committee is constituted.

It was so done. But, the Taxation Inquiry Commission also refused to go into the question and took refuge in the fact that there was legislation on the anvil of this legislature on the question of Joint Hindu family. They refused to go into the question. If the hon. Finance Minister goes into the question, he will find for himself that the last decision about the Joint Hindu family was taken by the Taxation Inquiry Commission. They postponed the evil day and the evil question.

Before that, the hon. John Matthai, the then Finance Minister made some inroads into the bastion of this Government in so far as Income-tax was concerned. He said that different standards were to be accepted in regard to Income-tax ceiling with regard to Hindu joint family and an ordinary person. Therefore he said that twice the amount will be sufficient to start with. This matter was subsequently referred to the Income-tax Investigation Commission. They came to the conclusion that twice the amount is not sufficient and they said that ceiling will be three times the ceiling in regard to an ordinary person in certain circumstances. They made other concessions also. Ultimately, the matter was not decided and therefore we came to the House over and over again. The previous Finance Minister Shri Deshmukh also postponed the question and said that it will be decided subsequently. Ultimately, it came when the previous Finance Minister Shri T. T. Krishnamachari was there.

Shri T. T. Krishnamachari, by one stroke of the pen, took away all the concessions which were obtained from the Government during the last 28 years. I complained to him that it was not proper to do so. As has been pointed out by one of my fellow-Members, the previous Finance Minister had a different view from the view of the present Finance Minister. This cannot be better brought out than by referring to the speech of the hon. Finance Minister Shri T. T. Krishnamachari in this House when he replied to me on the question of the Wealth tax Bill when this particular question arose. The hon. Finance Minister will find that on page 1717 he referred to this question in the following words. I do not propose to read the whole of it. It is a long speech. He made certain observations which were not very complimentary so far as he himself was concerned. He referred to these two matters to which I have referred, the Taxation Inquiry Commission's report as well as the findings of the Income-tax Investigation Commission. He said in respect of one of the Judges that the Judge was a retired man, and his saying that in regard to taxation, a person should be equitable, just and fair was an anachronism. He has, as Finance Minister, looked to revenue alone and nothing else. These were the words that he said. He said that that Supreme Court retired Judge was a retired man, what did he know of revenue things. Therefore, he came to the conclusion that revenue considerations were supreme with him and he would not listen. That was his argument. I am very glad that his argument has been repeated by those who possess the sort of mentality and philosophy. In the House we hear that there are 10,000 people and they may be killed for the benefit of the rest. That is the argument. No equity, no justice, no merits. That is very unfair. There are some rich people and they ought to be killed: this philosophy, I am very glad, has not appealed to the Finance Minister and should not appeal to him. There is difference between a Congress Minister and a non-Congress Minister.

I brought it to the notice of that Congress Minister Shri T. T. Krishnamachari. The reference to it will be found on page 11,608. I referred to this question and rather strongly pressed it. As a matter of fact, I said, he had no right to behave ruthlessly, he ought to be more fair.

Ultimately, so far as Shri T. T. Krishnamachari was concerned, I also succeeded in getting something out of him in spite of this attitude of his, which was quite wrong, which was very unjust, which ought not to be taken by any Finance Minister in any Assembly. He had to admit that the case of Joint Hindu family was quite different. Ultimately, he gave this assurance. I do not want to read the whole thing; it is long. We are short of time. I will only quote what is absolutely pertinent. He said:

"What are we doing? We have the Hindu Law which has completely taken away the corpus of the Hindu joint family property, and may be my hon. friend who used to be a supporter of the Hindu joint family at one time is perhaps right in saying let us into recognise it, let us at least for purposes of taxation accept the *Dayabhaga* principle and assess them accordingly."

In sheer desperation, while all my attempts of 28 years were being brushed aside by one stroke of the pen by the Finance Minister, I requested, take away the Joint Hindu family as Dr. Ambedkar wanted to do. I am satisfied. This question of Joint Hindu family does not trouble me any more. He referred to it and said that he may be disposed to do so.

He said:

"These are matters which I cannot decide in an amendment. I think he suggested a committee. I do not know when a committee could be appointed, but I can say this, that I agree with him in this matter that this question must be thrashed out both from the point of view of equity and from the point of view of revenue considerations.

This is the success that I had attained even with that recalcitrant man.

"Because, to me revenue considerations are paramount. To my friend, equity considerations are paramount. But, there must be a dividing line somewhere which will probably break even, in regard to both these considerations".

As to when we can do it, I am not in a position to hold out an assurance. All that I can say is, there is a case for examination afresh and from a new point of view, having in view the changes that have been taking place. The question of assessing them as a firm is not possible. Both the Commissions have rejected the theory. In fact, the Income-tax Investigation Commission goes further and says that if a member of a firm is not allowed to draw salary and that is not deducted in income, where is the justification for treating them as firms. Because, that concession does not come in. On the other hand, if we treat them as firms, the family will also have to pay the firm's tax at one anna, that is 6-1/4 per cent.

The whole question of Income-tax law will have to be thought of. Some kind of revision is undoubtedly necessary. When it could be done, I am not in a position to say. But, when we undertake it, I can give this assurance that we shall have this question gone into. Of course, I will plead only my side that tax consideration must be paramount. It will be open for somebody else to plead that some other consideration should be paramount. But, we should not make it a thorny issue year after year, for the Hindu undivided family to suffer or to be discriminated either way. It must be settled in categorical terms. It has to be done. All I can say is: "but not yet."

Then subsequently I brought it to his notice as will appear from a perusal of page 11606 when I stated:

"I know the hon. Finance Minister has been pleased to say

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that a committee will be appointed. But I submit it is entirely wrong to postpone this committee and go on taxing the people. If you feel that it is unjust, that there is a case for the appointment of a committee, why don't you appoint the committee today, so that people may not be unnecessarily taxed? I do not understand why this matter should be deferred and linked with the appointment of a committee on incometax. This was the reply which the British Finance Minister used to give. A Congress Finance Minister should behave better. He has got a Constitution to follow. He is bound by article 14. If he feels that it requires scrutiny, it is for him to start the committee today and not just penalise the people and tax them in this discriminatory manner."

I went on further and brought it to his notice that the committee should have been appointed long ago, and at least it should not be delayed. Now, today I have got this amendment that from this tax the Hindu undivided family should be taken away, and further there are other amendments regard the Hindu Joint family in respect of other clauses. In one amendment I say that so far as the Hindu joint family is concerned, the percentage should be divided by the number of people entitled to partition. In another I say that at least taking the income-tax provision into account, the rate should be one-third, or at least a person in a joint Hindu family should be entitled to make a gift to the tune of at least Rs. 30,000.

A new point has been raised by hon. friend Shri Mulchand Dube, and I take that point also into consideration. So far as the joint Hindu family is concerned, how can it make a gift? Every person is not entitled, so far as the joint property is concerned, to alienate it, and if at all the *karta* does it, it must be out of

necessity, and a gift is never a necessity. This is a point which Shri Mulchand Dube has brought out and I thank him for it.

All the same, to treat one person and a number of persons in the same way is to ignore the first axiom of Euclid that the whole is greater than the part. I do not want to give at this stage all the reasons. I have given them so many times in the House. I do not want to repeat them and take the time of the House. I am very anxious that the committee should be appointed as soon as possible, that the hon. Finance Minister must do justice to this cause and not evade this.

I can anticipate his reply, and the reply, I know, will be given in the same way other Finance Ministers, at least half a dozen of them and more, have given, namely, that this is not the proper time, that in a Bill of this nature such complicated questions . . .

Mr. Chairman: The hon. Member may proceed.

Pandit Thakur Das Bhargava: I am speaking so that the hon. Minister may hear me, not for any other purpose. If he has any other more urgent business . . .

Mr. Chairman: He will read the proceedings.

Pandit Thakur Das Bhargava: That is not proper. When he is here, I want his full attention. No Finance Minister has ever read the proceedings. Does he know what happened in the case of the Wealth Tax Bill and the Expenditure Tax Bill? He does not know. No Finance Minister can possibly know. None of us can possibly know.

Shri Morarji Desai: I agree.

Pandit Thakur Das Bhargava: I would very much request him to hear me, and I have not much more to say.

Shri Morarji Desai: I am very sorry I did not hear him for half a minute.

Pandit Thakur Das Bhargava: What I am submitting is that I know the hon. Finance Minister will rise in his seat and say that this is not the proper occasion because in a Bill of this nature consideration of these complicated questions cannot be attempted. I quite realise that. At least half a dozen Finance Ministers have already said this, and I have accepted it. I accept it here. I do not want to force his hands. I only respectfully want that he may go into the question, and I am very happy to note that he has not the attitude of mind of the previous Finance Minister. Even he, when I asked him to go into the question, said that he would appoint a committee. I would respectfully ask him to appoint a committee and himself go into the question and come to the right decision as soon as possible, because now the Estate Duty (Amendment) Bill is coming, and there too the same question arises. There you have got another standard. Every person's property is deemed to have passed on as soon as he dies on the basis that we take it that partition has taken place, and whatever portion a person is entitled to will be taken as his property. In income-tax law your standards are absolutely different. You charge the whole family. If there are ten members in a family getting even Rs. 3,000 you will charge them. Even ten members of a family of labourers will be charged income-tax. So, this is the difficulty, and this difficulty is not imaginary. This has been agreed to by many hon. Finance Ministers, and they tried to look into the question, but they did not get the time. If you kindly go through the report of the Taxation Enquiry Commission, you will find that they have not been able to arrive at a final decision on this question. The hon. Dr. John Matthai really understood the question rightly, and he himself was the person who amended the Finance Acts. He said twice the amount should be the ceiling. In the Taxation Enquiry Commission's report also he agreed that three times the

amount should be the ceiling for income-tax purposes, for certain cases, but that was a palliative which did not fully satisfy us. That palliative has also been taken away ruthlessly. Justice has not been done.

Take your time. I will not press all these amendments at this time because I know that the hon. Finance Minister is not able to do justice to me, not because he is not minded to do justice, but because at this point the question is too complicated, and he cannot come to a decision. I will not force a decision. I only respectfully ask him to kindly appoint that committee and go into the question and come to a final decision and not to ignore it, and not to be guided by the guiding principles which the previous Finance Minister stated, had the audacity to state in this House, that only revenue considerations appealed to him.

This is going too far, going to the very root of the matter. He must go into the merits of the question. This is the very root of the question. Some hon. Member talked of a toll tax. This is in the nature a toll tax so far as every Hindu is concerned. I have not said for the first time, but many times.

So, I submit for the consideration of the hon. Minister that he may appoint the committee. This is the real purpose with which the amendment has been brought forward. I know the amendment cannot be accepted in the manner in which I have brought it.

As regards amendment 53, my point is this that we cannot give all the possible powers to an income-tax officer to decide all these questions. Who is the principal officer? If he is just to give notice to a clerk, the clerk would be responsible. If he is to treat any other person as the principal officer, he will become the principal officer. I would rather like that the company itself should be able to decide who is the principal officer to whom the notice can be sent, and therefore, I have brought in this amendment, so that, if possible, the

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principal officer may not be decided merely by the income-tax officer, but the company itself may choose its own officer for this purpose, and that person only may be given notice.

There is one other amendment, amendment 54 to this clause. The word "power" has been used in this clause. It reads:

" 'transfer of property' means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—

(a) the creation of a trust in property;

(b) the grant or creation of any lease, mortgage, charge, easement, licence, power partnership or interest in property;"

My submission is that the word "power" to my mind does not denote any meaning at all. You have included all the possible things so far as the question of the transfer of property is concerned—disposition, conveyance etc. I fail to see what the possible meaning of "power" can be in regard to (xxiv) (b). My proposal is that the word "power" should be taken away, and if that is taken away, (c) also goes away because it refers to "power". The "grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property" includes the grant of power. Power of what—electricity or what power I do not understand. We must define what is meant by "power". It is too general, it has no meaning, it only creates ambiguity. The word "power" should be taken away, and the word "power" as illustrated in (c) is not justifiable. Under (c) nobody does anything for his benefit. Exercise of power can never by any stretch of the imagination be regarded as transfer. Therefore, my submission is that the word "power" should be taken away and (c) would go consequently.

Mr. Chairman: I shall now put all the amendments together to the vote of the House, unless it is desired by any particular hon. Member that his amendments should be put to vote separately.

Pandit Thakur Das Bhargava: I want a reply to what I have submitted.

Mr. Chairman: Does the Finance Minister wish to reply to the points that he has made?

Shri Morarji Desai: Yes, As my hon. friend has said, the question of Hindu undivided family is one which is bristling with all sorts of difficulties, and it cannot be treated here in any way. And I cannot take out the Hindu undivided family from this clause, for otherwise, it will mean again a loophole which it will be very difficult to guard against in any way.

About examining the general question of Hindu undivided family, I myself am not aware of the various difficulties that are cited. I shall certainly try to consider all of them and I shall try to do whatever can be done.

Of course, I do say that revenue consideration is certainly supreme in a taxation measure, but it does not mean that revenue consideration, though supreme, must be at the cost of fairness and justice. The consideration of justice and fairness is supreme in all things. On that scope, I have no doubt in my mind.

As regards the question of power, there also, I would say that the power of attorney by itself is not going to be charged anything, but if under the power of attorney a gift is given away, then the person for whom it is given away will not be chargeable.

Pandit Thakur Das Bhargava: Is power of attorney a transfer of property? Power of attorney can never be regarded as transfer of property. It is only appointment of an agent.

Shri Morarji Desai: These are all legal things, and in all legal safeguards, I have got to accept the legal advice, and, therefore, it is not possible for me to accept the advice of my hon. friend; though he himself is also a brilliant lawyer, yet I have got to depend upon the lawyer who gives me advice. Therefore, I cannot accept his amendments.

Pandit Thakur Das Bhargava: All that I can submit is that the reply is certainly one which I never expected. What is this reply that the law officers know? Either he must justify or not justify.

Shri Morarji Desai: There is nothing to be justified.

Pandit Thakur Das Bhargava: Is it that I should go to the law officers and ask them? This is no reply. I am very much dissatisfied.

Shri Morarji Desai: I cannot satisfy the hon. Member.

Mr. Chairman: The hon. Member cannot expect the Finance Minister to mortgage himself in advance with regard to the opinion on this.

Pandit Thakur Das Bhargava: He can leave it over, consult his friends and find out whether it is necessary.

Shri Morarji Desai: It is necessary and, therefore, I do not accept his amendments. If he is dissatisfied, I cannot help him.

Pandit Thakur Das Bhargava: Before you put the amendments to vote, may I just enquire from the Minister if he is agreeable to the appointment of a committee which the previous Finance Ministers were agreeable to? They said they would appoint a committee.

Shri Morarji Desai: No; now, I would not give any promise which I cannot keep.

Pandit Thakur Das Bhargava: So, that means that the assurances given by the previous Finance Ministers do not stand. I am rather intrigued. One Finance Minister says that he will

appoint a committee, but another Finance Minister says that he is not bound by that assurance. The assurances were given in this House.

Shri Morarji Desai: Again, my hon. friend is very unreasonable. I have not said that I do not accept it. I do not know what the promise given was. I must go into that. Simply because my hon. friend mentions them here, I cannot accept the liability immediately. Certainly, I accept all the promises given by my predecessors. I do not go by disowning any promises. What is the use of saying all this?

Mr. Chairman: I shall now put amendments Nos. 1, 2, 51, 24, 52, 53, 3, 54 and 4 to vote.

The amendments were negatived.

Mr. Chairman: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3—(Charge of gift-tax)

Mr. Chairman: I find that there are five amendments to this clause, namely amendments No. 15, 25, 55, 56 and 26. Does any hon. Member want to move any of his amendments?

Pandit Thakur Das Bhargava: I beg to move:

Page 4, after line 18, add:

"Provided that in case of gifts made by a Hindu undivided family the rate of gift-tax shall be determined by dividing the said percentage by the number of persons entitled to partition in the family."

Page 4, after line 18, add:

"Provided that in case of gifts made by a Hindu undivided family the rate of gift-tax shall be one-third of the percentage of the rate of gift-tax provided in the Schedule."

Mr. Chairman: These amendments are now before the House.

Pandit Thakur Das Bhargava: I have already made my submissions, and the Minister has already replied to them. These amendments also relate to the Hindu undivided family. The Minister says he will look into this question. I am quite satisfied if he looks into the question. But the reply to these amendments will be the same as before, namely that he is unable to make a reply. So, I do not want to insist on making a speech and weary the House, for, if he is unable to reply, then what is the use?

Mr. Chairman: I shall now put amendments Nos. 55 and 56 to vote.

The amendments were negatived.

Mr. Chairman: The question is:

"That clause 3 stand part of the Bill".

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4—(Gifts to include certain transfers)

Mr. Chairman: I find that the Finance Minister has already read the amendments which are bad for want of sanction of the President, but that apart, the amendments are Nos. 57, 58, 5, 59, 6, 105 (which is incidentally the same as 6), 27, 7, 60, 28, 61, 66 and 106.

Shri Naushir Bharucha: I would like to know how my amendment No. 6 is out of order.

Mr. Chairman: Not out of order. I only said that it was the same as amendment No. 105. That was all.

Shri Naushir Bharucha: I beg to move:

Page 4, line 29, omit 'from the transferee'.

Shrimati Ha Falchoadhuri: I beg to move:

Page 5,—

after line 6, add—

"Provided, however, that for the purposes of this Act transactions of the following nature shall not be deemed to be gifts:

- (a) any amounts forgone by a managing agent in favour of the managed companies;
- (b) any transaction entered into in the ordinary course of business;
- (c) any transaction resulting from any compromise arrangement;
- (d) any amenities of any description whatsoever given by an employer to his employees or any class or classes of them or their dependants, including bonuses, gratuity payments, provident funds and pensions and concessional accommodation; and
- (e) any transaction entered into by any Trustee in the course of performing the obligations of the trust."

Shri Naidurker: I beg to move:

Page 4, line 31,—

add at the end—

"But the provisions of this sub-clause shall not be applied to any consideration, the right of recovery whereof has been barred by the law of limitation or by any other law for the time being in force;"

Page 4, line 39,—

add the end—

"But the provisions of this sub-clause shall not be made applicable to any terms of any *bona fide* compromise, entered into by the debtor and the creditor in any civil suit whereby the creditor

withdraws, abandons, or surrenders his full or any part of the claim in favour of the debtor and which the court, having regard to the provisions of the Gift Tax Act and pecuniary circumstances of the debtor and other circumstances of the case certifies to be *bona fide*".

Pandit Thakur Das Bhargava: I beg to move:

Page 4, line 21,—

after "where" insert "with a view to evade any tax,"

Page 4, lines 21 and 22,—

for "otherwise than for adequate" substitute "for grossly inadequate"

Page 4, line 26,—

after "where" insert "with a view to evade any tax,"

Page 4,—

(i) line 36, omit "not"; and

(ii) line 37, for "*bona fide*" substitute "*mala fide*"

Page 4, line 43,—

for "adequate" substitute "substantial"

Shri Assar: I beg to move:

Page 4, line 29, omit 'from the transferee'.

Mr. Chairman: These amendments are now before the House.

Pandit Thakur Das Bhargava: In regard to these amendments, my humble submission is that the way in which I look at this Bill is quite different from the approach of the Finance Minister or the Select Committee. To my mind, we should start with the presumption that all transactions between individuals are honest. It is only in those cases where the income-tax officer finds that there is an element of gift clothed as sale or otherwise, that he should interfere.

So, my first point is that I think the key to the whole clause is that unless and until the income-tax officer finds that the particular transaction has been made with a view to evade any tax, he should not look into it, because, after all, it is the business of the civil courts to decide civil disputes between parties. If between two persons there is a dispute whether a transaction is good or bad, whether it is without consideration or with excessive consideration or on the basis of fraud and misrepresentation or anything else, it is the civil court which should decide and not the income-tax officer. The income-tax officer is an executive officer; he is himself the police, and he himself goes into the question and investigates the matter, and subsequently he himself becomes the judge in his own cause. I do not object to that aspect because for a very long time we have lived under these circumstances. At the same time, now that he is being given extraordinary powers, powers which shall pertain to the domain of civil courts, I am anxious that the right perspective should be held before him.

Now, if there is surrender or release or compromise, or in the words of this clause, there is some other way of settling a dispute, I fail to see how the income-tax officer will do justice in that case.

17.00 hrs.

In the first place, as I have submitted already, if the people are not disingenuous and they want to evade the law, they will, before being called upon to appear before the income-tax officer, go to a civil court and get a decree from the court. Or they themselves will enter into a compromise and by arbitration or otherwise, make it as a rule of the court having the force of a decree. Will the decree be binding upon the income-tax officer or not? It may or may not be.

Shri Morarji Desai: Most certainly, it will be binding.

Pandit Thakur Das Bhargava: If so, then I will respectfully submit for the consideration of the hon. Finance Minister that in many cases this decree will forestall the action of the income-tax officer. Suppose there is a transaction in which the income-tax officer finds that there is an element of gift. He finds that that transaction should not have been concluded on payment of Rs. 6,000, as I mentioned earlier but on payment of Rs. 12,000. This means that there is an element of gift to the extent of Rs. 6000. If there is a decree before they come to the income-tax officer, the result will be that if the income-tax officer accepts that decree, he will not be able to go into the question at all. Therefore, what the hon. Minister wants will not be brought about. As a matter of fact, I am one with the hon. Finance Minister in seeing that so far as this law is concerned, it should be effectual. It should be able to plug all the loopholes and tax evasion should be avoided. I am as anxious as he in that regard; at the same time, I am afraid that if he gives to the civil court decree, a sanctity like that, it may be difficult to stop tax evasion. I would rather like that here one provision which we have got already, clause 42, were also considered. It runs thus:

“No suit shall lie in any civil court to set aside or modify any assessment made under this Act . . .”.

What happens is this. First of all, there is the civil court decree. Then the parties come before the income-tax officer. He finds that there is an element of gift. Therefore, he taxes them and assesses the tax. No civil court can interfere with that. So far so good, because the tax will be realised. At the same time, if the civil court decree is abided by, he will have to pass an assessment order according to the decree. This difficulty is bound to arise.

The hon. Minister has been pleased to say—and I think he rightly said that—that so far as business transac-

tions are concerned, they are not going to interfere with them. The only way in which you can see that business transactions are not interfered with is by starting with the presumption that these transactions are genuine and only if anything suspicious or fishy comes to notice, should the income-tax officer be able to interfere. Otherwise, the difficulty will be that he will have to probe into every transaction. It will be impossible in practice. If he does not do that, he will be accused of partiality. It will be said that he has not done his duty. Therefore, as a practical measure, I am submitting that the right course to follow is not to put these provisions in a positive form but to put them in a negative form. I have, therefore, proposed amendment No. 57 which says:

after “where” insert “with a view to evade any tax”.

Then I say in amendment No. 58:

Page 4, lines 21 and 22, for “otherwise than for adequate”, substitute “for grossly inadequate”.

This is the present law as per section 53 of the Provincial Insolvency Act. Whenever a question arises before a court whether with a view to defeat any creditor etc. a wrong transfer has been made, the question arises whether the consideration is grossly inadequate. In ordinary transactions, there are two parties. At least one party thinks that the consideration is adequate. The other party may just have an advantage over him. He may also think that he has effected a good bargain. But the bargain is not one which is entered into by both parties; the bargain is one in which there is a third party. The income-tax officer shall have to probe into that. He shall see whether the bargain is good or not. If that be so only in cases where the income tax officer has *prima facie* evidence to the effect that it is grossly inadequate consideration should he inquire into it.

Similarly, I am submitting in amendment No. 59:

"Page 4, line 26, after "where" insert "with a view to evade any tax".

In amendment No. 60, I say:

Page 4,—(i) line 36, omit "not"; and (ii) line 37, for "bona fide" substitute "mala fide".

Unless and until the income tax officer comes to the conclusion *prima facie* that there is a *mala fide* affair involved, he ought not go into the question. It will not be fair to say that it is not *bona fide*, the burden is upon the parties who have entered into the transaction to prove that it is *bona fide*. The parties have acted upon it; they regard it as a transaction which is *bona fide*. If a person says it is *mala fide*, it should be incumbent upon him to prove that it is *mala fide*.

I am anxious that income tax officers may have that power, because after all tax evasion can only be prevented in this way. But if you put it positively, the difficulty will be there, and this will not be done. Therefore, I want that it should be put in a negative way. Hence my amendments.

In amendment No. 61, I submit: that in page 4, line 43, for "adequate" substitute "substantial". This word is not mine. It has been used in many other Acts in which if there is a substantial consideration, the transaction is upheld. It is only disallowed or rescinded when the consideration is not substantial; otherwise adequate consideration means adequate to the notion of the income-tax officer. After all, he will not have the experience of all places, of all transactions. A transaction done in Hissar may come before the income tax officer in Calcutta and *vice versa*. These persons will not have that experience to find out if under the particular circumstances the consideration is adequate. It is enough if it is substantial.

Therefore, I am submitting that in the operation of all these provisions the approach of the income-tax officer should be that he must, to start with, accept that whatever is placed before him is honestly done; if he finds from the terms of the contract or the surrounding circumstances that there is something suspicious, he can probe into it and ask the parties to satisfy him and to the extent of his satisfaction, he can hold whether there is any element of gift in it or not. Otherwise, I am afraid that persons will be harassed to an extent which we cannot imagine. If every transaction of mine is opened by the income-tax officer—there may be a hundred transactions in one case—I do not know how the work will be done. After two years have passed since a transaction took place, it will be reopened and the parties will be called, resulting in harassment.

Therefore, I would request the hon. Minister to consider this amendment and accept it so that he may save the whole country from harassment. When he spoke when the Bill was referred to the Select Committee, he himself said that he does not want harassment to take place. I believe that he does want to avoid harassment, and Government do want to avoid harassment. If they want to avoid harassment, this is the only course open to them, the course which I am submitting. Therefore, this may be accepted. If transactions are reopened, the assessee will hand over for months and months. This is not a desirable state of affairs. This is not in accordance with the assurance that the hon. Minister himself gave, that he does not want any harassment or any business transaction to be interfered in this way. Therefore, I humbly request that my amendments may be accepted.

Shrimati Ila Palchoudhuri: The amendment I have moved is No. 66, in which I have also asked for certain clarifications. Unless these clarifications are there with respect to clause 4, it will be very difficult for business houses, as has already been pointed by

[Shrimati Ila Palchoudhuri]

my hon. and learned friend, Pandit Thakur Das Bhargava, will find it very difficult to carry on their business. In the course of their business, there are many transactions they have to do, and unless these provisions are put in, it will be very difficult for the businessmen to operate. In the ordinary course of course, they have, for instance to give trade discount. This will be taxed. The unconscionable powers given to the income-tax officer to go and harass them over every little deal will make it very difficult for business houses to function. Look at the paper industry for instance. The manufacturers have given a verbal assurance to Government that they will not sell the paper above a certain price. Now, actually, the market price may go up due to the demand. The Gift Tax Officers will be able to treat the difference between the market price and the actual price at which it is sold by the manufacturer for the purpose of taxation.

Shri Morarji Desai: The market price is the price fixed by Government and not the black-market price.

Shrimati Ila Palchoudhuri: Even if it is not the black-market price, there may be certain rises and there are so many adjustments. If it is left to the Gift Tax Officer to judge what is to be taxed and what is not to be taxed, then, every little transaction will have to be looked into and it will become difficult not only for the business houses but also to their employees.

For instance, amenities of any description whatsoever may be given by an employer to the employee. He may give them housing and all sorts of amenities. Is all this going to be taxed? All that is not clarified in clause 4. I hope the hon. Minister will accept my amendment and thus clarify clause 4 so that there may not be any difficulty and harassment for businessmen. If we want business to function, we must also make it possi-

ble for them to function without harassment.

Shri Naushir Bharucha: The amendment which I have moved relates to clause 4 (b). It reads as follows:

"Where property is transferred for a consideration which, having regard to the circumstances of the case, has not passed or is not intended to pass either in full or in part from the transferee to the transferor, the amount of the consideration which has not passed or is not intended to pass shall be deemed to be a gift made by the transferor;"

My amendment is that the words 'from the transferee,' should be omitted.

This clause, as it stands, does not take into account the actual practice prevailing in the legal profession. Today, hundreds of conveyances are daily made where the consideration does not move from the transferee but on behalf of the transferee from someone else. I shall give one illustration. If I sell a house to X and X says that the conveyance should be made in the name of his son Y and if I make it, as the clause stands, the consideration does not proceed from the transferee Y but it proceeds from X.

Mr. Chairman: But does not the word 'transferee' include his representatives?

Shri Naushir Bharucha: It will not include. That is exactly the difficulty. What will actually happen is this. If I make a conveyance in the name of Y and receive the consideration from X, it is a perfectly bona fide transaction in the eye of law. But, still, I have to pay the Gift Tax on the sale proceeds of the house which I am selling. That is an absurd thing. Every day hundreds of conveyances are drafted where A sells a house to B for, say, Rs. 1 lakh, takes the money from B, and makes the conveyance in the name of C, B's son. I appeal to

the hon. Finance Minister to consider this thing whether this will at all fit in with the existing practice prevailing in the legal profession.

Shri Morarji Desai: Sir I have heard very carefully my hon. friend Pandit Thakur Das Bhargava. He says that I should start by considering every transaction *bona fide*.

Shri Naldurgker: Sir, I have some amendments to the same clause.

Mr. Chairman: Does the hon. Member want to speak?

Shri Naldurgker: Yes, Sir.

Mr. Chairman: I would request the hon. Member to be as brief as possible.

Shri Naldurgker: Sir, I have moved my amendment to clause 4. It is:

"But the provisions of this sub-clause shall not be applied to any consideration, the right of recovery whereof has been barred by the law of limitation or by any other law for the time being in force;"

I want to submit that the wording is, "where the property is transferred for a consideration which, having regard to the circumstances of the case, has not passed....". According to the Limitation Act, three years' time has been prescribed to institute a suit for the recovery of the consideration that has not passed. Up to the time of limitation the transferor will have to wait for the recovery of the consideration. Supposing the right becomes time-barred. Under these circumstances, can such a transfer on the part of the transferor be considered as gift? I think it would be quite impossible.

Shri Morarji Desai: If it is colluded it will be; not otherwise.

Shri Naldurgker: If the consideration has not passed—what does that mean? If the consideration has not passed, according to the Limitation Act, three years' time is prescribed for the institution of a suit for the recovery of the consideration that has

not passed. Supposing the three years' time lapses and the right becomes time-barred? Under these circumstances, I submit that it should not come under the purview of clause 4.

If consideration is not intended to pass: According to the Contract Act when a certain contract is entered into without consideration, that contract is *ab initio* void. Supposing A contracts to transfer his property of Rs. 2 lakhs without any consideration, there is no contract at all according to the Contract Act. It means that the transfer is void and there is no transfer according to law. If the circumstances are such that consideration has not passed or is not intended to pass, such a transfer is void according to the Contract Act. Under these circumstances, according to clause 4(b), such transfers would come under gift.

There are various benami transactions in our country. Supposing there is a judgment debtor A and his creditor wants to execute a decree. In order to save his property, A wants to transfer the property nominally in favour of B his son. Such a transfer is called a benami transaction. These have been recognised by Hindu law and by the decisions of Courts. In those circumstances, it is not a transfer according to law. Therefore, I submit that my amendment should be accepted by the hon. Finance Minister.

I have also moved another amendment, No. 28. It reads:

"But the provisions of this sub-clause shall not be made applicable to any terms of any *bona fide* compromise, entered into by the debtor and the creditor in any civil suit whereby the creditor withdraws, abandons, or surrenders, his full or any part of the claim in favour of the debtor and which the Court, having regard to the provisions of the Gift Tax Act and pecuniary circumstances of the debtor and other circumstances of the case certifies to be *bona fide*;"

There are various matters in this case. The creditor has to surrender or

[Shri Naldurgker]

abandon the whole of his right or any part of his claim. I am afraid that this clause does not make any sort of provision regarding *bona fide* compromises. I submit it will lead to unnecessary litigation on the part of a creditor and other persons who do not want to go to a court. They will be forced to go to the court to exercise their rights. I think this is rather unfair, at least as far as debtors are concerned. We are now proceeding towards socialism and we have to ameliorate the conditions of the poor and indebted persons. In these circumstances, I think, the hon. Minister will consider this amendment and give relief to the indebted persons.

Shri Morarji Desai: Sir, I have very carefully considered what my hon. friend, Pandit Thakur Das Bhargava said. He wants to put it in the positive; and here it is put in the negative. It is difficult to say that every business transaction must be considered *bona fide* and we must proceed on this basis. Ordinarily, this is how one should go on. Therefore, it is mentioned here that if it is for inadequate consideration it will be so treated. If it is said, grossly inadequate, who is going to define 'grossly' and 'inadequate', both? It is the same difficulty for the Income-tax Officer. If he makes a wrong decision and does it for harassing, there is no doubt that such an officer will be punished in an exemplary manner. I have no doubt in my mind about that. I have no doubt in my mind that steps will be taken to do that. There is no intention on the part of anybody that there should be any harassment. We shall try to issue administrative instructions wherever necessary and see that harassments are not there. Therefore, there should be no fear about harassment in this matter. If we put it in the manner in which it is put, then it will be very difficult. That will lead to more harassment because the Income-tax officer will have to prove everything himself. He will have to call them several times and do many things. That will be more a source of harassment

than this. Then the income-tax officer will have to prove his *bona fides*. Therefore, I do not see why the hon. Member is afraid of it.

As regards the amendment of Shri Bharucha, this was considered very carefully in the Select Committee and we saw no reason to accept it because it does not make any difference and, therefore, it is not necessary to accept it.

As regards the amendments moved by my hon. friend, Shri Naldurgker, he does not seem to have read the amended clause 4(c). It provides for all those contingencies which he has in his view and there is no question of taking any gift tax from all these people. But if there is any collision whereby the limitation period is allowed to pass by, then certainly it will be a gift. In all cases, where there are *bona fide* limitation periods coming in, there is no question of charging any gift tax. That is provided in clause (c). I do not accept the amendments.

Mr. Chairman: Does any hon. Member want his amendment to be put separately to vote? No. Now, I shall put all the amendments to the vote of the House.

The amendments were put and negatived.

Mr. Chairman: The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5.—(Exemption in respect of certain gifts)

Mr. Chairman: Now, there are quite a large number of amendments to clause 5. I shall straightaway indicate those which are struck down as being out of order because the President's sanction has not been obtained: 62, 71, 107, 73, 72, 112, 16, 17, 113, 99, 12, 18, 29, 65, 74, 100, 114 and 77. I think that it will help the hon. Members if

I read out the numbers of these amendments which are out of order.

Shri Bimal Ghose: Sir, I have asked for permission but I presume that permission has not been received for my amendments Nos. 16, 17 and 18.

Mr. Chairman: I have just now read that they are out of order.

Shri Bimal Ghose: You have said that the President's permission has not been obtained. I have said that I have written for permission and I presume that it has not been obtained.

Mr. Chairman: I think it was handed over to the Minister but it was too late and it could not be obtained. So, the fact is that they have not been obtained.

Shri Naushir Bharucha: Sir, I beg to move my amendments Nos. 8, 9, 10, 13 and 14.

Shri Prabhat Kar: I beg to move my amendments Nos. 111, 115 and 116.

Shri Braj Raj Singh: I am moving my amendments Nos. 75 and 76.

Shri Bimal Ghose: I am moving my amendments Nos. 19 and 20.

Fandit Thakur Das Bhargava: I am moving my amendments Nos. 63 and 64.

Shrimati Ila Palchoudhuri: I am moving my amendments Nos. 67 and 68.

Shri K. Periaswami Gounder: Sir, I am moving amendment No. 97.

Shri Subbliah Ambalam (Ramanathapuram): Sir, I am moving my amendment No. 98.

Shri L. Achaw Singh (Inner Manipur): I am moving amendments Nos. 75 and 76.

Mr. Chairman: They have already been moved.

Shri Assar (Ratnagiri): Sir, I am moving my amendments Nos. 108, 109 and 110.

Mr. Chairman: Amendments Nos. 109, 110, 20 and 116 will not be treated as moved as they are covered by other similar amendments moved earlier, namely 67, 10, 75 and 76 respectively.

Shri Naushir Bharucha: I beg to move:

Page 5, line 24,—

add at the end—

"or to any public charitable purpose, as defined in Section 2(17) of the Estate Duty Act, 1953".

Page 5, line 22,—

after "established" insert "or which may hereafter be established".

Page 5, line 25,—

omit "charitable".

Page 6, line 12,—

after "gratuity" insert "provident fund or other retirement benefit".

Page 6,—

after line 17, insert—

"in favour of his wife or children or any person dependent on him, or any one or more of them, when the gift is made out of the moneys received by a person as his bonus, gratuity, pension, provident fund or any other retirement benefit."

Shri Braj Raj Singh: I beg to move:

Page 6,—

omit lines 18 to 21.

Page 6,—

omit lines 25 to 33.

Shri Prabhat Kar: I beg to move:

Page 5, line 27,—

for "1958" substitute "1957".

Page 6,—

omit lines 22 to 24.

Shri B. C. Ghose: I beg to move:

Page 6,—

omit lines 8 to 10.

Fandit Thakur Das Bhargava: I beg to move:

Page 5,—

for lines 22 to 24, substitute—

“(v) to any institution or fund or trust established for a charitable purpose;”

Page 5, line 29,—

after “made” insert “to any particular person”.

Shrimati Ila Palchoudhuri: I beg to move:

Page 5, lines 23 and 24,—

omit “to which the provisions of section 15B of the Income-tax act apply”.

Page 5,—

after line 24, insert—

“(vv) to any Chamber of Commerce, Trade Association, Society or other non-profit making Organisation, whether registered under any Act or not, or to any Corporation, Trust, Fund or Foundation organised and operated exclusively for any religious, charitable, scientific, literary, educational or public purposes;”.

Shri K. Periaswami Gounder: I beg to move:

Page 5,—

after line 16, add—

“(c) whose property shall not be liable to pay any estate duty, if he is dead on the day he makes the gift.”

Shri Subbiah Ambalam: I beg to move:

Page 5,—

(i) in line 30, for “one hundred” substitute “five hundred”.

(ii) in line 32, for “five hundred” substitute “three thousand”.

Shri Assar: I beg to move:

Page 5, line 22,—

after “charitable” insert “or religious”.

Mr. Deputy-Speaker: These amendments are now before the House.

Shri Naushir Bharucha: Sir, I shall be very brief. The subject matter of my amendment has been discussed already but two points of view have not been put forward.

5.28 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

In the first place, certain charities which are called communal charities are subject to gift tax while others which are called non-communal charities have been exempted. I have sought by my amendment No. 9 to add at the end of line 24 on page 5 the words “or to any public charitable purpose, as defined in Section 2(17) of the Estate Duty Act, 1953”. Public charitable purpose has been defined in the Estate Duty Act as follows:

“Public charitable purpose includes relief of the poor, education, medical relief and the advancement of any other objective of general public utility within the territory of India.”

The effect of my amendment will be this. All those charities as have been defined under Section 2(17) of the Estate Duty Act would be covered by the exemption granted under sub-clause (v) of clause 5 of the Bill. This amendment is based upon certain logic. The hon. Finance Minister has stated that income-tax is enforced upon communal charity but is forgetting that the income of these ‘communal’ charities is exempt from calculation under

section 4 of the Income-Tax Act. What is more is that incomes of such so-called communal charities are also exempt from the estate duty. Therefore, all I am trying to do is to bring the Gift Tax Bill in line with the Estate Duty Act and the Income-Tax Act as it stands.

When the hon. Minister says that only non-communal charities mentioned in Sec. 15B of Income-Tax Act will be exempted, he is only permitting exemptions to a limited number of charities. What is his objection? He says, we do not desire to encourage communalism. In the first place, the intention of this Bill is not to encourage or discourage communalism. But, as the Bill now stands, what will happen is, if I say that a charity shall serve only to a particular village only and the whole of India is excluded, even if the village be of 200 people, then it is a non-communal charity and I shall get exemption. If I say that the charity shall be applied to one square mile of a particular area—territorial—in that case also I earn exemption. But, if I say that the charity can be applied to a particular community in the whole of the Punjab which may run into millions, then I am not entitled to exemption. There is no logic in what the hon. Minister wants to do.

If he says that the gift should be universal, a so-called communal gift may be much more universal than a gift which is applicable only to a particular village or a particular territory. What is more? I can even say that Gujerati-speaking people shall only be entitled to this charity and still earn exemption. I ask, Sir, what is the logic behind cutting out the so-called communal charities?

The hon. Member, Shri Menon, said that the State looks after the people, the State provides hospitals and all these things. May I point out, Sir, that in the State of Bombay of which the hon. Finance Minister was once the Chief Minister, a State which is regarded as very progressive and advanced, the *per capita* expenditure on medical

relief per annum is only ten annas—on public health it is still less. Now, in cases like this, when private philanthropy fills up the gap and it does some good, which good is recognised in the Estate Duty Act, I ask, why is it being omitted from this? After all, today, the State is not in a position to relieve distress to the extent of even one per cent. Let us understand that clearly. And, private philanthropy has been the tradition of this country for hundreds of years. Private philanthropy fills up an important gap. At one stroke, people should not be discouraged from donating for private or, what they call, communal charities. It has been said that the gift-tax does not wish to ban gifts given to communal charities but it only says give it, but give gift-tax to the Government. Discouragement comes from this. Once people know that they have to keep an account of the gifts they donate and they have to face the Gift-Tax Officer, the inclination will be not to give any thing in charity whatsoever rather than get entangled in proceedings before the Gift-Tax Officer. It is not merely the tax itself; the fear of being entangled and harassed by the Gift-Tax Officer will deter charity.

The second point that I am making—and it is obvious—is this. We have exempted bonus, gratuity and pensions from Gift-Tax, but we have not excluded provident fund, which I think is merely an oversight. If we exclude gratuity, pensions and bonus, why not provident fund also. My amendment seeks to cover provident fund. I will give one illustration. Supposing after 30 years of service, I collect a provident fund of Rs. 50,000, if I have no wife and only a son whom I desire to set up in business, then I have to pay gift-tax on Rs. 40,000 (excluding the Rs. 10,000 basic exemption). After all, provident fund means that it is to provide for somebody, often other than the man who has earned—wife or the children—and it is this amount that we are taxing. The hon. Finance Minister will again say: "Let him pay the Tax, we are not stopping him from providing for the son". But, take the case of a person who has got Rs. 50,000

[Shri Naushir Bharucha]

and wants to set up his son in business with a capital of Rs. 50,000. He has to pay Rs. 2,000 to the Government at a time when he has no source of income, and when he definitely wants to provide for his son, not out of charity, but because the provident fund really is intended for him. I appeal to the hon. Minister to look into these things, to take into consideration the existing facts in life. I appeal to him, therefore, to consider the desirability of accepting this amendment.

Shri Bimal Ghose: Sir out of the five amendments that I have sought to move to this clause, three have been debarred because the permission that I had sought has not been obtained. As you will see, Sir, this is the most important clause of this Bill and, in my opinion, this clause effectively frustrates this Bill and makes it absolutely innocuous because these exemptions really make the position worse than if the Bill had not at all been introduced. I shall explain. The Finance Minister said, for example, that the gift of Rs. 1 lakh to the wife will not be exempted from the wealth tax. Yes, it will not be exempted from the wealth-tax for the first year, but what happens in the subsequent years? If that Rs. 1 lakh was not gifted away to the wife, in subsequent years that amount would have come under the wealth-tax or the expenditure tax. Now it can be taxed under the wealth-tax only just before it is gifted away, subsequently it will no longer come under the wealth-tax or the expenditure tax. In the same way, all the exemptions will have the effect of reducing the revenues from wealth-tax in subsequent years. Therefore, I feel if this Bill were not introduced the position from the point of view of revenues to the Government would have been very much better.

I am sure on that point. And, if the consideration, which the former Finance Minister had put forward,—which Pandit Thakur Das Bhargava read out—of the Government is only revenue that is to be paramount, then

I feel that if the former Finance Minister were here he would not have felt very enamoured of this Bill.

What has happened? We have adopted all the tax measures which Prof. Kaldar had suggested. We can say: "Here is a country which has introduced so many tax measures. We are most progressive". But the revenue from all these tax measures would be only about Rs. 15 crores to Rs. 20 crores. For the introduction of these tax measures we made certain remissions of income-tax of the highest slab from 84 per cent to 77 per cent. That way we would have lost about Rs. 3 crores to Rs. 5 crores, so that we shall not have gained more than Rs. 10 crores by enacting all these measures namely, expenditure tax, wealth-tax estate duty and others. Whereas, on the other hand, we have increased indirect taxation over a two-year period by about Rs. 100 crores, with all these taxation measures we have not been able to increase direct taxation by more than Rs. 10 crores or Rs. 15 crores. Therefore, what have we gained by introducing all these taxation measures? That is a question that I would like to ask the Government.

Coming to these specific sub-clauses (xii) and (xiv) of clause 5 which I want to be deleted, I do not understand the significance of this. Why should a gift be necessary for the education of the children? We have provided under the expenditure-tax exemption for the education of children. What is the necessity of a gift for the education of the children? I do not understand that. I also do not understand as to why there should be an exemption for gift in the case of business, profession or vocation made *bona fide* for the purpose of such business, profession or vocation. In the case of no business is a gift necessary for purposes of business. If anything is paid to anybody, it must be for some consideration. Therefore, I think this was introduced merely for enabling gifts to be made to political

parties; otherwise, I cannot for myself visualise a case where a company or a person needs to make a gift for the *bona fide* purpose of the business. If it is for the *bona fide* purpose of the business, let him pay the tax because he must be getting some benefit out of it. Otherwise, no businessman will make a gift for the purpose of business. Therefore, I think it is unnecessary. That is why I have brought in an amendment for the deletion of these two sub-clauses.

Shri Prabhat Kar (Hooghly): As many of my amendments have not been allowed to be moved on the ground that they require the permission of the President—there are some technical difficulties in the way—I shall be brief and speak on clause 5. Clause 5 being the most important clause, naturally, the effect of the gift-tax will depend on it, from the point of view of revenue for the Government. As my hon. friend Shri Bimal Ghose has said, when we see clause 5 at it stands today, we feel that it would have been better perhaps that the Gift-tax Bill was not brought at all. He has pointed out certain lacunae as a result of these exemptions. I want to stress one or two points. First of all, I want to point out the charitable purposes. Much has been made out in regard to the tradition of India. Yes; we are talking about the tradition of this country for two thousand years, when people never died of hunger or never died of starvation. So, we are thinking of the traditions of India of those days which do not exist today. But we know also today how charities are made and what are the charitable purposes. We also know for a fact that persons who adulterate the food of the people, persons who adulterate food and poison it and poison the people, erect temples as a charitable purpose. They commit a sin and at the same time they erect a temple and call it a charitable trust and give some percentage of money to the Government. They create a charitable trust and allow some four or five per-

sons to live there. I know these things are done. One of the important literateurs of Bengal, Shri Parasu Ram, has written a story *Shri Siddeshwar* which deals with such things. A man who adulterates food and earns a few lakhs of rupees puts up a Shiva temple. He commits the sin of adulterating food and he knows it and as though like an atonement for the sin, he puts up a temple and makes a charitable trust. This is how things happen. Persons who are rich and who avoid taxes, cheat the Government by evading taxes, they put up charitable trusts so that the people may not look to their sins and say that they have evaded taxes but look to their charitable trusts. This is the type of thing we do not want. We do not support these things and we do not like the charity which is made out of such acts. I would say that in no circumstances we should tolerate such things and we have no reason to be soft to such people.

Mr. Deputy-Speaker: Does the hon. Member think that such people should keep all the money with them, the money that they earn by these methods?

Shri Prabhat Kar: We want them to pay the taxes to the Government. We do not mind their charities, but they should pay the taxes to the Government. It is not that such people should be debarred from making charities. But they should also pay the taxes. Nobody is debarred from creating trusts.

Mr. Deputy-Speaker: The danger expressed on that side is that they will not part with the money.

Shri Prabhat Kar: Tax them. We want the taxes to be paid.

Shri Bimal Ghose: Conscience will prick so much that they will give.

Shri Prabhat Kar: These are the persons who always behave in this way. You should not say that because of the charities, they should not pay the gift-tax. My only point is, impose

[Shri Prabhat Kar]

the gift-tax. But they may be allowed to continue to make their charities and create trusts. It is not that they are not in a position to pay the gift-tax. The man who gives away Rs. 5 lakhs or Rs. 10 lakhs by way of charity should be able to pay gift-tax to the Government and thus enable the public exchequer to grow. That is the main point. Do not give them a lead to evade taxes in any way.

Next, I come to sub-clause (xiv). Shri Bimal Ghose said that it is for the purpose of providing an impetus to the companies for giving contributions to political funds. I am not going to discuss the propriety or otherwise of it. Not at all. But today, it is a fact that large sums are being given to the political parties. I am not at all raising the point whether we should be approving of it or not, or whether it comes under morality or immorality. What I say, is, why not they pay gift-tax. They have the liberty. Give them the liberty to contribute to any political party. But what is the reason for the Government saying that they shall not impose a gift-tax on them? What are the reasons and what is the purpose? The companies have been subscribing and they have been giving it. We may not object to it, but why should we not impose a gift tax on them? When they make such types of grants, why do you say that they should not pay the tax to the Government? Why should we exempt them from paying the gift-tax? It is not a question of the companies contributing to political parties at all. The point is, why they should be exempt from paying the gift-tax.

The second point is, how the companies make any donation or gift. We know, and the hon. Finance Minister knows perfectly all right, and it has been stated, that so far as the companies are concerned, they are being run simply for earning profit. Now, under no circumstances will any company part with a single pie unless it is assured of a profit, whe-

ther it is one per cent. or half a per cent. or a quarter per cent. How can we imagine that a company will make certain gifts which may not attract the provisions of this Bill? Yet, we have said here:

"in the course of carrying on a business, profession or vocation, to the extent to which the gift is proved to the satisfaction of the Gift-tax Officer," etc.

How can it be said so? I do not know exactly the reason why. At least a company should not be exempt from the provisions of this clause for purposes of the gift-tax.

Lastly, there is the question of discrimination between one citizen and another. That is the question of privy purse. The privy purse is tax-free. Any gift made out of that again will be tax-free. There will be no gift-tax levied on it. We have exempted the princes from the wealth-tax. A small part of the privy purse is also exempt from expenditure-tax. Now we are exempting them from the gift-tax. Already there is no income-tax for them. I do not understand why on the huge amount of money which is being paid as privy purse no tax will be imposed. Are they so sacrosanct that however difficult the position of the Government might be, a gift-tax cannot be imposed on them? In every piece of legislation that puts a tax on the people, we are just exempting this privy purse and putting it outside the scope of such taxation measure. I feel that this type of discrimination should not be there. They should pay the same tax as is imposed on every other citizen of the country according to the provisions of the Bill.

I have said what I wanted to say so far as clause 5 is concerned. As I said, many of my amendments are being held as out of order. Yet I hope this amendment of mine to clause 5 may be accepted.

श्री ब्रज राज सिंह (फिरोजाबाद) :
उपाध्यक्ष महोदय, मैं अपने अमेंडमेंट नं० ७५
और ७६ को प्रस्तुत करता हूँ, साथ ही जो
दूसरे संशोधन थे, जिन्हें आउट ऑफ आर्डर
करार दे दिया गया है . . .

उपाध्यक्ष महोदय : अब उनके विषय
अफसोस करने की जरूरत नहीं है ।

श्री ब्रज राज सिंह : अफसोस करने की
जरूरत सिर्फ इसलिये है कि यह क्लाम ही
इस विधेयक का आत्मा है और जब उम्क
आत्मा निकाल दी जाती है तो मैं नहीं समझता
कि इस विधेयक में कुछ रह जायेगा । इस
क्लाज में ही वे सारी व्यवस्थाएँ काँ गई
हैं जिन के जरिये हम जो टैक्स लगाना चाहते हैं
उसे माफ कर दिया जायेगा, और मेरे जो
संशोधन थे उनके द्वारा मैंने यह चाहा था कि
इन व्यवस्थाओं को खत्म कर दिया जाय
जिन में कि हम टैक्स का माफ करने जा रहे हैं ।
जैसा कि दूसरे माननीय मित्रों ने कहा, मुझे
यह लगता है कि इस क्लाम का, जिस शकल
में यह है, मान लेने में न सिर्फ हम दस गिफ्ट
टैक्स के जरिये सरकारों खजाने का फायदा
नहीं करेगे वरन् जो प्रत्यक्ष कर लगाये गये हैं
प्रॉफेसर कैल्डोर की सिफारिश पर उन सब
को मिला कर हमें नुकसान और होगा । एक
तरफ हम देखते हैं कि अप्रत्यक्ष कर बहुत
बड़े तादाद में बढ़ रहे हैं और दूसरी तरफ
जब प्रत्यक्ष करों के बढ़ाने का मसाला आता है
तो न सिर्फ जो बड़े बड़े प्राइवेट लोग हैं उनकी
तरफ से रूकावटें डाली जाती हैं वरन् जब इस
तरह के टैक्स के बिल प्रवर मितियों का
भेजे जाते हैं तो वहाँ पर भी यह बात सच
साबित होती है कि वह ऐसे लोगों को और
छूट देना चाहते हैं और इन टैक्सों का अच्छी
तरह से बढ़ाना नहीं चाहते ।

हम सभी जानते हैं कि प्रॉफेसर कैल्डोर
ने ३० करोड़ का अनुमान लगाया था कि
इस तरह का गिफ्ट टैक्स लगा कर हम ३०
करोड़ ६० पैदा कर सकते हैं । उसका जब

बिल पेश किया गया तो ३ करोड़ ही
रक्का गया और अब यह कहा जाता है कि
वह शायद २ करोड़ ही होगा । मेरा अन्दाजा है
कि वह शायद १ करोड़ से कुछ ज्यादा
होगा । तो मैं यह चाहता हूँ कि इस क्लाम में
जो एग्जेंशन दिये गये हैं, जो छूट दी गई है,
उनको न दिया जाय और उनके लिये मेरा
कहना यह है कि जैसा इस विधेयक के क्लाम
५, सब मसालों का नं० ३ जो है, उगमें
लिया है :

"of property in the form of
savings certificates issued by the
Central Government, which that
Government, by notification in the
Official Gazette, exempts from
gift-tax;"

अब १० हजार तक तो कोई गिफ्ट टैक्स है
ही नहीं, इसके ऊपर जो सर्टिफिकेट हैं उनको
सरकार माफ कर देगी, उन १० करोड़ टैक्स
नहीं लिया जायेगा । होता है कि कुछ
लोग हैं जो ऐसे तरीकों से रुपया पैदा करते हैं
जो तरीके समाज विरोधी होते हैं, उनसे
कुछ मन्दिर बनावायेगे, कोई और काम करेंगे ।
हमारे मुक्त में एक बड़े १ जीर्णित हैं उन्होंने
बृन्दावन में एक मन्दिर बनवा दिया और इसके
लिये जो राया इकट्ठा किया गया वह
ग्वानियर में एक कड़ा मिला है उग में जो
धर्मिया ३ या ४०० की थी उन पर सरकारों
तीर में ६०० तिक्का कर पेश किया गया ।
तो मेरा कहने का मसाला यह है कि जो यह
सर्टिफिकेट खरीद जायेंगे, वह किन तरह के
होंगे ? वह मेहनत से पैदा किया हुआ
रकबा नहीं होगा, मेहनत से पैदा किये हुए
रकबे में सर्टिफिकेट नहीं खरीद जा सकते
और जब इस तरह के लोग सर्टिफिकेट
खरीदते हैं तो उनको कोई छूट नहीं दी
जानी चाहिये ।

इसी तरह में सवाल उठता है कि जब
शादिया हों तो १०,००० ६० तक की हर
रिश्तेदार के ऊपर छूट दे दी जायेगी, उस पर
कोई टैक्स नहीं लगेगा । इस मुक्त में कितने

[श्री ब्रज राज सिंह]

ऐसे लोग हैं जो शादी के बाद १०,००० रु० रिश्तेदारों को दे सकते हैं? मैं समझता हूँ कि बहुत ही कम लोग निकलेंगे। इस तरह की दलीलें दी जाती हैं कि कुछ लोगों को मारा नहीं जा सकता, उनकी हत्या नहीं की जा सकती, पूरे मुल्क के विकास और फायदे के लिये। मैं कहता हूँ कि यहाँ किसी की हत्या नहीं की जा रही है। हमने जो समाज व्यवस्था स्वीकार की है वह इस तरह का है कि हम किसी की हत्या नहीं करना चाहते। हम तो अहिंसक लोग हैं जो इस मुल्क में रह रहे हैं। अगर किसी से टैक्स के रूप में रुपया ले लिया जाय, जिस के फायदे काफ़ी रुपया है, तो उसने उसकी हत्या नहीं होगी। हम जो समाज व्यवस्था कायम करने जा रहे हैं उसमें नीचे से नीचे की आमदनी कितनी हो, या उंचे से उंचे की आमदनी कितनी हो, वह दस या बीस गुने में ज्यादा नहीं हो सकती। लेकिन जिन पर यह टैक्स लगेगा उनकी आमदनी में और दूसरों की आमदनी में हजार गुना का फर्क है। अगर हम हजार गुना को छटा कर ५०० गुना तक भी लाया जाय तो उसका कोई फायदा होने वाला नहीं है। तो यह दलील देना कि हम दस बीस हजार लोगों को मारना चाहते हैं, गलत है, अतः इस तरह की जाँ छूट दी जा रही है वह उचित नहीं है।

इसी तरह से पति द्वारा पत्नी के लिये और पत्नी द्वारा पति के लिये १ लाख रु० तक के उपहार के देने की छूट है, इस पर कोई टैक्स नहीं लगेगा। कितने लोग इस मुल्क में हैं जो पत्नी को १ लाख रु० का उपहार दे सकते हैं या पत्नी अपने पति को १ लाख रु० उपहार दे सकती है। बहुत ही कम लोग ऐसे निकलेंगे, मुश्किल से हजार निकलेंगे। उन पर आप चाहते हैं कि यह टैक्स न लगे। किन्तु खेद है कि आज आप जो सोशललिस्टिक पेटर्न आफ सोसायटी की बात करते हैं, समाजवाद की बात करते हैं उसमें यह बात फिट नहीं होती है कि इस तरह

से एक लाख रु० तक के उपहार की छूट दी जाय।

इसी तरह से आप ने जो संशोधन एलाउ किये हैं, आर्डर में धोषित किये हैं उन में मैंने कहा है कि पेज ६ पर लाइन १८ से २१ तक निकाल दी जाय। लाइन १८ से २१ तक जो सब क्लॉज़ १४ है उस में लिखा है :

"in the course of carrying on a business, profession or vocation, to which the gift is proved to the satisfaction of the Gift-tax Officer to have been made bona fide for the purpose of such business, profession or vocation;"

अब उसमें व्यापार में कौन सी इस तरह की चीज हांगी जो बानाफाईडी काम के लिये होगी? मैं नहीं समझता कि इसके अलावा कुछ और हो सकता है जैसा कि बम्बई और कलकत्ता के हाई कोर्ट के माननीय जजों ने ध्यान दिलाया। वहाँ पर जजों ने कहा कि कम्पनी के आर्टिकल्स आफ ऐमॉनिशान में संशोधन करने की इसलिये जरूरत है कि जिस पार्टी का वह सहायता देना चाहते थे उस पार्टी का सरकार जब बने तभी उनका बिजिनेस चल सकता है। अगर इस की यह मंशा है तो मैं कहना चाहता हूँ कि यह बहुत खतरनाक बात हम देश की राजनीति के लिये पैदा कर रहे हैं जब कि बिजिनेस हाउसेज के व्यापारी यह सोचें कि हमें जो खास पार्टी है, चाहे वह कांग्रेस पार्टी ही क्यों न हो, या कोई और पार्टी हो, उस पार्टी का सरकार बनाने के लिये रुपया देना हांगा और इस लिये हम उन्हें माफी दे दें कि उस पर कोई गिफ्ट टैक्स नहीं लगेगा।

इसी तरह में मेरा तीसरा संशोधन है, उसके लिये कोई ऐसी वजह नहीं है कि मुल्क में कुछ खास लोगों को छोड़ दिया जाय, इस लिये कि उनके साथ कोई ऐग्रिमेंट हुआ था, किसी खास वक्त पर कि भविष्य में जब बेल्ट टैक्स का सवाल आता हो, एस्टेट ड्यूटी का सवाल आता हो, उस पर प्रत्यक्ष कर लगाने का सवाल आता हो, तो उसे छूट न जाय।

में कहना चाहता हूँ कि जहाँ क्लॉज ५ का सवाल है, यह इस विधेयक की आत्मा है और इस विधेयक में इस तरह की छूटें दे कर, आप विधेयक का जो उद्देश्य है उसे खत्म कर देना चाहते हैं। इस विधेयक का उद्देश्य प्रत्यक्ष करों को बढ़ाना है, इस रूप में जिससे कि जिस समाज को हम बनाना चाहते हैं और समता तथा बराबरी का समाज कायम करना चाहते हैं, उसके लिये और मुल्क के विकास के लिये पैसा मिल सके। मुल्क के विकास के लिये जब पैसा लेने का सवाल आता है तो कहते हैं कि विरोधी लोग इसका समर्थन नहीं करना चाहते हैं, लेकिन इस विधेयक का आज कौन विरोध कर रहा है। जब दफा ५ में छूट दी जा रही है, उसका कौन विरोध कर रहा है, विरोधी दल ही तो कर रहा है सरकार तो छूट देना चाहती है हम चाहते हैं सरकारी खजाना बढ़े, उमका पैसा मिल सके, जिस में मुल्क का विकास हो, लेकिन अफगांस की बात है कि सरकार पैसा नहीं लेना चाहती। जिन के पास पैसा है, उन से पैसा लेने की जब बात होती है तो उस को टाल दिया जाता है। जब भी इस तरह के कानून प्रवर समिति को भेजे जाते हैं, जिन में अप्रत्यक्ष कर बढ़ता है, तो हमारी आशंका सही साबित होती है। सेलेक्ट कमेटी से जो भी कानून आयेगा उस में अप्रत्यक्ष करों में बढ़ोतरी होगी, लेकिन जब प्रत्यक्ष कर लेने की बात होती है और प्रवर समिति को जब वह बिल भेजा जाता है तो इस प्रकार से छूटें दी जाती हैं। इससे साबित होता है कि हमेशा प्रवर समिति का झुकाव सरकार की ओर रहता है, और सरकार इस बात को मान लेती है कि इस प्रकार के प्रत्यक्ष कर कम कर दिये जायें।

क्लॉज ५ के सम्बन्ध में मेरा निवेदन यह है कि क्लॉज सारं का सारा टैक्स को घटाता है। सरकारी खजाने में कम पैसा आयेगा, इस से तो लोगों पर ही ज्यादा बोझ बढ़ता है। वह लोग नहीं समझते कि इस

तरिके से टैक्स का बोझ ग्राम जनता के सिर पर ही पड़ने जा रहा है। यहां पर किसी की हत्या होने का सवाल नहीं है, लेकिन जो लोग पैसा देने की स्थिति में हैं उन से पैसा लेना जरूरी है। तभी समाजवादी समाज की स्थापना हो सकती है। अगर हम आज समाजवादी समाज की स्थापना चाहते हैं तो जो छूटें हम दे रहे हैं वे छूटें सरकार उन लोगों को न दे। मूझे आशंका है कि आप इस बात को नहीं मानेंगे, लेकिन चाहे जो हो आप को आगे स्वीकार करना होगा कि जिस उद्देश्य में यह बिल लाया गया है, वह उद्देश्य इस में पूरा नहीं होगा। जिन चोरियों को आप पकड़ना चाहते हैं वे फिर होंगी और जो नूपहान आप खत्म करना चाहते हैं वे मौजूद रहेंगे और जो लोग टैक्सों की चोरी करने में माहिर हैं उनको और मौका मिल जायगा। मेरा निवेदन है कि सरकार गम्भीरतापूर्वक विचार करें कि जिस उद्देश्य में वह यह बिल लायी है क्या इस प्रकार की छूट देने से वह उद्देश्य पूरा हो सकेगा। मेरा निवेदन है कि इन छूटों के कारण वह उद्देश्य पूरा नहीं होगा। इस लिए मेरा निवेदन है कि आप इन छूटों को वापस लीजिये और जो टैक्स देने में समर्थ हैं उनसे टैक्स लीजिये। हम नहीं चाहते कि जो टैक्स देने में असमर्थ हैं उन पर टैक्स बढ़े, लेकिन हम देखते हैं कि उन पर टैक्स बढ़ रहे हैं। जो टैक्स देने में समर्थ हैं उनसे टैक्स लेना आवश्यक है। अगर आप उनसे टैक्स नहीं लेना चाहते तो देश में यह भावना फैलेगी कि आप केवल कुछ वर्गों से ही टैक्स लेना चाहते हैं और देश के निर्माण का भार उन लोगों पर ही डालना चाहते हैं जो उस भार को उठाने में असमर्थ हैं। अगर आप यह छूट देंगे तो आपके वह साठे कथन जो कि आपने समाजवादी समाज बनाने के लिए किये हैं झूठे साबित होंगे।

इन शब्दों के साथ मैं इस क्लॉज ५ का विरोध करता हूँ और अपने संशोधन को पेश करता हूँ।

Mr. Deputy Speaker: Every hon. Member shall be provided an opportunity.

Shrimati Ila Palchoudhuri: I wish to submit that when we move amendments to this Bill, it is not our object that less revenue should accrue to Government or that we are here to support any black market prices or anything like that. If we have put forth any amendment, it is because we want the tax to work with as much possibility of revenue to Government and as less harassment to the public as possible. That is the idea of bringing forward these amendments.

I have moved amendment No. 67 because I feel by this clause 5 we will very often dry up the very wish for making gifts and charitable donations. This clause says that only section 15B of the Income-tax Act as it applies to this part will apply to such gifts and that will be only to those not pertaining to particular religious communities. If the benefits are not for particular communities then only this will apply. What is wrong in particular religious communities being benefited? When your own institutions cannot supply the 360 million people in this country if particular communities are able to supply some good to their own communities, then I think all communities will be supplied to a certain extent. Where is the objection to not doing this? I do not understand that.

Many speakers have also quoted this aggregation in America and how it has been done in America comparing India with America. When it comes to aggregation we think of America. It reminds me of a story, if you will give me one minute, Sir, of a milkman who wanted his milk to be sold. When he produced his bill, it was cut to almost half. Then his friends asked him, "How do you stand all this cut?" He said, "All that cut went on the water. It never touched the milk." Under American standards you can have aggregation on many taxes which would not be possible in India for incomes are vast. According to American standards, as I have proposed in my amendment, if these exceptions

were allowed as they are even in America, then I think more people will be benefited, such as, Chambers of Commerce, trade associations or public institutions which are an essential part of the economy of a nation. It is necessary that donations to them should be exempted. Donations to clubs and societies should also be exempted. If for the encouragement of scholarships, learning and various ways of meeting expenses by donation are not exempted, the officers are going to harass people as to why one has put forth money to support a boy in college as that is a gift and you have to pay a tax on it. Very often that person would not be able to bear the tax and the gift as well. So, the reaction would be to stop the gifts because after all you have to work with human nature.

There are gifts for public purposes also. There are gifts also for Olympic Games. These are usually made possible by big donations. There are donations by which our teams go abroad. If these are taxed then that will suffer. Bearing all this in mind, I have brought these two amendments and I commend them to the hon. Minister and the House. The Indian mind has always worked on the premises that they want to make gifts under all conditions. They make them in life, in death, in birth and in marriage and if we dry up the source of that tradition, I do not think we will do the country any good. If this tax only affects 10,000 people, as my hon. friend, Shri T. N. Singh says, the gifts they make affect very much more than 10,000 people. I think the more people benefit by these donations, the better for our country and better for our traditions.

पंडित ठाकुर दास भागवत (हिसार):
 मे आपकी इजाजत से अपने थ्रमोंडमेंट नम्बर ६३ और ६४ के बारे में कुछ अर्ज करना चाहता हूँ ।

मने इस हाउस में बहुत सी स्पीचे ज सुनी और बार बार काल्डर साहब का जिक्र

सुना । कई दफा मैंने एक्सपेंडीचर टैक्स के सिलसिले में थानरैबिल मिनिस्टर साहब से कौटिल्य नीति का जिक्र सुना और मैंने उनको जबाब दिया था कि आप कौटिल्य नीति को छोड़ दें । लेकिन वह कौटिल्य तो हिन्दुस्तान के थे, ये काल्डर साहब वहाँ से आ गये । उन्होंने अपने देश में गिफ्ट टैक्स नहीं लगाया । हमारे फाइनेंस मिनिस्टर साहब ने बताया कि जब काल्डर साहब से पूछा गया तो उन्होंने बताया कि वह हिन्दुस्तान के हालत से वाकिफ नहीं हैं । और उन्होंने जो फिगर दिये हैं वे हैरानगुन हैं, जिनका जिक्र थानरैबिल फाइनेंस मिनिस्टर साहब ने किया है । उन्होंने कहा था कि इस टैक्स से तीस करोड़ रुपया मिल सकता है । हमारे दोस्त बार बार उनके इस फिगर का फाइनेंस मिनिस्टर साहब के सामने पेश करते हैं और कहते हैं कि तीस करोड़ लाइये । मैं पूछना चाहता हूँ कि यह हिसाब काल्डर साहब ने किस हिसाब पर लगाया । मैं श्रद्ध से अर्ज करना चाहता हूँ कि यह गिफ्ट टैक्स सिर्फ दो तिन मुल्को में लगाया जाता है जिनकी कल्चरल बैकग्राउंड का हिन्दुस्तान में कोई वास्ता नहीं है । मैं तो कहता हूँ कि इस देश में तो गिफ्ट टैक्स लगाना पाप के बराबर है । आप एस्टेट ड्यूटी लगायें, जो बेईमानी करना है उसको सजा दें, आप इनकम टैक्स बढ़ा दीजिये लेकिन गिफ्ट टैक्स न लगायें । हमारे कुछ नायक लोग उन सब को रगड़ देना चाहते हैं जो कि गिफ्ट करत आये हैं, यह कह कर कि यह सपना बेईमानी में पैदा करते हैं । मैं कहता हूँ कि जो बेईमानी करता है उसका आप प्रॉमिषूट कीजिये । अगर कोई बेईमानी में सपना पैदा करके मन्दिर बनवाये तो मैं उसको दाद देने का तैयार नहीं हूँ । लेकिन हमारे मुल्क में जो गिफ्ट देने में कल्चरल बैकग्राउंड है उसको कमजोर न कीजिये । आप देखें कि बिनोवा जी ने क्या किया है । उन्होंने सम्पत्ति दान और भूदान से क्या क्या हासिल किया है । हमारे प्रेसिडेंट साहब भाज बच्चों को क्या सीख दे रहे हैं । वह कहते हैं कि खाना खाने के पहले एक एक मुट्ठी अन्न दान दो । तो

जहाँ तक दान देने की बात है, जहाँ तक इन्सान को इन्सान ममझने की बात है, वह दया और दान के बेसिम पर है, उसको आप कमजोर न कीजिये । जो टैक्स इस देश के अन्दर दया और दान की भावना को कम करता है मैं गम्भिरता हूँ कि वह टैक्स इस देश के कल्चर का दुश्मन है, वह इस देश के रिर्लाजम मैटीमेंट का दुश्मन है, जो भी नॉबिल सैटीमेंट है उसका दुश्मन है । जो लोग इस टैक्स के हक में बोल रहे हैं वह अपने अपने घरों में जाकर देखें कि उनकी लेडीज रोज दान दे रही हैं । पता नहीं शायद चार पांच आदमी ऐसे हों जो कि न देते हों । और वह भी अगर कोई लड़का वजीफा मांगने आ जाता है तो उसको दान दे देते हैं । लेकिन इसी मारी की सारी चीज को वह यहाँ कंडेम कर रहे हैं ।

अगर कोई शक गिफ्ट न करे तो आप उसको बैगा करने के लिए मजबूर नहीं कर सकते । हो सकता है कि जो गिफ्ट करना चाहता है वह इस एक्ट के अगरे से गिफ्ट न करे । इसका क्या नतीजा होगा ? इसका नतीजा यह होगा कि जो सपना दान से आता है वह सब का सब बन्द हो जायेगा । आप किसी का दान करने के लिए मजबूर नहीं कर सकते । जो दान देता है उसका आप रगड़ रहे हैं और कहते हैं कि उसको एग्जम्पशन न दें और जन चीजों को प्रानून एग्जम्पशन देता है उनको कहते हैं कि यह लूटहाना है । यह कहा गया कि अगर बालन दिया जाय तो उस पर टैक्स न लगाया जाय । लेकिन अगर कोई एग्जम्पशन के लिए दान देना चाहता है तो आप उस पर क्या नाराज होते हैं । एक्सपेंडीचर टैक्स के अन्दर ५००० तक बच्चे को शिक्षा के लिए एग्जम्पशन है । मैं तो कहता हूँ कि जो रिजनेबिल एमाउंट हो उसको मान लिया जाय तो आप कहते हैं कि यह गलत है । मैं इस चीज को नहीं समझ सका । मैं श्रद्ध से अर्ज करना चाहता हूँ कि जो दान पब्लिक के भले के लिए हैं उन पर एग्जम्पशन होना चाहिये । भाज हमारे देश में ऐसे लोग तक मौजूद हैं जिन्होंने जीवन दान तक दे दिया है ।

शायद हमारे थे बोस्त उनके बारे में कहें कि उन लोगों ने जीवन दान देकर गलती की। वह यह दान न देकर रुपया पैदा कर सकते थे। लेकिन उन लोगों ने अपना सर्वस्व दान दे दिया है। लेकिन उस दान का भी बेसिस वही है जिस बेसिस पर कि एक दूसरा आदमी रुपये का दान देता है और दूसरी चीजों का दान देता है। तो मैं अदब से अर्ज करना चाहता हूँ कि आप इस बेसिस को कमजोर न बनाइये, बेशक जो चीज काँडैम करने के काबिल है उसको कँडैम कीजिये। कम्पनियों के मामले में अगर हाउस समझता है कि इस एग्जम्पशन से लोग टी० ए० वगैरह बना कर नाजायज फायदा उठावेंगे तो उसको नामंजूर कर दिया जाये। यह तो ठीक है। लेकिन जो चीजें रीजनेबिल है, जिनकी सिलेक्ट कमेटी ने सिफारिश की है आप उन सब को हटाना चाहते हैं। हमने अपने कांस्टीट्यूशन में जो चीज दफा २६ और ३० में तै कर दी है उसको खत्म करने की कोशिश की जा रही है। हमने कांस्टीट्यूशन में उन लोगों को जो कम्प्युनली माइन्ड्ड हैं यह हक दिया है कि वह चाहें तो अपनी पसन्द का कोई इंस्टीट्यूशन बना सकते हैं, कोई स्कूल या कालिज खोल सकते हैं। लेकिन मैं पूछना चाहता हूँ कि क्या देश में कोई एक ऐसा स्कूल या कालिज है जिसमें सिर्फ एक ही कम्प्युनिटी के बच्चे दाखिल किये जाते हों और दूसरी कम्प्युनिटिज के बच्चे दाखिल न किये जाते हों। तो मैं कहूंगा कि सब इंस्टीट्यूशन पबलिक नेचर के हैं। हमारे आनरेबिल मिनिस्टर साहब ने भी अपनी स्पीच में फरमाया कि अगर कोई चैरिटेबिल इंस्टीट्यूशन पबलिक नेचर का होगा तो उस पर यह टैक्स नहीं लगेगा।

मैंने देखा है कि इनकम टैक्स एक्ट की दफा १५ बी० जो है वह काफी नहीं है। उसके अन्दर ऐसा प्रावीजन है कि जिसके अन्दर कुछ चीजें नहीं आतीं। दफा १५ बी० के बनाने में मैं भी पार्टी रहा हूँ मैं सिलेक्ट

कमेटी का चैयरमैन था। उसमें कुछ प्रावीजन कम्पनीज के मुताल्लिक हूँ। लेकिन मैं अदब से अर्ज करना चाहता हूँ कि अगर आप दान पर यह टैक्स लगावेंगे तो देश में गिफ्ट की भावना कम हो जायेगी और अगर आप ऐसा करेंगे तो आप ऐसा अत्याचार करेंगे जिसको देश कभी नहीं भूलेगा। गवर्नमेंट का यह फर्ज है कि अगर कोई ऐसी चीज हो जो कि हमारी कल्चुरल बैकग्राउंड को मजबूत करती हो तो उसको कमजोर न करे। इस लिए मैं अदब से अर्ज करना चाहता हूँ कि जो चैरीटेबिल इंस्टीट्यूशन पबलिक नेचर के हैं उन पर कोई प्रतिबन्ध नहीं होना चाहिये चुनाचे मैं चाहता हूँ कि जो मैंने अग्मेंडमेंट नम्बर ६३ दिया है उसमें अल्फाज "पबलिक नेचर" और बढ़ा दिये जायें। और उसको मंजूर कर लिया जाय। मैंने और भी इस तरह के अग्मेंडमेंट दिये हैं। दफा १५ बी० के मुताबिक अगर कोई ट्रस्ट को रजिस्टर करा दे तो वह इसके अन्दर नहीं आता। मैं अदब से अर्ज करना चाहता हूँ कि जो चैरीटेबिल ट्रस्ट हैं, जो गरीबों के लिए हैं, जो उनको एजुकेशन के लिए है, उन पर गिफ्ट टैक्स लेना वाजिब नहीं है। इसके अलावा इस तरह के गिफ्ट का हिसाब रखना भी मुश्किल हो जाता है। मान लीजिये कि मैंने किसी संस्था को इस हजार रुपये दान दिये। उसका तो मैं हिसाब रख सकता हूँ। कल अगर किसी स्टुडेंट को एक एक रुपया भी दूंगा, तो मुझे उस का हिसाब रखना पड़ेगा। और अगर हिसाब में कोई गलती हूँ, तो इस के मुताल्लिक प्राविजन यह है कि मुझे कँद किया जा सकता है। नतीजा यह होगा कि मैं इनकम टैक्स आफिसर के पीछे पीछे फिरता दूँगा। इस लिए मैं अर्ज करना चाहता हूँ कि जहां तक चैरिटी देने का सवाल है आप कुछ ही प्रतिबन्ध लगायें लेकिन चैरिटी के ऊपर ऐसा प्रतिबन्ध न लगायें जिससे यह सोचें ड्राई अप हो जाय और हिन्दुस्तान की इस पुरानी ट्रेडीशन को नुकसान पहुंचे।

Shri Khandlikar: Mr. Deputy-Speaker, while supporting the amendments moved by my hon. friend Shri Bimal Ghose, I would like to make a few observations.

There is no basis for the contention that this Gifts tax measure is bringing socialism nearer. In fact, if we go to the original source and see how it has come to the forefront, we see that in this particular period, such tax measures are absolutely necessary. Mr. Kaldor has pointed out in his book the necessity of measures like the gift tax. For the arguments just now advanced by my hon. friend Pandit Thakur Das Bhargava, I would like to point out one thing. Who are supposed to pay the tax? On what basis is Rs. 30 crores estimated? Non-agricultural property worth about Rs. 4000 crores is in the hands of less than even one per cent. of our people according to Kaldor. This is a sort of hunch. After going through all the Income-tax department statistics, it is said that out of Rs. 4000 crores, annually about Rs. 150 crores, by way of gifts this way or that way is being transferred. Only 1 per cent. or less than 1 per cent. hold property of Rs. 4000 crores—non-agricultural property. These estimates are given, as I said, as a sort of hunch by Kaldor in his book.

When this measure came before this House, it was expected that in the present period when we are introducing a new tax system, this was a part of the tax system. It is no question of eliminating individuals with wealth. On the contrary, this tax system provides for enough incentives. Therefore, my first submission is, all the exemptions provided in the Bill as it has emerged from the Select Committee have no basis and they are contrary to the objectives: first plugging the loopholes. Secondly, in this period when the Government is spending so much on development, private fortunes are being built up. We have abolished all States and integrated them with Indian Union. But now, business and industrial empires are

growing. Unless some machinery is set in motion to mop up the profits, our whole economy is likely to be distorted and inequalities will increase. That is the main basis.

How does this Bill appear after it has come from the Select Committee? In our side there is a saying. This Bill, after the amendments, looks to me, according to the saying, like the tail of a sheep. It does not provide protection from flies. It does not protect against shame: it just provides a fig leaf cover bringing out nakedness more prominently. This Bill as it has emerged from the Select Committee does not plug the loopholes on the one side and does not help in any way to lessen the inequalities. All the amendments, in particular, all the exemptions that are provided for in the Bill are, in some way or other intended for that section of the people who evade taxes. I would like to know this from the Finance Minister who was quite reasonable and a little flexible in our Committee when we discussed this matter, for which he got some compliments. Unfortunately, his flexibility has taken a wrong turn on this occasion. I hope he will realise that mistake. While this Bill is a tax measure, to improve the system itself, I would like to ask whether this is consistent, whether it is logical. It has nothing to do, as I said, with laying down the basis for socialism; it is all talk. It has nothing to do with that of radical social change. Therefore, my submission is this. So far as these exemptions are concerned, particularly, Rs. 1 lakh for a wife or husband or the principle of aggregation or exemption given to companies, let us look at them from the point of view, what would be their effect on the total collections that you are proposing to have, if you take away all these things. Let him prove by economic argument that if these exemptions are not provided for, it will have a disincentive effect on production. Let him say that and prove it. I am prepared to agree. According to the basis on which the measure is enunciated, and brought before the House, I see

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no reason why these exemptions should be provided.

There is one question. I would like to respond to the appeal made by my hon. friend Shri T. N. Singh, if the Finance Minister is prepared to be a little more reasonable as he was in the Select Committee and a little more flexible and try to evolve a common measure of agreement here.

The question of charity is there. We do know that there is a certain amount of commercialisation of charity, there is fraud in charity, but at the present juncture we must also realise, and I do realise, that the State arm of social service is not reaching to the lowest level, is not reaching all corners of society where really the need for immediate help is there. In such a situation, a certain amount of latitude for charity is pardonable. I would say that. Shri T. N. Singh has pointed it out in his Minute of Dissent, and it can be worked out further, that if you take some hypothetical sum of income and if aggregation is not there, Government loses nearly half the tax that it would have otherwise realised. That has been shown mathematically, by accounting method. Let the Finance Minister say that this is wrong calculation. I would accept that argument, but it is no use saying in a self-righteous manner that this is correct or not correct. It is not a philosophical argument between me and him. We belong to the same philosophy, but he has got to adjust his philosophy to the economic situation because philosophies also undergo change in a particular economic context. That he cannot forget. Therefore, I would humbly submit that he should be prepared to accept these amendments made by my friend. Of course, there are difficulties regarding President's assent, I know, but even then sometimes I feel sitting in this House that we now have a sort of rule that we legislate in haste and amend at leisure. That is the law of this House. He said that later on, when we gather experience, we shall see

whether aggregation is necessary or not.

Shri Morarji Desai: May I say he is casting a reflection on the House by saying that it is the habit of this House to legislate in haste and repent at leisure.

Shri Khadilkar: Not repent—amend.

Mr. Deputy-Speaker: It is not a reflection on the House.

Shri Khadilkar: I do not want to cast any reflection. It is far from my mind.

Mr. Deputy-Speaker: I thought he was passing some reflection on himself.

Shri Khadilkar: Or everybody who is conscious about it. He said we shall consider it, that if there was any hardship certainly the House could reconsider the matter. Therefore, I would appeal to him to reconsider his position on the question of aggregation, on the question of reducing the gift of Rs. 1 lakh given to the spouse and on the question of exemption to the companies.

As I said earlier, today we have got a new era of company rule. If you analyse all the incomes that are getting concentrated...

Shri Morarji Desai: May I say that the question of company comes in clause 45? Why does he want to raise it here?

Shri Khadilkar: As I said earlier. I am supporting all the amendments moved.

Mr. Deputy-Speaker: He is supporting the amendments of Shri Ghose.

Shri Khadilkar: Another time it is not necessary for me to speak. I will just finish.

All these companies have come to dominate; new empires of monopoly interests are created, and you want to provide them with some latitude, in such a way that the party in power is likely to benefit—the party in power or any party, I am not concerned because it is not a charter given to a particular party to rule this

country. This is a democracy. People are getting wise, and they will choose perhaps better rulers next time. Who knows? Therefore, when I say that the party is likely to get benefit, I do not mean any particular party. But then, certainly in our democracy, a certain patronage, certain corruption forms part of the ruling party, whatever it is. It is bound to form part in a backward country like ours. Therefore, I would suggest that he should be prepared to accept it. He has a reputation for preserving moral integrity. Let that reputation be tested in the rule itself. Otherwise, what happens is that you have taxation measures, they create irritation.

Mr. Deputy-Speaker: It would be better if he ended with this appeal.

Shri Khadilkar: In a minute. With this irritation, you do not get the revenue, you just irritate the people. So, instead of that, I would fervently appeal to him to consider these three amendments moved by my friend Shri Ghose.

Regarding charity and other things, for the time being, let this House once on this occasion rise to a higher stature of the social necessity of a particular measure which is before it and pass it unanimously.

One other observation I have got to make. Regarding charity, I was prepared to say that it has a role to play at the present juncture in our society, but it is getting diverted. A certain communal aspect or caste aspect round about charity is getting strengthened at the bottom. So, that danger must be avoided. A certain vigilance must be exercised while giving a little latitude to social charity.

Shri Nathwani (Sorath): As the time is rather very short, I shall be very brief.

Mr. Deputy-Speaker: The Speaker said this morning that we shall sit till we finish. So, it is for the House to decide.

Shri Narayanankutty Menon: One condition is broken. He agreed to keep the Coffee House also open, but it is closed.

Mr. Deputy-Speaker: Sashi Ram's is open. It will remain open till we rise.

An hon. Member: It is upstairs.

Mr. Deputy-Speaker: He will bring down anything that the Members require.

Shri Nathwani: In order to appreciate the nature of the exemptions, it is necessary to understand the real basis of this tax.

The avowed object of the Bill is to tax gifts generally, not merely to tax those transactions by way of gifts which seek to evade or avoid other taxing statutes like Estate Duty, Income-tax, Wealth Tax or Expenditure Tax Acts. As every gift reduces the impact of other taxes, whether it is income-tax or estate duty, it has been found necessary to tax gifts generally. That is the basis of the whole Bill. From this it follows that certain legitimate expectations in favour of family, charity or business should not be unnecessarily disturbed. That creates the necessity for providing exemptions. Therefore, we have to see whether under clause 5 we have gone beyond the legitimate limits or not.

Controversy has centred round sub-clauses (v) and (vi) which provide for gifts in favour of certain charities. My hon. friend Shri Naushir Bharucha has moved an amendment, and he seeks to enlarge the definition of charitable purposes by bringing it in line with that provided under the Estate Duty Act, but there is a history behind the definition of charity given in the Estate Duty Act. It is rather late, very late, in the day to urge that all charities should be exempted from the purview of this Bill.

As far back as 1948, the Government adopted a certain policy in favour of charities. You know, Sir, that under section 15(b) as it originally stood, if any part of the profits of a

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business was applied or diverted for certain approved charities, that part of the income or profits would be exempt from income-tax. Here we are seeking to do exactly the same thing. Here we are exempting donations in favour of, if I may use the expression, approved charities, and they are free from tax. Likewise, under section 15(b), as amended in 1953, if money has been applied for certain prescribed charities, then that part of the income would escape income-tax.

It was pointed out that under the Estate Duty Act, the definition of the word "charity" has been very wide, and it was asked why we should not follow that precedent, but there is a history behind it. When the Bill was taken up for clause by clause consideration, the then Finance Minister himself brought an amendment. I think it was my hon. friend Shri B. R. Bhagat, then Parliamentary Secretary, who moved an amendment exactly on the lines on which the present sub-clause has been framed. Then the discussion dragged on, and with a view to put an end to it, the Finance Minister stated that so far as the practical effect was concerned, it did not matter much because under the Estate Duty Act, as you know, gifts made more than two years prior to death would be exempt from the duty altogether. Therefore, he thought that the number of cases where a death took place, and where a gift in favour of general charity had been made more than six months but within two years prior to the death, would be small, and, therefore, the amount involved would be very small. Therefore, he took a snap decision—if I may use that expression—when he said that he was withdrawing his amendment. He gave as a reason this practical reason. Then, he said that in doing so he was not at all surrendering his principle; and that principle was that which is embodied in section 15(b) of the Income-tax Act. Therefore, there is no analogy between the Estate Duty Act and the provision which we are seeking to make.

Then, it was said that this would dry up the fountains of charity. I do not know whether those hon. Members are very serious in their argument, because, so far as the general public is concerned, there is ample provision made under the exemption limit of Rs. 10,000, and sufficient margin would be left for charitably inclined persons to make handsome donations for any kind of charity whatsoever. But it may happen that in case of large donation of the order of Rs. 50,000 or Rs. 1 lakh and so on, certainly, if it does not fall within the approved charity, it would attract the tax. But is it seriously suggested that a tax of Rs. 2000 on a charity of Rs. 50,000 would work hardship? And after all, should we not take into consideration the fact that these moneys go into the Government exchequer? Government have given a lead in favour of certain charities; they want to prefer certain charities. And hon. Members are very vigilant in voting several thousand crores of rupees every year of which they are custodians. The Members of Parliament are in charge of these moneys, and they can regulate the application of these funds.

It was further asked why in case of regional or linguistic—if I may use that word—charities, discrimination was not made. The difference is obvious. Territorial divisions are natural. We have got a federal structure of Constitution. If one restricts charities to a State or to a part of it, it would be legitimate. I can conceive of cases where this kind of trend may take an ugly form and in that contingency, the State might have to intervene. Suppose certain areas are rich; comparatively, there is no rich tract in our country; but suppose certain persons are inclined to spend all their moneys in charity in their part only with the result that some backward areas are left out; it may be that the State might have to intervene at that stage, but we have not reached that stage. Distribution according to region or according to language, of

charities, has not assumed such a form that we should seriously bother about it now.

That is why I feel that the provision as it stands is the proper one. My hon. friend Shri Prabhat Kar who said that we should delete these lines, I am afraid, has lost sight of the legitimate expectations in case of certain charities.

I would say one word more about sub-clause (xiv) of clause 5. Certain Members seem to be under a misapprehension because they are referring to gifts or what we might call political contributions by companies towards the funds of certain parties. But I do not think under this sub-clause such kinds of funds are covered, because though the gifts are for the purpose of business—certainly, those words, if they stand alone, might be construed as meaning something wider.... (Interruptions)

Mr. Deputy-Speaker: Order, order.

Shri Nathwani: I was submitting that under sub-clause (xiv) political funds contributed by companies would not be covered, because the opening words make it abundantly clear, and they say, gifts not merely made for the purpose of business, but 'in the course of carrying on a business'. So, the sub-clause restricts or limits the scope of the gifts to those made for the purpose of business in actual carrying on a business. Therefore, there need be no apprehension regarding the misuse or misapplication of this part.

In short, I would submit that there are good grounds why we should provide for exemptions in favour of families, namely wife, children, for the education of children, for charity, and for business purposes. Of course, the limit provided may not be accepted by all. Personally also, I think that the exemption limit of Rs. 1 lakh in favour of wife or husband as the case may be, is rather very liberal. And I would have personally liked to restrict it, but as the majority view

seems to be against that, I have not moved my amendment seeking to lower that limit.

Shri Subbiah Ambalam: My amendment relates to gifts relating to charitable purposes but not falling within clause 5. At the outset, I would like to say a few words about this Bill. The object of the Bill is to prevent evasion of estate duty. But I want to ask the Finance Minister whether we have effected any prevention of evasion by such a Bill. After a perusal on the exemptions under clause 5, my impression is that we have not really plugged the loopholes in the Estate Duty Act, but we have provided a lot of exemptions whereby people have been given ample discretion to transfer properties to their kith and kin and near relations.

The main effect of this Bill is that it throws dust on people with nobler instincts, with philanthropic motives, to contribute money for charitable purposes. That is the net result, from my point of view.

But what is the purpose of the Bill? The purpose of this Bill is to increase the revenue of Government, but I am afraid, instead of gaining anything by virtue of this Bill, we are likely to lose a lot of revenue as a result of the exemptions provided under clause 5. As an illustration, I might point out the exemption given to gifts made to one's wife to the tune of Rs. 1 lakh; not only will it not fetch any revenue to Government under this Bill but rather it will reduce the revenue that we are likely to get under wealth tax or estate duty.

Again, the provision in sub-clause (1) (xvi) was never contemplated. Is it the purpose of this Bill to provide exemption to Princes who are entitled under the Constitution for privy purses? I would submit that these are provisions which are beyond the scope of the Bill; they are unnecessary, and our Government are likely to lose a lot of revenue on account of these exemptions.

[Shri Subbiah Ambalam]

Regarding the restriction on gifts for charitable purposes, I would like to say that the restriction has been very harsh. I feel that these gifts would have served our purpose very well. The policy of Government is to provide services by way of medical relief, by way of scholarships to poor and deserving people and other needy persons whom Government are not by themselves in a position to help. But by means of this restriction on charitable gifts, we are not acting according to our declared policy. Rather, this restriction puts a stop and prevents the beneficial effects that flow out of these charitable gifts.

Therefore, I would request the Finance Minister to raise the limits that have been imposed in sub-clause (1) (vi) for charitable purposes. Firstly, the limit of Rs. 100 should be raised to Rs. 500. I would submit that the sum of Rs. 100 specified here is not even sufficient to meet college fees for one single term. Even though people may have a mind to contribute money for charitable purposes by way of scholarships, still this clause prevents them from contributing. Therefore, I would request the Finance Minister to accept my amendment for substituting the words 'one hundred' by 'five hundred' and the words 'five hundred' by 'three thousand'.

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): I move:

"That the question be now put".

Shri Bimal Ghose: Which question?

Mr. Deputy-Speaker: It is about this clause, not the whole Bill. I think it has been sufficiently discussed. I have given opportunity to everybody. I will call upon the Minister. There is no need of putting the question.

Shri Morarji Desai: The objection taken to clause 5 (1) (xiv) is, to my mind, a bit far-fetched, when it is said that it is meant for giving dona-

tions to political parties. I do not see how they will be covered by this. I have gone on patiently hearing this; so far I have not said anything. But if the language is examined, it is only far-fetched imagination which is responsible for making this imputation. It says:

"in the course of carrying on a business, profession or vocation, to the extent to which the gift is proved to the satisfaction of the Gift-tax Officer to have been made *bona fide* for the purpose of such business, profession or vocation".

I do not see how that will be brought in here. As a matter of fact, this clause is put in in order to provide for this: if a managing agent has given up the managing agency commission so that the company's affairs may not suffer, that is, there are losses and he does not take it, even then he will be charged gift tax; now, under this amendment, he will not be charged. There may be a debt or transaction where some compromise has to be made, e.g. whereas for Rs. 1 lakh due, Rs. 90,000 or Rs. 50,000 are obtained. There is a decree or some compromise arrived at. In that case, this will be covered by that. It is only such cases that will be covered, as far I can see.

Shri Narayanankutty Menon: Contributions will also be covered?

Shri Morarji Desai: This clause is not meant for contributions.

Mr. Deputy-Speaker: It may be covered under some other clause. But so far as this clause is concerned, I feel it would not be covered.

Shri Morarji Desai: If it is meant only for the purpose of any far-fetched legal argument, I do not know.

Shri S. A. Dange (Bombay City—Central): The companies when they make a gift to a political party have themselves stated that it is in furtherance of their business.

Mr. Deputy-Speaker: That is a different thing.

Shri Morarji Desai: If they have got any directions or any provisions in their memorandum or articles of association where it is provided that it is furthering the cause, then it comes in, not otherwise. But this does not cover companies here. The relevant clause regarding companies is clause 45. If the House objects to that in the case of private companies, I am prepared to accept the original clause. That is what I have made clear so often. But my hon. friend, Shri Khadilkar, who paid me a compliment in the Select Committee—which is protected; it is not known outside—now wants to say, "No, no; that is all wrong; I do not want to do that". I am very glad that he has withdrawn it because I take any compliment that he pays in the reverse direction.

Shri Khadilkar: I said, wrong direction.

Shri Morarji Desai: I have not done anything rigid or flexible. Does he want that I should give up the Select Committee's Report and do something else? I have, on the contrary, accepted what the Select Committee said though I said that, to my mind, I considered it not a very proper thing. I mean the aggregation clause, where it would bring in less revenue. But when I found that most of the Members of the Select Committee were sharply divided and it was difficult to say how many were on one side and how many on the other, I thought it better to accept the decision. That was what I said.

I have also made it clear that this is a new measure and therefore there are bound to be several new experiences being gathered. When experience is gained, then will be the time for some amendments.

As regards the provision concerning gifts to one's wife, we have made it tighter in the Select Committee, where we have said that any gift made by the wife out of that will be taxable, even if it is Re. 1 or Rs. 5 or Rs. 10.

Shri Bimal Ghose: How can you find it out?

Shri Morarji Desai: If thieves are not found out, they are not punished. If they are found out, they are sentenced. How many can claim that they are not concealed thieves? Therefore, it is no use making a claim like this, going at the whole world and tilting one's sword, when one is oneself responsible for such things. There is no use being very self-righteous. I am not self-righteous. My hon. friend becomes so self-righteous when he talks about self-righteousness. But it is no use claiming all this wisdom.

Then again, I do not know how my hon. friend, Shri Bimal Ghose, who is always well informed about law and other matters, tripped himself. He said that it is only for one year that it will be considered for wealth tax. It is not right. It will be considered for wealth tax as long as the husband lives and as long as that money is not spent away. If it is spent away for legitimate purposes, certainly it is spent away. Then so much less will come into the wealth tax. But otherwise, it cannot be avoided.

Shri Bimal Ghose: You lose the expenditure tax.

Shri Morarji Desai: Expenditure tax is also covered. This does not give any exemption to that.

Shri Bimal Ghose: To the wife.

Shri Morarji Desai: As regards that also, there are specific rules in the expenditure tax law. There is in section 4 (1) (a), the wealth tax, by which it is covered. The income from that also is covered in income tax. But where people want to make allegations or imputations, when nothing is available and still something has to be said, I cannot help it.

Then about the education of children to the extent to which gifts are proved. There also something was imagined. I do not know what is imagined therefrom. This covers cases where some children are sent outside and lump sums have got to be

[Shri Morarji Desai]

sent. If they are considered gifts, they will be taxable. This is required for the education of children; it is nothing else. There also it has to be to the satisfaction of the gift tax officer as being reasonable, having regard to the circumstances of the case. We want to see that nobody gives beyond his station.

Therefore, there is nothing done in this where we can say that we have brought it down in any way. If anybody wants to imagine things, he is welcome to that imagination.

Then my hon. friend on this side said that there were loopholes and loopholes. And he wanted to put another loophole! He said 'Raise the limit of Rs. 100 to Rs. 500 and the maximum limit to Rs. 3,000'. I cannot understand this sort of argument. Anything which an hon. Member considers wrong is a loophole; anything which he considers right is a very legitimate provision. This is a very strange attitude and this is what I have got to contend with. My hon. friend wants me to be very flexible and very reasonable. I can be very flexible and reasonable only if all agree. Then I have no objection. I am prepared to take any Bill which all agree to. But I cannot make all agree. I have not got that capacity. If my hon. friend has got that capacity, I wish him good luck and shall give a prize for it.

I oppose all the amendments.

Mr. Deputy-Speaker: I shall now put all the amendments to the vote of the House.

The amendments were put and negatived.

13-48 hrs.

[MR. SPEAKER in the Chair]

Mr. Speaker: I will put the question again.

The question is:

That Clause 5 stand part of the Bill.

*The Lok Sabha divided: Ayes—51; Noes—12.

The motion was adopted.

Clause 5 was added to the Bill.

Clause 6 was added to the Bill.

Mr. Speaker: Now, we will take up new clause 6A.

Shrimati Renuka Ray: Sir, I have tabled an amendment for the addition of a new clause 6A. I am not moving it; but I would like to say few words.

Mr. Speaker: Let me see who are those that are moving this new clause 6A.

Shri Bimal Ghose: Sir, I have got amendment No. 21.

Shri Prabhat Kar: I have got amendment No. 117.

Mr. Speaker: It is the same as No. 21.

Shri Braj Raj Singh: Sir, I have got amendment No. 78.

Mr. Speaker: This amendment requires the President's recommendation; therefore, it is ruled out of order.

Shri Bimal Ghose: Sir, I move—

Page 8, after line 4, insert—

"6A. Amount of gift-tax how determined.—For the purpose of determining the gift-tax payable by any person for any financial year under this Act,—

(a) there shall first be ascertained, the value of all taxable gifts made by the donor during the five previous years immediately preceding the financial year and the gift-tax that would have been payable on the total value of all such gifts in accordance with the rates specified in the Schedule, if all such gifts had been made during the previous year;

*Names of members who had recorded votes, have not been included under the direction of the Speaker as the photograph copy of division result did not clearly show the names of all members.

(b) the gift-tax payable for any financial year in respect of the gifts made during the previous year shall be that amount which bears to the amount of the gift-tax ascertained under clause (a) the same proportion as the total value of the taxable gifts made during the previous year bears to the total value of all the taxable gifts made during the five previous years immediately preceding the financial year."

Sir, you will notice that this clause was in the original Bill; and the Finance Minister in moving for consideration today stated that he did not feel quite happy that this clause has been dropped. What I want to know from the hon. Finance Minister is this. Although it is true that the Select Committee has recommended that this clause be deleted, inasmuch as it was in the original Bill what reasons prompted him first to incorporate it in the original Bill and how is it he thinks that those reasons do not have any force now and that the clause may be withdrawn? I think he owes an explanation to this House on that score.

Secondly, I think, there is a rate structure in this Bill and that rate structure must have had relevance to that clause which provided for aggregation. If there were no aggregation, then, probably, the rates would have been higher. Inasmuch as there is no aggregation now, I claim that the rates should be higher than what they are, because the aggregation clause cannot be dropped without doing something about this rate structure.

In this connection, my hon. friend Shri T. N. Singh referred to the American practice. What he stated was not absolutely correct but there is a lot of significance in what he said because the American practice is this. Although it is aggregated since 1932, the tax that is paid is on the aggregation up to the current year minus the tax that would have been paid for aggregation up to the previous year. But, even so, it would be higher than it would otherwise have been or as it would be under our provision. There-

fore, I feel that since the rates have not been increased, the original provision of aggregating the gifts over a period of 5 years should be maintained in the Bill. That was a healthy provision with a view to do away with the practice of making gifts in particular years with a view to get the advantage of rates. Therefore, I do not see any reason why the original clause should be dropped in this Bill.

Shri Prabhat Kar: Sir, I would also . . .

Mr. Speaker: I think the hon. Minister said that enough has been said. Yes, the hon. Member may go on.

Shri Prabhat Kar: I would also like to have an answer from the hon. Minister because in the Select Committee he felt that the original provision should remain and also voted against the present amendment. As this particular provision was in the original Bill and the whole structure of tax was made on that, the Schedule ought to have undergone a change. But, that has not been done. Naturally, the omission of the original clause on aggregation has changed completely the expectation of revenue from this gift-tax. We would like to know from the hon. Finance Minister—as he was opposed to the omission of the original clause—what are the reasons for his not thinking in terms of bringing in an amendment for the inclusion of the original clause for otherwise the rates would have to be changed.

Shri Mulchand Dube: How long is the House sitting? It is past 7 now.

Mr. Speaker: The day is not yet over.

Shri Mulchand Dube: The sense of the House may be taken as to how long the hon. Members are willing to sit.

Mr. Speaker: We are now in the midst of a clause. Let me see how long the hon. Members will be patient

Shri Mulchand Dube: Will it go up to 12 o'clock?

Mr. Speaker: We agreed to go on till 12 o'clock.

9-00 hrs.

Shrimati Renuka Ray: Mr. Speaker, I do not want to take up a great deal of the time at this late hour. Nonetheless, I do feel constrained to say that this gift tax has been brought mainly for the purpose of seeing that the other complementary statutes—the wealth tax, the estate duty and the expenditure tax—can be effective and the loop-holes, as so many hon. Members have used that term, can be plugged. We have been discussing clause 5 at length. It has been interesting in the sense that on the one side there are those who say that the Government has not gone far enough to provide exemptions and on the other hand the others say that it has gone too far. There is no doubt that in the attempt to see that citizens are not harassed in any manner we have gone to the very limits of having exemptions in this Bill and by doing so it has become less effective. If clause 7 of the old Bill is deleted according to the decision of the Select Committee, I feel that the Bill is almost reduced to a farce and it does not serve the most important purpose for which this Bill was needed. The position should be obvious to anybody if the tax is not aggregated even over a period of five years. Anyone would realise that the best way to avoid the full incidence of the transactions would be to distribute the tax over a period of years instead of making all the gifts in one year. The result is that fragmentation will take place and this measure will not bring about the main result.

I have not spoken about the other point of view as to the amount of tax that will be collected by this gift tax. That will not be very much. Though we have followed Kaldor's system, we have not followed it in its entirety. We have got the Estate Duty Act. Therefore, the amount we could have collected under this Act, if this provision had remained, would have been something like Rs. 3 crores. That is not very much. But now as Shri T.N. Singh has stated in his note of dissent that amount is going to be very

much less. I am not so much exercised in my mind about that. But I am exercised in my mind about the fact that the very purpose for which the Gift Tax Bill is brought forward will not be served. Many of us asked for this tax when the wealth and expenditure tax came and we welcomed the measure when it came and hoped that anything that was left out would be improved in the Select Committee. But I find that it has not been so improved. In fact the leaving out of this clause has made it very difficult for this gift tax to see that the wealth tax and the estate duty tax can be properly collected.

There are other points on which I would like to have gone into detail. I will not do so. I know that the hon. Minister himself has stated a little while ago in this House and also in the Select Committee that he himself feels unhappy about it. Though there is a divided opinion on it, when the efficacy of the measure and the motive underlying the measure depend upon this particular clause, I do hope that he will try, if not in the next session, after sometime, to amend this Act so that this measure is reintroduced. If this is not done, I would repeat that the Gift Tax Bill as a measure to see that the other taxes are not evaded but collected properly, will not be a success that was intended. With these words, I would again request the hon. Finance Minister to consider this matter.

Shri Morarji Desai: Sir, I have my sympathy with the hon. Member. But I will say, as I have said before, that the opinion was sharply divided on this and that I did not like to disturb the decision of the Select Committee in any way. That is the only reason why I am not accepting this clause. But as I said, in the course of the experience of a year or two with this measure . . .

Shrimati Renuka Ray: A year or two?

Shri Morarji Desai: It cannot be done before that.

Shrimati Renuka Ray: Why not few months?

Shri Morarji Desai: There is no question of coming immediately, within a few months, with an amending Bill. If we find it necessary, we will certainly come with an amendment. So, I am not accepting this amendment.

Mr. Speaker: Need I put it to the vote of the House? (Shri Bimal Ghose: Yes.) All right. I will put amendment No. 21 to the vote of the House.

The amendment was put and negatived.

Mr. Speaker: The question is:

"That Clauses 7 to 9 stand part of the Bill."

The motion was adopted.

Clauses 7 to 9 were added to the Bill.

Clauses 10 to 21 were added to the Bill.

Clause 22.—(Liability in case of discontinued firm or association of persons).

Mr. Speaker: I am proceeding with the clauses. If any hon. Member is particular about any particular amendment to any particular clause he may get up and mention his amendment.

Pandit Thakur Das Bhargava: Sir, I beg to move my amendment.

No. 79 to clause 22.

Page 15,—

omit lines 4 to 11.

Mr. Speaker: I shall put amendment No. 79 to the vote of the House.

The amendment was put and negatived.

Mr. Speaker: The question is:

"That clause 22 stand part of the Bill."

The motion was adopted.

Clause 22 was added to the Bill.

Clause 23.—(Appeal to the Appellate Tribunal from orders of the Appellate Assistant Commissioner.)

Pandit Thakur Das Bhargava: Sir I beg to move my amendments No 80 and 81 to clause 23.

(i) Page 15, lines 36 and 37,—

omit "and any such orders may include an order enhancing the amount of gift-tax determined or penalty imposed; and

(ii) Pages 15 and 16,—

omit lines 38 and 39 and 1 and 2, respectively.

Page 16, line 12,—

after "Appellate Tribunal" insert—

"after hearing and considering the objection if any, against the nominee of the Appellate Tribunal".

Mr. Speaker: I shall put amendments Nos. 80 and 81 to the vote of the House.

The amendments were put and negatived.

Mr. Speaker: The question is:

"That Clause 23 stand part of the Bill".

The motion was adopted.

Clause 23 was added to the Bill.

Clause 24.—(Power of Commissioner to revise orders of subordinate authorities.)

Pandit Thakur Das Bhargava: Sir, I beg to move my amendment No. 82 to clause 24.

Page 18, line 5,—

omit "enhancing or".

Mr. Speaker: I shall put amendment No. 82 to the vote of the House.

[Mr. Speaker]

The amendment was put and
negatived.

Mr. Speaker: The question is:

"That clause 24 stand part of
the Bill".

The motion was adopted.

Clause 24 was added to the Bill.

Clauses 25 to 31 were added to the
Bill

Mr. Speaker: The question is:

"That clause 32 stand part of
the Bill."

The motion was adopted.

Clause 32 was added to the Bill.

Clause 33 was added to the Bill.

New Clause 33A

Pandit Thakur Das Bhargava: I
beg to move:

Page 21,—

after line 23, insert—

"33A. (1) All officers whether
exercising appellate, revisional
or administrative jurisdiction
higher in rank than the officer
assessing the tax shall have the
power to order the stay of re-
covery of the tax and the penal-
ties for such period as they con-
sider proper."

(2) No application for revision
or review appeal or other pro-
ceeding shall be rejected on the
ground that the tax money has
not been previously paid or de-
posited."

Mr. Speaker: I shall put it to the
vote of the House.

The amendment was put and
negatived.

Clause 34.—(Rectification of mis-
takes.)

Pandit Thakur Das Bhargava: I beg
to move:

Page 21,—

omit lines 34 to 37.

Page 21, line 37,—

add at the end "and such recti-
fication has been made within a
period of one year of the order
passed".

Mr. Speaker: I shall put these
amendments to the vote of the
House.

The amendments were put and
negatived.

Mr. Speaker: The question is:

"That clause 34 stand part of
the Bill."

The motion was adopted.

Clause 34 was added to the Bill.

Clauses 35 and 36 were added to
the Bill.

Clause 37 (Power to call for infor-
mation).

Mr. Speaker: Are there any
amendments to clause 37?

Pandit Thakur Das Bhargava: I
beg to move:

Page 23, line 8,—

after "therein specified" insert
"or subsequently modified".

Page 23, line 11,—

add at the end—

"unless the officer on represen-
tation being made or otherwise,
revokes or modifies such order".

Mr. Speaker: I shall put these
amendments first.

The amendments were put and
negatived.

Mr. Speaker: The question is:

"That clause 37 stand part of the Bill."

The motion was adopted.

Clause 37 was added to the Bill.

Clause 38.— *Effect of transfer of authorities on pending proceedings.)*

Pandit Thakur Das Bhargava: I beg to move:

Page 23,—

after line 20—add—

"Provided, however, if the assessor demands that the proceedings be heard *de novo* or any particular piece of evidence be heard afresh the authority so succeeding shall start the proceedings afresh or hear such piece of evidence again".

Mr. Speaker: I shall put amendment No. 88 to the vote of the House.

The amendment was put and negatived.

Mr. Speaker: The question is:

"That clause 38 stand part of the Bill."

The motion was adopted.

Clause 38 was added to the Bill.

Clause 39 was added to the Bill.

Clause 40.— *(Service of notice).*

Pandit Thakur Das Bhargava: I beg to move:

Page 23, line 26,—

omit "either by post or".

The amendment was put and negatived.

Mr. Speaker: The question is:

"That clause 40 stand part of the Bill."

The motion was adopted.

Clause 40 was added to the Bill.

Clause 41 was added to the Bill.

Clause 42.— *(Bar of suits in civil court.)*

Pandit Thakur Das Bhargava: I beg to move:

Page 24, lines 12 and 13,—

omit "No suit shall lie in any court to set aside or modify any assessment made under this Act, and".

Page 24, lines 13 to 15,—

omit "and no prosecution, suit or other legal proceedings shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act".

The amendment was put and negatived.

Mr. Speaker: The question is:

"That clause 42 stand part of the Bill."

The motion was adopted.

Clause 42 was added to the Bill.

Clauses 43 and 44 were added to the Bill.

Clause 45.— *(Act not to apply in certain cases).*

Pandit Thakur Das Bhargava: I have my amendments Nos. 92 and 93.

Mr. Speaker: Amendment No. 92 is out of order because it requires President's sanction.

Pandit Thakur Das Bhargava: I beg to move:

Page 25 line 21,—

add at the end—

"or any charitable trust registered under the provisions of the Indian Registration Act".

Shri Bimal Ghose: There is my amendment No. 22.

Mr. Speaker: That is also out of order.

Shri Prabhakar Kar: I have my amendment No. 118.

Mr. Speaker: That also is out of order.

Shri Nathwani: I beg to move:

Page 25,—

for lines 6 to 18, substitute—

“(c) any company (other than a private company as defined in section 3 of the Companies Act, 1956):

Provided that the affairs of the company or the shares in the company carrying more than fifty per cent. of the total voting power were at no time during the previous year controlled or held by less than six persons.

(cc) a company which is subsidiary of and in which more than half the nominal value of equity share capital is held by a company referred to in clause (c);”.

Shri Morarji Desai: This amendment seeks the restoration of the original clause.

Mr. Speaker: Is the Government accepting it?

Shri Morarji Desai: Yes.

Shri Nathwani: May I say a word about my amendment? There is one obvious lacuna to which I want to invite the attention of hon. Members. My amendment seeks to restore the original sub-clause (c). But there is an explanation added in the original Bill which by inadvertence has been omitted by me in my amendment. I hope the hon. Finance Minister will be good enough to accept that Explanation also.

Mr. Speaker: Let him move an amendment to his amendment.

Shri Nathwani: In the original clause 46, after sub-clause (e) you will find an explanation which really explains the scope of a company the shares in which are held by less than six persons.

Shri Morarji Desai: The original clause 46 should be taken as it is.

Mr. Speaker: Hon. Members will understand the procedure. If in the original clause of a Bill some amendment is made by the Select Committee and the House wants to restore the original clause, what we do is, we say: “the following be added to the clause as reported by the Select Committee”. We cannot have an amendment saying “let the original clause be substituted”.

Shri Morarji Desai: The original clause 46 was changed to clause 45 of the Bill as reported by the Select Committee. What is now sought to be done is that the present clause 45 should be changed to what was clause 46 in the original Bill. Therefore, the amendment moved is “for lines 6 to 18 substitute—”. There, through inadvertence he has omitted to add the Explanation which was given in the original clause 46.

Mr. Speaker: Therefore, let him move an amendment to his amendment No. 31.

Shri Nathwani: I beg to move:

That in the amendment proposed by me, printed as No. 31 in List No. 3 of amendments, the following amendment be made, namely:—

after clause (cc), add—

“(ii) after clause (d) of section 45, the following Explanation be added:—

“Explanation.—For the purpose of computing the number of six persons referred to in the proviso to clause (c), persons who are related to one another as husband and wife, brother and sister, brothers, sisters or who are lineal descendants or ascendants of one another and persons who are nominees of any other person together with that other person shall be treated as a single person.”

Shri Naushir Bharucha: May I know, Sir, if at the last moment a private Member can suddenly spring a surprise on other hon. Members? I would like you to consider whether notice should be waived by you at this last moment. What will otherwise happen is, some people may go home under the impression that nothing more will be changed, and suddenly they will find this surprise flung at them. This is a bad precedent. If today Shri Nathwani is allowed to do this, tomorrow I will claim the same privilege and the third day another Member will also claim the same thing.

Shri Morarji Desai: When I moved the Bill for consideration I had stated that Government will not raise any objection if the old clause is restored. Therefore, it cannot be said that no time was given.

Shri Nathwani: This Explanation was left out by inadvertence; I do not know why my friend raises this objection.

Mr. Speaker: These objections, of course, sound strange. Shri Bharucha is here and, therefore, he can raise an objection, but I cannot understand his pleading on behalf of other hon. Members. They have left the entire thing in the hands of Shri Bharucha.

Shri Naushir Bharucha: But I cannot vote for them, Sir; that is the trouble.

Mr. Speaker: I shall now put the amendments to the vote of the House. The question is:

That in the amendment proposed by me, printed as No. 31 in List No. 3 of amendments, the following amendment be made, namely:—

after clause (cc), add—

'(ii) after clause (d) of section 45, the following Explanation be added:—

"Explanation.—For the purpose of computing the number of six persons referred to in the proviso to clause (c), persons who are related to one another as husband

and wife, brother and sister, brothers, sisters or who are lineal descendants or ascendants of one another and persons who are nominees of any other person together with the other person shall be treated as a single person."

The motion was adopted.

Mr. Speaker: The question is:

Page 25,—

for lines 6 to 18, substitute—

"(c) any company (other than a private company as defined in section 3 of the Companies Act, 1956):

Provided that the affairs of the company or the shares in the company carrying more than fifty per cent. of the total voting power were at no time during the previous year controlled or held by less than six persons.

(cc) a company which is a subsidiary of and in which more than half the nominal value of equity shares capital is held by a company referred to in clause (c).

The motion was adopted.

Mr. Speaker: I shall now put Amendment No. 93.

The amendment was put and negatived.

Mr. Speaker: The question is:

"That clause 45, as amended, stand part of the Bill."

The motion was adopted.

Clause 45, as amended, was added to the Bill.

New Clause 45A

Mr. Speaker: There is amendment No. 103 seeking to introduce New Clause 45A.

Shri K. Periaswami Gounder: I beg to move:

Page 25,—

after line 21, insert—

"45A. The proceeds of this tax in any financial year shall not form part of the Consolidated Fund of India but shall be assigned to and distributed among the States in such manner as might be prescribed."

Sir, in the Estate Duty Act, the distribution of the amount collected is left to the States. My purpose is that these taxes may also be distributable to the States in such manner as may be prescribed by the rules. That is the purpose of my amendment.

Shri Morarji Desai: I oppose the amendment.

Mr. Speaker: The question is:

Page 25, after line 21, insert—

"45A. The proceeds of this tax in any financial year shall not form part of the Consolidated Fund of India but shall be assigned to and distributed among the States in such manner as might be prescribed."

The motion was negatived.

Mr. Speaker: We then come to clause 46.

Pandit Thakur Das Bhargava: I beg to move:

Page 26, line 11, for "or the session immediately following" substitute "or any later session".

Mr. Speaker: The question is:

Page 26, line 11, for "or the session immediately following" substitute "or any later session".

The motion was negatived.

Mr. Speaker: The question is:

"That clause 46 stand part of the Bill."

The motion was adopted.

Clause 46 was added to the Bill.

The Schedule, Clause 1, the Enacting Formula and the Title were added to the Bill.

Shri Morarji Desai: I beg to move:

"That the Bill, as amended, be passed."

Shri Naushir Bharucha: I rise to speak. The Bill, as it emerged from the Select Committee, has been passed with one major change which has been suddenly brought in by one hon. Member and accepted by the Government. The point that I desire to bring to the attention of the House is that after the Select Committee has considered a particular business and when the Select Committee, by a certain majority, has adopted a clause, if the Government chooses to go back on the decision of the Select Committee, then, I think the hon. Members will have to consider whether it is worth-while sitting on such Select Committees. After all, what is the sanctity? I am not disputing the legality. It is open to the House to change the report of the Select Committee in any form it likes, but if at the very last moment, suddenly, a surprise is sprung and the decision of the Select Committee is set aside, I submit that the House is rather treating lightly the considered opinion of the Select Committee.

Mr. Speaker: The amendment was already there.

Shri Naushir Bharucha: Yes; I am not disputing it. What I am saying is that when after considerable discussion in the Select Committee we have arrived at a particular formula and when it has been accepted by the Select Committee by a majority, suddenly to come here and change it creates an impression that the labours of the Select Committee are not properly respected.

In this case, a very important amendment has been brought in at the last moment. What the Select Committee recommended was that

private companies, under certain circumstances, could make donations or gifts to any type of charity and these would be excluded from the tax. Take a company like the Tatas which is a private company. Every year they give gifts to the tune of lakh of rupees and nobody will tell them that they are communal-minded. There are many similar private companies which make *bona fide* gifts year after year, and yet, today, we find that there is, suddenly, a tax imposed on those gifts made by the companies. I submit that I totally disapprove of this particular amendment. I hope that in future, if the Government desire that we should serve on the Select Committee, they should be prepared to respect much more the recommendations of the Select Committee than what they have done today.

Shri Morarji Desai: May I say that it is not a fair thing to say that the Government have not respected the recommendations of the Select Committee. It is not that Government does not respect the Select Committee. The Government respect the Select Committee completely. The hon. Member himself has not shown respect by moving so many amendments here which were not accepted there.

Shri Naushir Bharucha: There, I said then.

Shri Morarji Desai: The others also have stated the same thing there. If they move an amendment and I could accept the amendment he was happy, and then if I moved another amendment he was not happy. I cannot understand. How is it that the Select Committee is not respected? I feel sorry that the hon. Member should have made that statement.

Shri Naushir Bharucha: Let me make the position clear. In this particular case, what my hon. friend refers to is this. We did not press. He said "take them as rejected." We said that we shall move the necessary amendment, because we wanted to save the time of the Select Committee. In this particular case, after a

thorough discussion, it was pressed and much against the desire of the Finance Minister the amendment was carried.

Shri Morarji Desai: It was not against my vote. It was my vote, but for which it would not have been carried.

Pandit Thakur Das Bhargava: I am rather surprised at the objection of my hon. friend Shri Naushir Bharucha when he says that the Government should not have accepted the amendment. The Government themselves, sometimes, give amendments to the amendments accepted by the Select Committee, and it is not unusual that the Finance a Minister himself or the Minister in charge himself gives many amendments in this House which are subsequently accepted. If a private Member's amendment is accepted and if the Government finds it a good amendment, I see no reason why an exception should be taken to that. After all, it is the right of every hon. Member to move an amendment. If my amendment is rejected, should I feel dejected, and where is the objection if another amendment is moved and the Government thinks that that is a good amendment? I think the Government has done the right thing in accepting the amendment.

I will go further and say that even at the last stage, namely, at the third reading stage, if the Government finds that there is some lacuna or some defect in the Bill, even at that hour, the Government is justified in bringing an amendment. I do not see any objection whatsoever in this case, and I therefore submit that the Government have done well in accepting the amendment.

श्री ब. ब. राज सिंह (फिरोजाबाद) :
 अग्रपक्ष महादय, मेरे मित्र बरूचा साहब ने
 दाखिली वक्त पर जो एतराज उठाया है
 मैं समझता हूँ कि वह बुनासिब नहीं है ।

[श्री ब्रजराज सिंह]

सिलेक्ट कमेटी के माननीय सदस्यों को यह अधिकार देना कि जो बात वह कहेंगे उसमें यह हाउस जो कि सर्वशक्तिमान् है कोई परिवर्तन नहीं कर सकेगा, यह ऐसी परम्परा कायम करना होगा जिसको भविष्य में भी कोई स्वीकार करने को तैयार नहीं होगा। सिलेक्ट कमेटी में विचार होता है और जो माननीय सदस्य वहाँ भेजे जाते हैं वे परिश्रम करते हैं। लेकिन उसके बाद जब विधेयक इस सदन में आता है तो इस सदन के हर माननीय सदस्य को अधिकार है कि वह उसमें संशोधन पेश कर सके और सरकार को अधिकार होना चाहिये कि वह चाहे तो उस संशोधन को स्वीकार कर ले। मैं समझता हूँ कि यह परम्परा कायम करना कि जो सिलेक्ट कमेटी ने तै कर दिया उसमें कोई संशोधन नहीं किया जायगा अनुचित होगा।

इन शब्दों के साथ में थर्ड रीडिंग के समय पर यह कहना चाहता हूँ कि बिल में जिस तरह से एग्जेंप्शन दिये गये हैं उन पर माननीय वित्तमंत्री विचार करने की कृपा करें और शीघ्र ही ऐसे कदम उठाने की कोशिश करें कि जिनसे इसमें जो टैक्स की चोरी होने की आशंका है वह दूर हो जाये।

Mr. Speaker: I shall now put the question.

Shri Nath Pal (Rajpur) Shall we proceed to pass the Bill without having a quorum?

Mr. Speaker: We are 48, I think. Well, let the quorum bell be rung.

All credit to the House for having sat and finished the Bill. I find that clause 5 has been discussed extensively. That is the main clause of the Bill. Others are procedural. We have spent about 7 hours—from 12:15 to 7:30.

Shri Braj Singh: But more than one hour was taken away by the point of order.

Shri Morarji Desai: I am extremely grateful to the Opposition for showing all the patience.

Mr. Speaker: Now, the quorum is there.

The question is:

"That the Bill, as amended, be passed".

The motion was adopted.

Mr. Speaker: The House stands adjourned till 11:00 a.m. tomorrow.

19:30 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, the 7th May, 1958.