taken already is 1 hour and 30 minutes and the balance is 1 hour and 30 minutes. This motion is for reference of the Bill to a Joint Committee.

Shri A. K. Sen: Everyone who wanted to speak has spoken already It was only suggested that we shall move the motion formally today.

Mr. Speaker: Very well.

The question is:

"That the Bill to consolidate and amend the law relating to th extradition of fugitive criminals, be referred to a Joint Committee of the Houses consisting of 20 members; 14 members from this House, namely Bakshi Abdul Rashid, Shri Joachim Alva, Shri Frank Anthony, Shri Dinesh Singh, Sardar Hukam Singh, Pandit Jwala Prasad Jyotishi, Shri Nemi Chandra Kasliwal, Shri Khushwaqt Rai, Shri Hirendra Nath Mukerjee, Shri Shivram Rango Rane, Shri J. Rameshwar Rao, Shri Sadat Ali Khan, Shri N. Siva Raj, Shri Asoke K. Sen, and 7 Members from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of Members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of Members to be appointed by Rajya Sabha to the Joint Committee."

The motion was adopted.

12.51 hrs.

INCOME-TAX BILL

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

"That the Bill to consolidate and amend the law relating to income-tax and super-tax, as reported b the Select Committee, be taken into consideration.".

On a motion by me on the 27th Apr l, 1961, the House was pleased to refer the Income-tax Bill, 1961, to the Select Committee. The Select Committee has presented its report to this House on the 10th instant. I should like to congratulate the Select Committee on the promptness and the thoroughness with which it has dealt with an important complicated Bill like this. I wonder if it is not a record.

Having regard to the nature of the Bill and the wide and keen interest which it has created, the Select Committee decided to hear evidence from associations and individuals who were desirous of presenting their views on the Bill. Accordingly, the Select Committee invited through a press communique views and comments from the public, and in in response to this, more than one hundred memoranda and representations were received. The committee gave a further opportunity to thirteen associations to give oral evidence before it.

I need hardly remind the House that the Bill itself has been drawn up up on the basis of the reports of the Direct Taxes Administration Enquiry Committee and of the Law Commission, both of which had examined several witnesses before drawing up

their reports. Thus, the Bill has had the advantage of wide consultation for its intitial draft, and perhaps, the closest possible scrutiny, after its presentation to this House. This has enabled the Bill, to achieve if I may say so, a balance between the different interests.

The Report of the Select Committee contains the reasons for the changes made by it, and I do not want to take the time of the House by repeating them. However, it is necessary to touch upon some of the more important changes and also to comment on the points mentioned in the minutes of dissent.

12.55 hrs.

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

One of the most important changes made by the Select Committee in the Bill is the restoration of the category of 'not ordinarily resident.' The category of assessees known as 'not ordinarily resident' had been enjoying a position from the tax point of view, which was superior to that of both residents as well as non-residents. This is because the foreign income of a 'not ordinarily resident' person is not taxed unless it is derived from a business controlled in, or a profession set up in India or unless the profits are remitted to India, and further he pays tax on his Indian income at the rate applicable to the Indian income only whereas in the case of residents and non-residents, the world income forms the basis for arriving at the effective rates of tax. The Income-tax Investigation Commission, the Taxation Enquiry Commission and the Law Commission had all recommended the removal of this anomaly by deleting this category altogether from the Income-tax Act. The Government had adcepted that recommendation while framing the Bill.

However a number of representations were received from Indian settlers abroad and also on behalf of foreign technicians in India, most of whom come within this category of 'not ordinarily resident' that the change proposed would hit them hard. The Select Committee considered that while there was no case for continuing the double advantage in regard to the tax liability which this category of persons had been enjoying so far, they should be treated more as non-residents than as residents. To eliminate the possibility of persons visiting India for a brief period being regarded as residents, the tests relating to residence have also been liberalised, Under the existing Act, any person who maintains or has maintained for him a house in India for more than six months in a year will be regarded as resident, if he is in India for any time during the year. The Select Committee has recommended that he should not be regarded as resident unless he is in India for thirty days in the year. Secondly, under the provisions proposed in the Bill as introduced, a person would be regarded as resident if he has been in India for a period of 365 days or more during the four years preceding the previous year and has been in India for thirty days or more duirng the year. This period of thirty days has been changed to sixty days by the Select Committee. These liberalisations will, I am sure, be welcomed by all.

The group of clauses relating to the income of charitable institutions, that is, clauses 11 to 13 of the Bill and clause 215 defining charitable purpose received considerable thought. These clauses give effect to the recomdations of the Tyagi Committee that if any trust accumulated its funds in excess of 25 per cent. of its income in any year, the excess should be brought to tax. It was further provided that only business which was carried on for a primary purpose of the trust could also be entitled to get the exemption. Some of the hon. Members, while speaking on the motion to refer the Bill to the Select Committee, expressed a fear that the provisions as drafted might adversely affect

[Shri Morarji Desai]

genuine charities with long-term objectives. This aspect of the matter was emphasised also by the representatives of various associations who gave eidence before the Select Committee. The Select Committee desired that the question of exemption of charitable institutions should be re-examined with a view to providing that while small trusts or trusts with a definite programme of fulfilling a declared objective should not be hit by the restriction relating to accumulation, the exemption should not be available to trusts whose objects are not really charitable or which are sectarian in character. The Select Committee has accordingly re-cast these provisions by providing that small trusts with an annual income of less than Rs. 10,000 would be free from the restriction relating to accumulation and that in the case of other trusts with income exceeding Rs. 10,000, the accumulation clause would not apply provided these trusts intimate in advance the specific object for which the funds are being accumulated and also the period during which the funds so accumulated are to be spent on the charitable object. This period should not exceed ten years. It has also been provided that the amount allowed to be accumulated should be invested in Government securities or other approved securities. The changes thus made have the merit of combining flexibility with a safeguard against mis-application of trust funds during the period of accumulation. Having regard to this safeguard, the Select Committee felt that it would not lead to abuse if the trust were to derive its income through a business undertaking in general and not necessarily confined to the primary object of a trust. Accordingly, the word 'property' occurring in clauses 11—13 has been re-defined to include a business undertaking. It has also been provided that the exemption from tax in respect of the income of a charitable trust created hereafter would apply only to those trusts which are not for the benefit of any particular race, religious community or caste. The other objective of the Select Committee, limiting the exemption only to trusts and institutions whose object is a genuine charitable purpose has been achieved by amending the definition in clause 2(15). The definition of 'charitable purpose' in that clause is at present so widely worded that it can be taken advantage of even by commerical concerns which, while ostensibly serving a public purpose, get fully paid for the benefits provided by them, namely, the newspaper industry which while running its concern on commericial lines can claim that by circulating newspapers it was improving the general knowledge of the public. In order to prevent the misuse of this definition in such cases, the Select Committee felt that the words 'not involving the carrying on of any activity for profit should be added to the definition.

1¾ hrs.

These proposals of the Select Commitee, should, in my view, be welcome to all, but there has been a Note of Dissent by Shri M. R. Masani on the proposal to limit the exemption in future to trusts not formed for the benifit of any particular race, religious community or caste. As he says that he is against communalism in any from whatever, he should have no serious objection if the exemption is denied to the charities intended to benefit the members of any particular race, caste etc. There is a great need now for developing national consciousness and when the effort of the State should be directed towards that goal, Shri M. R. Masani should not plead for State assistance to institutions formed for providing benefit on a sectarian basis.

In considering such matters, it is desirable not to be led away by catch-phrases. Shri Masani says:

> "We cannot legislate people into goodness, we cannot tax them into nationalism".

I cannot make out what this means. Does it mean that no law should be made for the good of the society, that there should be no restriction on personnel behaviour however harmful it may be to society? Further, it would seem that according to him, 'yes' and 'no' are the same, as he makes no distinction between taxing and exempting from tax. When a good object is exempted from tax, it does not mean that other objects are taxed because they are not good. Absence of an advantage does not mean that there is a disadvantage.

Another important change, to which I would like to draw the attention of the House, is that relating to the levy of an additional super-tax in the case of what have come to be known as Section 23A companies. These are companies in which the public are not substantially interested. Hon Members are aware that under the existing law, a section 23A company is required to distribute a certain percentage of its profits to its shareholders, and any failure to do so would render the company liable to levy of additional super-tax at 37 per cent, or 50 per cent in the case of investement companies, on the profits available for distribution after deducting therefrom the dividends actually distributed. It was provided in the Bill that deductions should be allowed for taxes payable any donations made to a charitable institution, and if the company is a banking company, any amount transferred to a reserve fund under certain provisions of the Banking Companies Act.

It was represented that in calculating distributable profits, some further deductions could reasonably be allowed. Thus, for example, a company might incur a loss under the head 'capital gains' or not have received its foreign profits owing to laws prohibiting remittances from the foreign countries. For income tax purpose, the capital loss cannot be set off against other income and the foreign profit will have been taken into consideation as the accrued income of the company. In such circumstances, it would lead to hardship if the amount calculated as distributable income d d not take into account the factors contributing to inability to to distribute dividends on that basis.

Similar difficulties arise when a company incurs expenditure part or whole of which has been held as disallowable under the provisions of the Act such as, for example, excess bonus amounts and any expenditure regarded as a revenue expenditure by the assessee but not held to be so by the department. Though for assessment purposes, these disallowed items should be regarded as assessable income, it would lead to hardship if they are taken into consideration for the levy of additional super-tax.

The Select Committee appreciated the need for providing relief in such cases and have accordingly recommended suitable amendments to clauses 104 and 109 with a view to excluding the items I have referred to while levying the additional supertax. With these amendments, I expected there would not be any more criticism of these provisions. But I find that Shri M. R. Masani says in his Minute of Dissent that clause 104 should be amended to provide that if the declaration of no dividend or less than the prescribed dividend is due to the necessity of meeting current business requirements of the company, penal tax should not be levied on the company. Hon. Members will recall that in 1955, we had actually inserted a provision similar to what is now being advocated by Shri Masani, But we deleted it in 1957, as it was found that this practice was combersome. At the same time, in the case of industrial companies, the percentage of profits required to be distributed was lowered from 60 to 45. One of the main considerations for lowering this percentage was to allow

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a good margin for current requirements which depended, under the amendment of 1955, on an application being made by a company and the the Commissioner adjudicating upon it. Therefore, the point raised by Shri Masani has already been considered when the existing provisions of section 23A were brought into being.

I may, in this connection, refer to the Tyagi Committee's Report in which the question of restoring the old provision regarding the current requirements was examined in detail with reference to facts and figures, and the Committee came to the conclusion that there was no ground for reintroducing that provision. Thus the point made out by Shri Masani has not much force.

While on this point regarding section 23A companies, I shoud like to refer to a clause in the Bill which has assumed proportions of a great controversy, that is, clause 79 dealing with restriction of carry-forward losses in the case of certain 23A companies where a substantial change in the shareholding has occurred. This clause was put in on the recommendation of the Tyagi Committee and was intended to prevent the avoidance of tax by buying up concerns which had incurred losses. The Select Committee felt that the provisions of the clause as drafted were drastic in that they would affect cases where the change in shareholding has been brought about not with a view to defrauding revenue but by a genuine changeover of business control or through inheritance or succession on the death of a sharehoder holding substantial shares. As the basic intention is to prevent tax avoidance, the Committee thought—and rightly, in my opinion—that the provisions should be applied only where the change in the shareholding has been brought about with the intention of reducing tax liability. The change introduced is reasonable and I commend it to the House.

Shri Tyagi (Dehra Dun): It is an improvement on what our Committee had done.

Shri C. D. Pande (Naini Tal): We were all there to improve it.

Shri Morarji Desai: Another clause which has been modified is clause 179 which sought to impose personal liability for the unrecovered tax levied on a private company on the directors and shareholders holding shares carrying not less than 10 per cent of the voting power. The Select Committee thought that the real responsibility for bringing the affairs of a company to a stage where even tax is not recoverable should be held to be that of the directors who were in charge of the affairs of company, and the liability need not be extended to shareholders who would have little say in the actual management. Accordingly, the Committee has suggested the deletion ef the provision fixing the liability on the shareholders, and confining the operation of clause 179 to the directors. Even here, if a director can prove that the non-payment of the tax was not due to any dereliction of duty on his part, he should not be liable.

In his Minute of Dissent, Shri Masani has stated that this clause seeks to disturb the well-settled law that directors of a limited company are not personally liable for the debts of the company. Shri Masani is no doubt aware that the idea of making the liability of directors unlimited in certain circumstances is not wholly foreign to even the Com-

panies Act. In section 542 of the Companies Act, limited liability is removed in respect of any person who was responsible for the carrying on of the business of the company with a view to defrauding creditors or for any fraudulent purposes. If the company after earning profits does not pay the tax and goes into liquidation, should not the directors be held accountable? Moreover, this liability is confined only to private companies. After all, private companies are like partnerships in a corporate garb, and the concept of limited liability cannot be allowed to be exploited for the purpose of avoiding payment of legitimate dues to the State.

A change of great importance which will be noted with interest is that made in clause 149 laying down the period up to which past assessments can be reopened. When I presented this Bill, I had mentioned that the provisions of section 34 had been modified by providing that no assessment falling beyond a period of eight years could be reopened unless the income escaping assessment for that year was Rs. 50,000 or the income for that year together with the income of any other year falling within the range of eight to sixteen years exceeded Rs. 1 lakh. Thus, if the escapement was Rs. 50,000 or more, the assessment could be reopened under the provisions as drafted without any limit of time. The Select Committee considered that having regard to the fact that section 34 was amended in 1956 mainly with a view to enabling the Government to deal with the cases referred to the Investigation Commission, there was no necessity after the disposal of these cases to continue the provision which permitted the department to reopen cases without any time limit. Therefore, the Select Committee has proposed a time limit beyond which no assessment can be reopened hereafter. That time limit is 16 years. A monetary limit is also imposed for reopening cases falling within the eighth and sixteenth years. This monetary limit is Rs. 50,000.

Shri C. D. Pande: In a single year?

Shri Morarji Desai: In a single year.

As I stated at the outset, I have so far dealt with only the more important changes made by the Select Committee. There are a number of other changes which are in the nature of reliefs, and which I am sure would be widely welcomed. I shall mention a few of them.

Many of the hon. Members who spoke on the Finance Bill had urged that the provisions relating to exemption of gratuities should be extended to persons employed in the private sector. They will be glad to know that the Select Committee has accepted the suggestion and proposed that the exemption should be available to gratuities received by persons other than in Government employment, subject to the same limits as are imposed in the case of Government servants.

Hitherto, any loan to a shareholder, whatever be the extent of his shareholding, by a section 23-A company was regarded as dividend in the hands of the shareholder. The Select Committee has now restricted the application of this clause only to loans to shareholders holding shares carrying not less than 20 per cent of the voting power. This would eliminate hardship in the case of small shareholders.

Hon. Members are aware that we are now exempting remuneration received by a foreign technician employed in India for a specified period and subject to certain conditions. This exemption does not at present cover the case of a foreign expert who has specialised knowledge in industrial or business management techniques. The Select Committee has now extended the concession to such persons also, though for a shorter

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period. The shorter period is considered justified in this case as the skill of such persons is such that it can be imparted to others with a certain training.

Promotion of art and encouragement of artists is a subject very dear to us all, and the Members will be happy to find that the Select Committeee has recommended that in the case of artists, musicians, authors, playwrights and actors, a higher limit should be allowed for obtaining rebate on the insurance premia paid by them towards insurance or a contract for deferred annuity on their lives. Similarly, the provisions to taxation of royalties or copyright fees for literary or artistic work have been liberalised by providing that where the time taken for completing a literary or artistic work by an author is more than 12 months, any lump sum received for that work should be spread over such period as may be prescribed by rules. The present position is that if the work is completed before 24 months, the amount is spread over two years and if it is more than 24 months, over three years.

The provisions relating to development rebate have also been liberalised, so that, according to the changes made by the Select Committee, for purposes of continuing the development reabte after amalgamation, it is not necessary that 100 per cent of the shareholders of the amalgamated company. The development rebate will be available even if shareholders holding shares equal to 9|10 in value of the shares of the amalgamating company continue in the amalgamated company.

Secondly, if a hundred per cent subsidiary company is merged in its parent company, being a holding company, the benefit of the development rebate availed of by the subsidiary company would not lapse.

Again, the original clause provided that where a firm converted itself into a private company, if certain conditions were satisfied the development rebate would continue to be available to the company. The Select Committee has made this provision applicable even where a firm converts itself into a public company, provided the same conditions are fulfilled.

Fourthly, the period of ten years prescribed for keeping in tact the amount credited to the reserve account has been reduced to eight years.

Another liberalisation to which I would invite the attention of hon. Members is that the list of industries, to which the provisions of section 56-A of the existing Act relating to exemption of super tax on dividends received by companies apply, has been enlarged. Further, it has been proposed that even if on a future date any item is omitted from the list, the benefit of the exemption that was enjoyed will be safeguarded for a total period of ten years.

Before concluding, I would like to clarify two or three points which have been stressed in the two Minutes of Dissent appended to the Select Committee Report. Shri Masani has complained that the words "business connection" have not been defined in the Act, and that the English principle that trading in England but not trading with England attracted tax, has not been incorporated in our law. I am afraid his pet set of words does not improve the position or make it any the clearer. I may say the position is not so clear in England as Shri Masani makes it out to be. There have been a number of cases even there as to what constituted trading in a country. No advantage will perhaps be gained merely by introducing a new expression, namely "trading in". That phrase will have to go through a number of interpretations, just as the words "sale inside a State" had to. On the other hand, the connotation of the term "busi-

ness connection" is now well understood in all commercial circles, and a good deal of publicity has been given to it in foreign countries. Its implications are known, and have also been clarified. In actual application, no tax liability attaches to a non-resident merely by reasons of his making his purchases in India without any regular purchasing agency or office. In order to set at rest all doubts on the point, this has been clarified by redrafting the explanation of clause 9.

Again, a great deal of unjustified meaning is sought to be read into the amendment introduced in clause 87 that for the purpose of claiming rebate on life insurance premia the amount paid towards premia should be out of income chargeable to tax. It is sought to be made out that this is a new provision which would disentitle persons from claiming rebate when they pay their insurance premia out of non-taxable income. I must say that there is a misconception here. Even under the present law, rebate will be admissible only if it is paid out of the total income. This is clear if section 16(1)(a) of the existing Act is referred to. Under section 16(1)(a), it is specifically provided that any sum exempted under section 15 (corresponding to clause 87) shall be included in the total income. This would show that the position is not changed but merely expressly stated in clause 87.

Shri Achaw Singh has complained in his minute of dissent that income-tax will not bring an equalitarian society unless a ceiling is imposed on incomes. I do not know what this means and what sort of society he has in view. In any case, the Income-tax Bill which is concerned primarily with procedural law is not the place for consideration of taxation policy. This is a matter which is not at all concerned with the Bill under consideration. His further point is that the maximum penalties for evasion of tax are never in practice levied and even the small penalties imposed are reduced by the appellate authorities and this has encouraged evasion. It is in order to remedy this very defect that minimum penalties have now been provided in the Bill. The provisions of the Bill would also enable the department to launch prosecution under the Indian Penal Code in cases where false statements of income are filed. In this connection, I would invite the attention of the hon. Member to clause 136 of the Bill.

After the Select Committee gave its report, a few points requiring amendments to the Bill had cropped up. Most of these are consequential. I have already given notice of the amendments I propose to move. I will explain some of these in detail when they are moved.

I would like also to mention one more point about the charitable trusts. There has been some difficulty about it pointed out by Shri Anthony and I have told him that when the clause comes up for discussion proper action can be taken to see that no difficulty is created.

With these observations, Sir, I move.

Mr. Deputy-Speaker: Motion moved:

> "That the Bill to consolidate and amend the law relating to income-tax and super-tax, as reported by the Select Committee be taken into consideration."

Shri Naushir Bharucha (East Khandesh): Sir, I desire to move an amendment:

> "That the consideration of the Income-tax Bill based on the report of the Select Committee thereon be deferred to 31st August, 1961."

Before I speak on this, may I asked a clarification with regard to the procedure? Shall I take it that I shall confine my observations only to this?

Mr. Deputy-Speaker: Yes.

Shri Naushir Bharucha: The reason why I have requested an adjournment till 31st August, 1961 is that copies of the report of the Select Committee on the Income-tax Bill were not available to the public on sale until this morning. In fact for the last five days, daily I have been making strenuous efforts to get an additional copy as I had a request from some people in Bombay to send a copy of the Bill. Everytime I was told by our Sales Section of the Lok Sabha here that copies have not been received. My submission is that a monumentel legislation of this character on which the Select Committee has spent so many anxious hours and which contains such a wealth of information as well as matters of controversy, a report of this character must be made available to the public so that the reactions of the public on the Select Committee report might be known to the House. I submit that it would not be fair to the Select Committee itself if the report did not received due publicity because after all what for is it that the Select Committee has laboured so hard? It is that the public might know and understand these things and the public must have at least a reasonable chance to make representations to the Parliament, if so desired, in the form of petitions or otherwise. I submit that it would be extremely unfair not only to the hon. Members here but to the public outside and also to the commercial community at large if we took up consideration of this Bill straightaway without giving the public any opportunity. I would, therefore, appeal to the hon. Finance Minister to postpone this thing, if not till 31st August, at least by a week. Let the hon. Finance Minister tell us how many copies of this report have been published, when they were made available to the public on sale. From them you can judge, Sir, that the public had no opportunity to study it and therefore, I submit, that an adjournment of at least a week, if not a fortnight, is eminently called for.

Mr. Deputy-Speaker: Is it authorised by any rule? Can be refer to any rule?

Shri Naushir Bharucha: My submission is this. One of the rules says that it is the right of the people to make a petition to Parliament and it is conceivable that this important right of people outside is infringed if they do not have an opportunity to make a petition on a most important matter which daily affects their lives.

Mr. Deputy-Speaker: That is right but there is one difficulty. Rule 77 says :

> "After the presentation of the final report of a Select Committee of the House or a Joint Committee of the Houses, as the case may be, on a Bill, member in charge may move that the Bill as reported by the Select Committee of the House or the Joint Committee of the Houses, as the case may be, be taken into consideration:
>
> Provided that any member may object to the report being so taken into consideration if a copy of the report has not been made available for the use of members for two days before the day on which the motion is made and such objection shall prevail, unless the Speaker allows the report to be taken into considerations.....".

So, the intention is that the Members should get copies two days in advance of the day in which it is to be taken up.

Shri Prabhat Kar (Hooghly): We got it only yesterday—the evidence.

Mr. Deputy-Speaker: I am not speaking of the evidence. The report was made available on the 14th. The information that is supplied to me is that from the 14th August till today 495 copies of the Select Com-

mittee report had been sold by our Sales Section. It was placed there on the 14th.

Shri Naushir Bharucha: I am not making any grievance that the hon. Members did not get copies. For four days I have been struggling to get an additional copy and only this morning I purchased it at a price of Rs. 4. For four days I was told that the Sales Section had not received any copies.

Mr. Deputy-Speaker: I will pursue the matter further but the information supplied to me is this.

Shri Naushir Bharucha: Probably, the printing department might have despatched it.

Mr. Deputy-Speaker: No. The Sales Section of Parliament has sold 495 copies.

Shri Naushir Bharucha: Twice a day for four days I have made enquiries and I have been told that they have not been received. Only this morning. I was rung up and told that copies were selling like hot cakes and if I wanted I should purchase one.

Shri Tyagi: It is a popular Bill.

Mr. Deputy-Speaker: The rule is about the Members getting it; there is no provision that the public should be provided with a copy.

Shri Naushir Bharucha: The objection listed here is applicable if the Member did not get a copy for two days. That is not the only point on which an objection can be taken; the list here is not exhaustive. My submission is this. If a Member feels that the right of the public to petition to Parliament on any measure that it is enacting is substantially infringed and as a result of that the public has not had an opportunity to study the measure and offer its views, then it should be postponed. Assuming for the moment that they had been made available on the 14th August, is it possible that people in Kerala would get the report and be able to study it and make their representation? It will take four days to reach there and four days more to come. If we respect the rules which we have framed, namely, that people have a right to petition, it should not be lightly infringed because the Government is pressed for time or for some other reason. Therefore, my objection need not be based merely on this rule. If it is based on any other rule and if the Chair finds it is desirable, then it can be postponed.

Secondly, apart from that, there is the moral point of view. An important legislation like this must not be rushed through and people must have time to study; they must have at least a chance to study.

Mr. Deputy-Speaker: I am informed that on the 14th August 62 copies were sold; on the 16th, 215 copies were sold and on the 17th, 250 copies were sold. These copies have been sold by the Sales Section according to their record.

So far as the desirability of making it available earlier is concerned, I would agree with the hon. Member that it should be available for sale sufficiently in advance, but here, the question is whether I can defer this discussion. I must have some authority under the rules to do so. If the Government agrees, I would not have any objection, but if the Government does not, then I have to go by rule 77. I can only take refuge under it. If the hon. Members had not got the copies in time, in advance, then perhaps that objection would have prevailed, but now, there is nothing that I can do in this matter.

Shri Naushir Bharucha: Then I request your ruling on this matt

[Shri Naushir Bharucha]

namely, whether the Government by their administrative procedure can circumscribe a definite right given under the rules and the Constitution of India to the effect that the people can make a petition on any subject to Parliament. That is an important right. It must be not be lightly encroached upon.

Shri Morarji Desai: May I make a submission? If the contention of the hon. Member is to be accepted, then no Bill can ever be moved here except after a month after the Select Committee's report is presented, because, only then, that right can be carried out in that manner. But in this particular matter, the hon. Member's contention is not very valid, because the press note on the report was issued on the 10th. This report has been reviewed by several newspapers during this period. The public knows it very thoroughly. It is not that the public do not know It. When the rule is framed by this House itself, that rule is taken note of; the rules prescribes two days' notice; that is, it should be in the hands of hon. Members two days earlier. They should have had the copies at that time. There may be a necessity for changing the rule if the hon. Member thinks so. I do not think this can be deferred and I cannot agree to a postponement of this discussion.

Mr. Deputy-Speaker: Then I am helpless. So far as the objection of Shri Naushir Bharucha is concerned, namely, even if it was placed with the Sales Section on the 14th, the members of the public from Kerala would not have got it, then, those who desired it must have some agency here or at least they might at least write to their Members that copies must be sold to them immediately and so on.

Shri Naushir Bharucha: An enquiry must be made into it, because I maintain that for five days I have not been able to get copies.

Mr. Deputy-Speaker: I will find out, but I have stated all the facts which I have had till now. Now, does any hon. Member wish to speak on the Bill? —Nobody; then I might put the question straightaway!

Shri Morarka (Jhunjhunu) *rose—*

Shri Morarji Desai: I find that the motion on the Report of the Committee of Privileges has been adjourned for consideration tomorrow. It will take some time more tomorrow also. The non-official work may be taken up at 3.30 today, so that the time for the Income-tax Bill could be extended by one more hour.

Shri M. R. Masani (Ranchi-East): Some of us have already made other engagements knowing that the non-official business would be taken up at 2.30.

Mr. Deputy-Speaker: The hon. Members were not obviously ready for discussion of this Bill today, thinking that 1 hour 30 minutes were left for the Extradition Bill and then after that, the report of the Committee of Privileges would be discussed. So, they thought that the time up to 2.30 would have been exhausted by these two items and that this Bill would not be taken up today. If we extend the time by another one hour, the difficulty might come up again. I do not know Shri Morarka.

Shri Morarka: Mr. Deputy-Speaker Sir, I did not rise first because I was one of the Members of the Select Committee and I thought that some other hon. Members in the House would say something and then I could get the opportunity perhaps to explain the justification of certain amendments made by the Select Committee. But since other hon. Members have not risen, and since I do not want

this debate to be concluded without any Member taking part in it, I have risen and I wish to make my comments, though I must confess that I am as little prepared as any other hon. Member in this House for this particular Bill. (*Interruptions*).

One can hardly exaggerate the importance of this Bill. Apart from the fact that this Bill has been on our statute-book for more than a century, as pointed out by the hon. Finance Minister, this is the main instrument of collecting our direct taxes. More than 95 per cent of our direct taxes is collected through this instrument, and more than one-third of the total revenues of the Central Government is collected through this measure. I am, therefore, surprised that a measure of this importance should evoke so little interest measure in this hon. House.

I regard this Bill as more important from another point of view also. Sometime ago, in America, an investigation was made into the causes of premature deaths. The investigation revealed three main causes for premature deams. One was cancer, the second was sex and the third was income-tax.

Shri Prabhat Kar: Let the hon. Finance Minister take note of these things.

Shri Morarka: It shows how potent this measure is.

Shri Asoka Mehta (Muzaffarpur): Therefore, you should accept Shri Naushir Bharucha's suggestion!

Shri Morarka: There is nothing for me to accept or not to accept. The hon. Deputy-Speaker has already given his ruling. I regard this Bill important also because it is perhaps the single measure of taxation which deals with the largest number of citizens in this country. It already comes into contact with about a million citizens, and as time passes, this number is bound to increase. I was saying that the greatest merit of this Bill, as it has emerged from the Select Committee, is its simplicity. When I say this, I must hasten to add that a statute which deals with the various types of incomes, various types of persons, cannot be so simple as it can be understood by an ordinary citizen easily. On the one hand, it has to deal with simple finances of the salaried earner, and on the other extreme, with the intricate ramifications of insurance corporations, banking companies, business combines, industrial cartels, international agencies and so on. Therefore, in the nature of things, a tax measure which has to deal with such things is bound to be complicated. Not only this. Look at the different types of income that this measure has to deal with: agricutural and non-agricultural; earned and unearned; casual and regular; revenue and capital; and then income from charitable trusts is to be treated separately; there is income from salary; income from interest on securities; income from house property; income from dividends; income from business or profession; and finally income from other sources. If all these incomes are to be given separate and different treatment, it is but natural that a Bill of this type is ound to be complicated. Besides, a bill to deal with these things, these different agencies and different types of incomes, has to be comprehensive. If it is to be comprehensive, it is bound to be complicated in its nature.

Mr. Deputy-Speaker: Is it more complicated or simpler than the earlier one? That is the question.

Shri Morarka: The Bill as it has emerged from the Select Committee has become much more simpler than the Act as it exists today. I do concede that perhaps a little more simplicity could be achieved if (a) the revenue of the States could be sacri-

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ficed; (b) Public do not mind being exposed to little more harassment. If you give more discretionary power and do not define the powers of the revenue officers and appellate authorities in detail, perhaps the Bill in form and appearance would become simpler, but at the same time, in effect, it would impose greater hardship on the people. The reform may not be very popular also.

Similarly, if you remove this classification of different incomes, perhaps the Bill could be simpler, but it would impose more hardship on the citizens, because they will have to pay the same high rate on capital gains which they are paying, for example, on revenue or the exemption they are getting for casual income would not be available to them. If, on the other hand, you treat all the incomes like capital gains, then surely the State revenue would suffer. Therefore, whichever way you look at it, you come to the conclusion that under the circumstances, the maximum possible simplicity has been achieved in this Bill. Any further simplicity of the measure was not possible without sacrificing the State revenue or exposing the citizens to a little more harassment.

In England, the Income-tax Act was first brought on the statute-book in 1799 during the time of pitt the Younger, mainly to finance the Napoleonic wars. Though the measure was simple, yet at that time the Bill was considered so complicated by the English people that the then Government had to publish a booklet known *as A Plan, Short and Easy Description of the Different Clauses of the Income-tax, so as to render if familiar to the meanest capacity.* This was the title of the booklet which was published in that year in a country like England, which had a high standard of education and literacy.

In our country, this was first introduced in 1860 and by 1866, 23 amendments were passed. Even at that time, the fear was that due to perpetual changes, people were liable to become an easy prey to fraud and extortion. This was the opinion expressed by some committee which was then appointed. The present Act was amended in 1922. Though it was amended at that time, there has not been a wholesale or an overall general revision of this Act. So, one could say that the Bill, as it has come before the House, is more or less giving a rebirth to the Income-tax Act. This Bill removes many of the overlapping, obsolete, illogical and confusing provisions which are existing in the Act at present.

It may be interesting to note how the income-tax law particularly becomes complicated and confusing, as time passes. The first reason is, due to the increasing revenue needs of the State, the taxes are increased from tim to time. The modern Governments have an insatiable appetite for tax. Indeed, the index for one's progress or prosperity of a nation is often measured in terms of the high percentage of taxes that exists within its political boundaries. So, for increasing the tax, either you must levy new taxes or increase the existing rates. When the rates are increased to high percentages, provisions have to be made for providing some tax shelters or for giving some relief to reduce the rigours of those high percentages. Otherwise, incentive is killed, people go out of business or certain classes are completely wiped out. In order to lessen the rigour, tax shelters are built.

The moment high rates are introduced and tax shelters are built, simultaneously another process starts, *viz.*, the ingenuity of the people to evade or avoid these taxes. The propensity of the people to avoid taxes increases as the rate of taxes increases. If the rates are normal and reasonable, people would not resort to certain practices, which they are more or less compelled to do when the rates go very high. When these things come to the notice of the Gov-

ernment, measures are brought to plug these loopholes, an expression commonly used in familiar parlance. In this way, all these piecemeal innovations come and they cause extreme complexities when they are embodied in the legislation because they are often framed to meet a particular exigency in complete disregard of the basic structure of the Act as it was originally framed.

There is also no doubt that these high rates of taxes drive the people into artificial and legal relationships, breaking the natural relationship of people. For example, partition of the Hindu joint family, separation of father and son, partnership between husband and wife, partnership between father and minor child, creation of trusts, incorporation of companies, transfer of property for a limited period, for long period and for life, and so on. All these legal relationships are created and natural relationships are broken only because the rates of taxation are made so high that people have no alternative but to do these things to avoid them.

There is another reason why the tax law of a country must be simple, subject to what I have said previously, *viz.*, that it cannot be absolutely simple. Every citizen is entitled to know what is his obligation to the State under a tax law. Tax laws must be precise, uniform and equitable; at the same time they must be simple...

Dr. M. S. Aney (Nagpur): Stable also.

Shri Morarka: Talking about stability, this is one law where the activity of the Parliament has been continuous, making it more and more complicated rather than making it simple. Every year this law is more or less tampered with. Every year when the Finance Minister presents the budget, some provision or other is introduced or deleted. Though certain basic things remain stable, certain other provisions are always subject to variation.

There is still some scope for simplicity. My one contention in that connection is, if the concept of what are known as 23A companies—the hon. Finance Minister also has referred to them—as amended or if possible even abolished, many of the other complications in the Bill could be done away with. I think the hon. Finance Minister and his able officers will consider this point, because they have simplified the company structure of taxation to a great extent last year and year before. We have inherited this from the United Kingdom, and, looking to the particular conditions of this country, if you can by increasing the rate of taxation on the private companies to some extent do away with these 23A companies, I think the law could be a little more simple.

There is one more reason why the tex law of this country should be rewritten. At the present moment we are having a lot of foreign collaboration and foreign finance. As I said, even the Indian citizen is entitled to know his obligations and his duties under a tax law to the State. But more than that, when it is of vital importance to invite foreign collaboration for our industrial development, a clear indication of the burdens to be borne by persons doing business in or with this country is obviously of the utmost value lest the foreign entrepreneurs be deterred by the fear of ill-defined tax liabilities. Actually it may not be the intention of the State to tax a particular income, but because the law is complicated and not clearly written some people may feel that they are taxable and they may be deterred away.

Coming to the second merit of this Bill, as it has emerged from the Select Committee, I think this Bill provides at all strategic and important stages incentives to expedite the assessment proceedings. Firstly, a time limit is imposed for submission of returns as recommended by the Tyagi Committee; otherwise if returns are not submitted in time then penal interests

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would be payable by the assessees. The officer has then to complete the assessment within the prescribed time otherwise it would become time-barred. Then, again, refunds if any will have to be paid within the prescribed time limit, otherwise, the Government will have to pay interest to the assessees. Even in the disposal of appeals, though there is no statutory provision made in the Bill itself, the hon. Finance Minister was pleased to assure the Select Committee that appeals would not be kept pending for more than 12 months as far as possible. I am sure, when this particular clause is discussed, the hon. Finance Minister will be pleased to give a similar assurance to the House.

Sir, I cannot over-emphasise the importance and the necessity of these provisions. Expeditious disposal of the assessments would avoid a lot of harassment and also, possibly, corruption. Delay generally breeds both of them. I am not here blaming the revenue officers or the department alone; I think at many places the assessees are equally responsible. Yet, Sir, in the larger interests of the revenue as well as the assessees and the good name of the department before the public, it is not only desirable but essential that the assessments are completed as soon as ever possible. Then it is far easier for a man to discharge his tax liability, even if it is on the higher side, within a year or so of his earnings. It becomes very difficult for him to find the money which he has either lost in business in the meantime or which has been consumed in certain extravagant expenses, whatever they may be. If for five or ten years the assessments are kept pending, the appeals are kept pending and the final tax liability is not determined within a reasonable time, naturally the assessee as well as the State revenue both stand to suffer. Therefore, I think the Bill provides great safeguards both in the interest of the assessees as well as the department with all these incentives for expeditious disposal.

Clause 153 of the Bill, though it gives four years time for completing an assessment—the first assessment—I am sure the hon. Minister would issue instructions and the department would see that as far as possible these assessments are completed within six months. Only very complicated assessments of certain insurance companies, banks or big corporations may take a longer time, otherwise there is no reason why the assessments cannot be completed within a period of six months.

Then I come to another point in the Bill which I regard as a point of great merit. The Bill restores natural justice to a greater extent than what is provided in the present Act. For example, the Bill now provides an appeal against a penalty imposed by the department. Even in the present Act, the provision of appeal against penalty is there, but there is a condition which, according to me, is a very unreasonable condition. The conditiin is that one connot file an appeal against a penalty unless one pays the amount of tax for the non-payment of which the penalty had been imposed. Sir, if you were in a position to pay the tax amount there would have been no question of any penalty being imposed. This condition which, as I said, according to me, was an almost impossible condition, has been done away with by the Select Committee. It would now be possible for the assessee to appeal against any penalty without paying the tax amount which is generally a disputed liability.

Then, appeal has also been provided for against the cancellation of registration of firms. It was a very noticeable anomaly in the Bill, namely, that if a firm applied for registration to the officer and if the registra-

tion was refused the firm could go in appeal and argue its case to get a decision whereas having once registered a firm if the I.T.O. on a subsequent date, for whatever reasons it may be, cancelled that registration there was no appeal against such a cancellation. I am glad that the Government has made a proposal in the Bill to remove that anomaly and the Select Committee has also endorsed it.

Now, Sir, I want to say a few words about a subject which is very often discussed here called "avoidance and evasion". These are two distinct things. Avoidance is knowing the law and then keeping out of it; you are never caught by the law and under the law you are never liable to pay the tax. Evasion, on the other hand, is where after being caught in the law you conceal your income, you hide your income to avoid payment of income-tax. Now, it is a fundamental principle of our tax law that no man is liable to pay tax unless a liability to pay is clearly imposed on him by the Act. In other words, the Income-tax Acts are what the ancient Romans called *Stricti Juris*. That is, you are either caught or you are not caught. The form of the transaction is everything, the substance is nothing. No man under our tax law in this country or for a matter of that in any other country is under any obligation to so arrange his affairs as to invite the maximum or the largest tax liability. On the other hand, he is free to so arrange his affairs that his case falls outside the scope of taxing law.

14 hrs.

The principle of any fiscal legislation is this: if a person comes within the letter of the law, then he has to be taxed, whatever hardships and whatever judicial sympathies he may invoke. But, if, on the other hand, he cannot be brought within the letter of the law, the subject is free and cannot be made to pay tax, however apparent his liability within the spirit of the law might appear to be. That is the clear definition of any tax law and that is the position that obtains everywhere.

In England, even the Duke of Westminster so arranged his affairs that he reduced his tax liability substantially and the Crown naturally felt aggrieved. There were appeals and second appeals and, ultimately, the matter went to the House of Lords, and it gave its verdict in favour of the Duke and against the Crown, on the ground that the Duke, like any other citizen, was entitled to arrange his affairs in such a manner as to attract the minimum tax liability possible.

It is perhaps for this reason that the terms of the tax law are kept deliberately obscure; otherwise, the tax-payer may walk outside it. I think it was Paley, the moral theologian, who said that it is safer if the laws be not known because if known they might be evaded.

If we want to tackle this problem of tax evasion seriously, then mere provisions in the Act will not be enough. You must convince the people that the tax that you collect from the people is properly utilized, that it is not wasted or spent in a flippant way. Secondly, Government must provide measures of social security like unemployment scheme, old age pension scheme and so on. If these provisions are there then people would find more justification and some moral sanction behind that high rate of taxation. More than this, if the rates of tax are reduced to reasonable limits, then the propensity to evade would be much less than what it is if the rates are high. Then, there should be better realisation of civic responsibility, which can be attained only through the process of education. As I said just now, as the rates of taxes increase, the propensity to evade or avoid those taxes also increases. Government and the political parties may have a theoretical satisfaction of imposing these confiscatory or high rates of taxation, but in practice very few people, almost a miscroscopic minority,

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would submit themselves to these rigours.

Then I want to come to one or two clauses of this Bill which, according to me, introduce new concepts which, as Shri Masani has stated in his minute of dissent, deviate from the settled law of the country. I am referring to clauses 79 and 179 of the Bill. Clause 79 deals with the carry forward of the losses of joint stock companies. Clause 179 deals with the personal liabilities of the directors if the taxes are not paid by the companies. I must express my gratitude to the Select Committee for amending these two clauses and making them more practical and less rigorous. So far as the practical utility or practical expediency of these two clauses are concerned, I have nothing to quarrel with. I entirely agree with the Finance Minister that they would not impose any hardship on any honest person any more. So, whatever I say is purely on matter of principle. So far as corporate bodies are concerned, they are given by the State two privileges. One is that of independent existence. They have a personality of their own, a corporate entity. Secondly, they have limited liability. The liability of every shareholder and director is limited to the extent of the shares held by him. Because the State has given these two facilities to the companies, it charges from the companies a tax known as the corporation tax which now, including income-tax, is 45 per cent. The main justification for taxing the companies as independent entities is that these companies are given these two privileges of individual personality and limited liability.

Unfortunately clauses 79 and 179 of this Bill seek to compromise both these principles to some extent. It is all right to introduce them in the Income-tax Bill, but if the State Governments or other taxing authorities like municipalities and local bodies take a cue from this and start taxing.....

Shri Naushir Bharucha: You are opening their eyes.

Shri Morarka: If they emulate this example, then, in the ultimate analysis, you would be harming the joint stock enterprise or the corporate sector. Many arguments were adduced against them and I am happy that the Select Committee was most sympathetic and very considerate to those arguments and, ultimately, they made both the clauses more realistic and less regorous. When we come to these clauses, I may point out some scope where slight improvements can still be made, particularly in clause 179.

When you are making a law today, making the directors personally responsible for the tax liability of a company which goes into liquidation, if you make it applicable to persons who become directors in future or who are now directors, I can understand it. But, under the law, if a person was a director of a company five years ago, still, by virtue of clause 179, if the taxes of the company have not been paid, he can be made personally liable though he may have nothing to do with the affairs of the company today or took any part in the frittering away of its assets. I know that it can be said, and that is a very valid safeguard that the Select Committee has provided, that if the director can prove that the non-payment of the tax was not due to gross negligence, misfeasance or breach of his duty then he would not be liable.

Shri Naushir Bharucha: Make it prospective.

Shri Morarji Desai: If he is not responsible, how can he be liable?

Shri Morarka: I was just coming to that. If it is clear. I have nothing to say.

Shri Nashir Bharucha: It is so.

Shri Morarka: My point is only this. Payment of tax according to assessment is a duty. If a person does not pay, it is a breach of duty. Apparently, the taxes were not paid because if the taxes had been paid, the question of personal liability would not arise. So it could be considered that even the non-payment of taxes by a director in the year 1957 at that time was his breach of duty and because he committed a breach of duty at that time, though the law is passed today, since it has retrospective applicability he must pay the tax from his own pocket. I am just stating the point at this stage. When we come to clause by clause consideration . . .

Shri Prabhat Kar: It is too far fetched. Breach of duty cannot be interpreted in that way.

Shri Morarji Desai: In the safeguard which is provided it says that if the director can prove that it was not due to his neglect of duty or on account of his breach of anything that he has done, he is not liable to it. If the person was not a director at the time, how could he be liable at all? It is provided. It is very clear.

Shri Morarka: My only humble submission was that if the clause did not have retrospective applicability, I have nothing more to say. But if by any stretch of imagination it can have retrospective applicability, my only request is that it should be made clear. There is no difference of opinion as regards the principle. It is only a question of form. I have no pretence to drafting ability and if Shri Kar and Shri Bharucha are satisfied, I am prepared to leave the entire thing in their hands and I am quite happy.

Shri M. R. Masani: You are quite right.

Shri Morarka: Before I conclude I would like to say that it is high time that we developed some respect for our tax-payers. Every tax-payer is not a tax-dodger. There are good and honest tax-payers and there are dishonest tax-payers. It is high time that we developed at least some respect for these people because, after all, a tax-payer in this country, does not enjoy any superior civic rights, nor am I asking for them. I am not pleading for any superior rights for them. But day in and day out to regard these tax-payers as tax-dodgers, anti-social creatures and mere parasites in the society or in the community, I think, to say the least, is a very unfair attitude towards these people.

In conclusion I would only hope that this Bill as we now pass would not be subjected to those annual changes but would be allowed to have its healthy growth for quite some time to come, that is, building of case law etc. As I said, in the past the activity of this Parliament has always been in the direction of changing the tax law and making it more complicated. It has seldom attempted to simplify the matter. I would also say that it would not be a correct policy to amend this law the moment some individual cases of loophole or evasion are brought to notice. This reminds me of what Aristotle once said. He said:

> "As in other sciences so in politics, it is impossible that all things should be precisely set down in writing; for enactments must be universal but actions are concerned with particulars."

Merely because some loophole of a minor nature here and there is brought to the notice of the Government or merely because of some stray cases the structure of the Income-Tax Act should not be so easily tampered with.

Before I sit down I must express my gratitude to the hon. Finance Minister and to the revenue officers who were kind enough to accept most of the amendments which were moved in the Select Committee. The Bill, as it has now emerged, accommodates

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the views which were expressed by the witnesses who appeared before the Select Committee almost cent per cent. Given the time and the freedom, and with the ability of the officers that we have, I am sure, the law could be made more acceptable to the people, there would be less and less complaints and the revenues of the State would also increase more and more.

Shri N. R. Muniswamy (Vellore): Mr. Deputy-Speaker, Sir, the present Bill, as it has emerged from the Select Committee, has made several improvements which have made it acceptable to many of the hon. Members. But I may be permitted to make out a few points for the consideration of the House.

My first point is with regard to gratuity. I find from here that death-*cum*-retirement gratuity allowance for which exemption is given to Central Government servants, State Governments servants and employees of other statutory bodies and corporations has been extended to private institutions also. But when I read the particular clause, namely, clause 10(10) I do not find that the wording is such as to interpret it that this is also extended to private institutions. With great respect I have to state that unless we make certain amendments or certain other changes, it is not possible for us to regard that this facility which is given in respect of death-*cum*-retirement gratuity to Central Government servants etc. is made applicable to private institutions also. Therefore I would request that this specific provision which has been made here may be considered in the light of this observation that I have made. It is stated in clause 10(10) that—

> "any death-*cum*-retirement gratuity received under the revised Pension Rules of the Central Government or under any similar scheme of a State Government, a local authority or a corporation established by a Central, State or Provincial Act or any payment of retiring gratuity received after the first day of June, 1953 under the New Pension Code applicable to the members of the Defence Services; or any other gratuity not exceeding one half month's salary for each year of completed service, calculated on the basis of the average salary for the three years immediately preceding the year in which the gratuity is paid, subject to a maximum of twenty-four thousand rupees or fifteen months' salary so calculated, whichever is less;"

The rules and regulations that are being adopted by private institutions are at variance with what is obtaining in the Central Government or in the State Governments or in the statutory corporations. In the absence of the rules being brought here for consideration by us, it is not possible to understand, according to the tenor of this wording, that it is made applicable to private institutions also. The notes on the clauses definitely indicate that the intention is to make it applicable to private bodies also. But unless that is specifically stated in this clause, it is not possible to draw that inference.

As regards clause 179 to which Shri Morarka has raised a certain objection, whether it is made applicable retrospectively or prospectively, according to me it will be made applicable only prospectively, that is, from the day this Act comes into force. But if on any ground it is made applicable retrospectively also, my only observation is that, as long as it is a saving clause, unless it is proved that non-payment of tax was not either due to breach of duty or misfeasance or negligence on the part of a particular director, he must be made liable to pay. Even if it is made retrospective, I should, with great respect, say that there is nothing

wrong in it. Even if a company has gone into liquidation, if taxes which were not paid in the earlier period are still pending and it could be traced that it was due to negligence, misfeasance or breach of duty of a particular director, he must be made personally liable. Though the scheme of the Act is such that we cannot make any of the directors personally liable for non-payment of the tax, still I would say, morally they are bound. When they administer a company, they must take care to see that all the dues are paid. If they are negligent in that aspect, if they squander away the money without paying the due taxes to the Government, they are certainly personally liable. Otherwise, if there is no provision like that, actually the company may be worked in a reckless way and they will not give thought to the payment of the taxes to the Government. Therefore, I would say, it is not altogether arbitrarily written and it could be brought under the category of making them pay personally. Unless they can prove that it is not due to their negligence or breach of duty, they will have to pay. That is the first impression that comes to me. As Shri Morarka has stated that it is not fair, I should say that it is proper that we make them pay personally.

As regards clause 147 dealing with incomes escaping assessment, I find here, it is a very salutary provision. Supposing an Income-tax officer comes to realise that a particular assessee has not paid the income-tax or there was escapement of assessment in a particular year, if the period is less than four years, they can re-open the case and they can issue notice. If the period is between 8 and 16 years, they can still re-open it provided the particular year's assessment which has escaped is over Rs. 50,000 or more. I have certain observations to make. In the earlier Act, it was stated that in the range of 8 to 16 years, the amount should be at least 1 lakh of rupees or it should amount to Rs. 1 lakh, though not in one particular year, in 4 or 5 years put together. Here, I find, in one particular year, it must be Rs. 50,000 or likely to amount to Rs. 50,000. I should say, this is very difficult. It is not possible to find any particular individual who had not paid the assessment for a particular year exceeding Rs. 50,000. The earlier Act was somewhat understandable, because, for a period of 4 or 5 years put together, the escapement had to be Rs. 1 lakh or more and then, they could re-open. Now, for one year, it must be Rs. 50,000 or about Rs. 50,000. With great respect, I say this and the reason is this. For example, after giving notice to a particular assessee that the escapement is about Rs. 50,000 in a particular year, and after re-opening the assessment, they find that it is less than Rs. 50,000—it may be Rs. 30,000 —what is the effect of it? Is that assessment illegal? Should we give it up? I do not understand the sequence of that. Unless it is Rs. 50,000 or likely to be Rs. 50,000, if it does not reach that figure, if it is less than that,—it may be Rs. 10,000 or 15,000—that assessment is illegal or that assessment could not be made. That aspect of the matter has been left open. I would only say that it must be made clear. Otherwise, what would be the position? If on re-assessment, it is found that it is less, say Rs. 10,000 or Rs. 20,000, the assessment cannot be made, and you will have to allow him to go scot-free.

Another thing that I wish to bring to the notice of the Finance Minister is, that there is no obligation on the part of any assessee to preserve the books of account for a period of 16 years. It looks as though if a particular assessee, whose books of account have been checked and assessment levied, does not maintain accounts for a period of 16 years, he must be made liable. In the absence of a provision in the entire scheme of this Act, we cannot do it. As a matter of fact, in capriciousness, an Income-tax officer

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may re-open any assessment either because of his own fault or the fault of the assessee. Whatever may be the sanction, either from the Commissioner or the Board, all the same, there must be reasonableness in making a particular assessee to preserve the books of account for 16 years.

The other point which I wish to take up is, in the penalty provisions, it has been stated here that there will be an announcement in the Gazette that these are the defaulters. It is difficult even for the people who get these Gazettes to look into them. They do not look into the Gazettes at all. The reason is, it is so voluminous. We do not know when the list of defaulters will come. Unless wide publicity is given in the local dailies, in the place wherever he resides or in places where he frequently visits, it is not possible to create an impression in the people that he is a defaulter and a dodger. Unless we create some sort of an impression in the country, the social ostracism cannot be there. If anybody defaults or refuses to pay, it must be brought to the notice of everybody, as far as possible, in those places to which they go. In announcing the orders of the Government, they do it by beat of tom tom. Whatever a man or a girl does anywhere, comes out. Equally, there must be wide publicity given to all these defaulters and dodgers. Otherwise, we may not be able to create an impression in the country that these are dodgers. Otherwise, they freely go out in cars throwing out dinners. They are the first persons to shake hands with Ministers and high dignitaries. They create an impression that they are good citizens. Unless it is brought to the notice of all that these are the people who committed default, the impression that is created would be very different. That is the reason why I say, instead of simply advertising in the Gazettes, we must do it intensively, so that they could realise it.

The other point is about rebate on insurance premium. It has been stated in a dissenting note by Shri M. R. Masani, I think, that if premium is paid from taxable income, there is no difficulty, but supposing he pays from some other source, he should not be taxed. With great respect, I say, this is wrong. So long as there is an entry in the debit column in the taxable income regarding payment of premium, we can give exemption. It must be relatable to the period for which and the amount for which the exemption is sought. Unless we can do it, it is not possible. It is quite possible, one man may have several sources of income. He can pay premium from them. As long as he has not paid the particular premium from taxable income, he cannot claim exemption even though it has been paid from some other source. With great respect, I should say, he is wrong.

The other aspect is this. It has been stated in the recommendation of the Direct Taxation Enquiry Committee that the Act must be made simple and there must be brevity in the Act. What I find here is, the old Act consists of 67 sections. Here, instead of brevity, we are having 298 sections. It is quite possible that in the old Act, each section ran into several pages though the number was 67, and when you analyse it and put it in proper order, it may have increased to 298 sections. All the same, brevity is not sought for here. Brevity is given the go by. Instead of being put in a precise form, it is still as long as it was originally. It cannot be said that we have brought it out in a concise form.

As regards trusts, a good deal of anxiety was expressed by some sections of the people. It is said that income from trusts should not be taxed The scheme of the Act is, with regard to the corpus which is intended for charitable objects or religious institutions or for the benefit of persons who have got these laudable ideas, there is no trouble. So far

as the usufruct coming out of the corpus is concerned, if that exceeds a limited amount, tax has to be paid. Clauses 11, 12 and 13 deal with the several aspects of these trusts and charitable institutions.

There is one small aspect which I wish to bring to the notice of the House. There are many institutions which are run out of funds set apart by philanthropists. Even though these institutions may benefit only a particular section of the people, we must encourage them. Government might possibly say that they are not meant for the general public and all sections of the people are not benefited by them. The basic principle of Government appears to be that these institutions get some sort of grant from the Consolidated Fund of India which is contributed by all sections of the people, and as long as they get a share out of it for the institutions, it is quite proper that they should pay the tax. According to Mr. Masani where Government collects income-tax from public charitable trusts, it really deprives some of the poorest citizens of the country of desperately needed help which they would have otherwise got under the trust. If that is the case, I would submit that such institutions should not claim any grant or subsidy from the Government, as long as they get it from the Consolidated Fund of India.

At the same time we should be generous and try to encourage these charitable institutions.

Shri M.R. Masani: Mr. Deputy-Speaker, Sir, . . . May I continue, Sir?

Mr. Deputy-Speaker: Now that he has commenced, he may.

Shri M.R. Masani: The relation between the tax-gatherer and the tax-payer is an unhappy one throughout history and Mr. Morarka has made a very good beginning in explaining the nature of that relationship and the qualities that are desired on both sides.

Mr. Deputy-Speaker: The hon. Member may continue his speech tomorrow.

14.33 hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

EIGHTY-SIXTH REPORT

Shri Jhulan Sinha (Siwan): Sir, I beg to move:

> "That this House agrees with the Eighty-sixth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 16th August, 1961."

Mr. Deputy-Speaker: The question is:

> "That this House agrees with the Eighty-sixth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 16th August 1961."

The motion was adopted.

14.34 hrs.

REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL*

Shri Mahanty (Dhenkanal): Sir, I beg to move for leave to introduce a Bill further to amend the Representation of the People Act, 1951.

Shri Jhulan Sinha: Sir, I rise on a point of order. The House now adopted the Eighty-sixth report of the Committee on Private Members' Bills and Resolutions one of the recommendations of which is that this Bill should not be allowed to be introduced.

Mr. Deputy-Speaker: That is a different Bill—the Constitution (Amendment) Bill. This is the Representation of the People Bill.

The question is:

> "That leave be granted to introduce a Bill further to amend the Representation of the People Act, 1951."

The motion was adopted.