

12.17 hrs.

PAPERS LAID ON THE TABLE

STATEMENT ON INDO-PAKISTAN CANAL WATER DISPUTE.

The Minister of Irrigation and Power (Hafiz Mohammad Ibrahim): I beg to lay on the Table a copy of the statement regarding latest developments on the Indo-Pakistan Canal Water Dispute. [Placed in Library. See No. LT-877/58.]

AMENDMENTS TO COTTON TEXTILES (PRODUCTION BY HANDLOOM) CONTROL ORDER

The Minister of Commerce (Shri Kanungo): I beg to lay on the Table, under sub-section (6) of Section 3 of the Essential Commodities Act, 1955, a copy of each of the following Notifications making certain further amendments to the Cotton Textiles (Production by Handloom) Control Order, 1956:—

- (i) S.O. No 1339 dated the 12th July 1958;
- (ii) S.O. No. 1594 dated the 9th August 1958. [Placed in Library See No LT-876/58].

12.17½ hrs.

AMENDMENTS TO REGULATIONS FOR ELECTIONS TO COMMITTEES

Sardar Hukam Singh (Bhatinda): I beg to lay on the Table a copy of each of the Amendments made by the Speaker to Regulations 2, 7, 13, 15, 19 and 21 of the Regulations for holding of elections to Committees by means of the single transferable vote

12.17½ hrs.

PRESIDENT'S ASSENT TO BILLS

Secretary: Sir, I lay on the Table the following two Bills passed by the Houses of Parliament during the current session and assented to by the President since a report was last

made to the House on the 11th August, 1958:—

1. The Appropriation (Railways) No. 3 Bill, 1958.
2. The Ancient Monuments and Archaeological Sites and Remains Bill, 1958.

12.18 hrs.

DELHI RENT CONTROL BILL

The Minister of Home Affairs (Pandit G. B. Pant): I beg to move for leave to introduce a Bill to provide for the control of rent and eviction, and for the lease of vacant premises to Government in certain areas in the Union Territory of Delhi.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill to provide for the control of rent and eviction, and for the lease of vacant premises to Government in certain areas in the Union Territory of Delhi"

The motion was adopted.

Pandit G. B. Pant: I introduce the Bill.

12.19 hrs.

ESTATE DUTY (AMENDMENT) BILL—contd

Mr. Speaker: The House will now resume clause by clause consideration of the Estate Duty, (Amendment) Bill as reported by the Select Committee. Out of 5 hours allotted to this Bill, 50 minutes now remain. Clause 2 was adopted on the 30th August 1958. The House may now resume discussion of clause 3. Pandit Thakur Das Bhargava may kindly continue his speech on amendment No. 25 moved by him the other day. The balance of time is 50 minutes—say, one hour.

Shri Prabhat Kar (Hooghly): In view of the fact that so many clauses have to be taken up, may I suggest that the time may be extended?

Mr. Speaker: The original time allotted was 4 hours. We extended it to 5 hours.

Shri M. R. Masani (Ranchi-East): If I may make a submission, the time originally allotted was 3½ hours for general discussion and 1½ hours for the clause by clause stage. It is true that the general discussion went over the allotted time. But may I urge that the 1½ hours for clause by clause consideration might not be shortened, as otherwise it may not be adequate for the discussion?

Mr. Speaker: We will have half an hour more.

We have adopted a convention in this House that whenever the House does not sit on any day in the week, it sits on Saturday. Likewise, whenever we extend the time on any subject on any day, we will sit after 5 p.m. to that extent so that the extension of time will finish off there.

Shri Prabhat Kar: Today we have a half-hour discussion.

Mr. Speaker: We will sit for another half-hour. I would like to finish the work every day, whatever time may be allotted. In exceptional circumstances, it may go to some other day.

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): It is not necessary that we sit after 5.30 today.

Mr. Speaker: If the Government is willing to allow this time to be taken up the next day, I have no objection. I wanted to aid Government.

Pandit Thakur Das Bhargava (Hissar): I had moved my amendment in relation to the conditions of

service etc. of the Appellate Controller. In the original Act, we had only controllers so far as Estate Duty was concerned. Now, we have got another officer, the Appellate Controller. What I submitted yesterday was that I congratulated the Government for appointing these Appellate Controllers just as there are Appellate Commissioners in Income-tax. I never submitted that the Appellate Controllers are not judicial officers. They are in the same sense judicial officers as the Appellate Commissioners. What I want to contend is that they may become much more judicial officers if the Board wishes that in addition to the provision that such Appellate Controllers shall not be subject to such orders, directions and instructions as will interfere with the exercise of their appellate functions. It further agrees that they should not be subject to itself in regard to conditions of service. Therefore, any reference by the hon. Finance Minister to administrative officer, in America and other countries becomes irrelevant, because we have already seen that this Department has appointed judicial officers. What I wanted to contend was that these judicial officers should not look to the Central Board of Revenue for promotion etc. They should not feel that if they accept too many appeals they may be transferred to a place where they may not have all the amenities of life or that their promotion might be stopped. I only submit that their conditions of service should be a bit different.

There is another argument. It is that in this cadre there may not be too many persons and therefore the chances of promotion will be very few. It is a moot question whether these Appellate Controllers should belong to the Finance Department. I would rather like that this cadre of officers should be subordinate to the High Court and their promotions etc., just like those of other judicial officers, may be subject to the jurisdiction of the High Court. That would take away this objection also.

This objection can be met in other ways also by Government. They may say that there are other ways open to the officers for promotion.

My only point is that the Appellate Controller is the first judicial officer. I may tell the hon. Minister that I am not complaining that these officers are not behaving rightly. They are behaving rightly but there will be much more confidence. In other countries the assessee goes to the Income-tax officers with the confidence that they will be treated according to law. We want that our assessee should also feel like that and they should also have the same confidence. For this purpose, this first judicial officer should not look up to the C.B.R. for promotion etc. That is a point which I submitted for consideration.

I should also like to refer to article 50 of the Constitution in which it is said that the Government should take steps for the separation of the judiciary from the executive. I may also refer to another provision, section 556 of the Code of Criminal Procedure which states that officers of a particular department cannot hear cases relating to crimes against that particular department because they are deemed to be interested in it. Since these officers remain officers of the income-tax department, they have to think that they must look up to the Board for promotion etc. They may be mistaken. It may be an unconscious bent of mind that if they behave in a particular way they cannot get promotion etc. But the fact is there. The hon. Finance Minister also thought that these officers do not think in that way and that they do not like that they should be subordinate to some other authority. I had many conversations with these officers and I must say that the officers would very much like to be subject to the High Court than to the C.B.R. for promotion etc. Therefore, no good reason has been

advanced by the hon. Minister for saying that this reform cannot be made.

I think the will to do is not there. If the will is there it can be done very easily and there will be no difficulty. As I submitted previously, an attempt was made but the department did not agree. I wish the hon. Minister would rise above the wishes of the department in this matter and give satisfaction to the general public. The department will become much more popular if they accept this reform.

So far as the High Courts and the Supreme Court are concerned, they are concerned only with questions of law, cropping up in these cases. But the Appellate Controller is the first judicial officer who deals with facts. Therefore, my submission is that, on these grounds, this amendment should be accepted.

The Minister of Revenue and Civil Expenditure (Dr. B. Gopala Reddi): Sir, I am unable to accept this amendment since it was considered at great length in the Select Committee also. It is purely a revenue and administrative matter and not much of a judicial matter and we want to follow the general pattern of revenue administration. After all, as I said, we are likely to get about Rs. 2½ crores or so. While in the Income-tax Act, the Wealth Tax Act, the Expenditure Tax Act and in the Gift Tax Act we follow a particular pattern, it is not the intention of Government to follow another pattern in this Estate Duty. All the revenue Acts must follow the same pattern. Whatever obtains in Income-tax and other taxes must also obtain in Estate Duty.

There are about 2 or 3 officers going to be appointed as Appellate Controllers and there is again an appeal to the usual Tribunals. Therefore, at this stage, it is not desirable to keep these officers under the High Court or the Supreme Court. We do want them to be fair-minded and judicial-minded; but they must be under the C.B.R. The aggrieved party can always go to

[Dr. B. Gopala Reddi]

the Appellate Tribunals. We want the general pattern of income-tax to be the pattern here.

Pandit Thakur Das Bhargava: I do not want this in Estate Duty alone. I have been urging that in Income-tax and other taxes the pattern should be this and.....

Dr. B. Gopala Reddi: But income-tax is not now under consideration

Pandit Thakur Das Bhargava: It is only a pattern taken from the income-tax.....

Dr. B. Gopala Reddi: Let us follow the usual practice and let us think of amending all the other Acts later on. That is a different matter.

Mr. Speaker: Is it necessary to put the amendment to the vote of the House?

Some Hon. Members: The hon Member does not press it.

Mr. Speaker: Is the hon Member not pressing it?

Pandit Thakur Das Bhargava: I want that this might be put to the vote of the House.

Mr. Speaker: Then, I will put it to the vote of the House. The question is:

Page 2, line 35,—

add at the end—

"and the Appellate Controllers shall not be subject to the Board in the matter of their transfers, promotions and other conditions of service."

The motion was negatived.

Mr. Speaker: Now, the question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Mr. Speaker: I urge upon the Government party to have the whips here.

I am really surprised that there are a dozen whips and yet they leave the entire responsibility of making the motion, supporting the Bill and ultimately carrying it through also on the shoulders of the hon. Minister. The Secretaries and other persons belonging to the party must be able to assist the hon. Minister. There is no use leaving the hon. Minister alone. At least let me have more than one voice for 'Ayes'. In future, if I hear one 'Aye' alone, I will say the 'Noes' have it

(Amendment of section

9)

Shri L. Achaw Singh (Inner Manipur): Sir, I beg to move—

Page 2,—

after line 36, add—

'(a) in sub-section (1) for the words "two years" the words "five years" shall be substituted.'

The period of two years provided in the present Bill is absolutely inadequate. The Taxation Enquiry Commission has recommended that the original Act should be amended so that it can bring this into line with the law of other countries and I do not know why the Select Committee has rejected the proposal which was provided in the original Bill. I submit that the change will deprive the Government of a substantial amount of revenue. In England, the period of five years is provided for charitable gifts. I do not know why we should not profit by the experience of those who have found it to be effective. I would, therefore, request the Government to accept my amendment.

Mr. Speaker: The amendment is before the House.

Shri Prabhat Kar: Sir, I support this amendment. When the hon. Minister brought forward this Bill originally on the floor of the House he said that out of the experience of the last five years, he thought if

advisable to bring the amending Bill. So, Government gave proper thought while the amending Bill was brought forward before the House. At that time, when the Bill was brought up here, the Government thought that the period of two years should be changed to five years. But the Select Committee has amended this. I would like to know why the Government, which thought of five years originally, is now thinking in these terms.

Pandit Thakur Das Bhargava: I oppose this amendment. The effect of this amendment will be that the gifts which have already taken place more than two years ago, will be in jeopardy. If the five years' rule is adopted, it would mean that those gifts which would have become indefeasible will come into question again. The principle of retrospective legislation is so well-known in this House that I need not repeat it. In England, in 1910 an attempt was made for changing the period from one to three years. At that time transitional provisions were made that all those gifts which were established by the efflux of time were taken away from the purview of that amendment. Similarly, in 1946 when three years were changed to five years, at that time also, similar transitional provisions were accepted. Now, we have passed The Gift Act. What is the meaning of changing the period to five years? Ordinarily, when we enact, we do not give retrospective effect and it will be wrong to do so in this case. Only in certain kinds of legislation, retrospective effect is given. It is not this kind of legislation. In our taxation legislation, retrospective effect is not ordinarily given and so this amendment is not acceptable. All those expectations which have been raised in the minds of the people making gifts ought not to be disturbed and all these circumstances which they have contemplated in the course of their life should not in this way be disturbed to such an extent. Then, all those transactions would be in jeopardy. I, therefore, oppose this amendment.

Dr. B. Gopala Reddi: I am thankful to the Panditji for the elucidation he has given. The Select Committee went into the pros and cons of this amendment and suggested that the *status quo* might be maintained. That means two years. We need not also give retrospective effect as he has pointed out. Therefore, I am unable to accept the amendment.

Mr. Speaker: I shall put amendment No. 21 to the vote of the House. The question is:

Page 2,—

after line 36, add—

'(a) in sub-section (1) for the words "two years" the words "five years" shall be substituted;'

The motion was negatived.

Mr. Speaker: The question is:

"That Clause 4 stand part of the Bill"

The motion was adopted.

Clause 4 was added to the Bill.

Mr. Speaker: The question is:

"That clauses 5 to 11 stand part of the Bill."

The motion was adopted

Clauses 5 to 11 were added to the Bill

Clause 12.—(Amendment of section 33)

Mr. Speaker: Now, we shall take up clause 12. Let me dispose of the Government amendment first. The hon. Minister. The hon. Minister must have somebody to assist him also; there are so many young Ministers ..
(Interruptions)

Dr. B. Gopala Reddi: SIR, I beg to move:

Page 4,—

(i) line 19, for "clause" where it occurs for the second time, substitute "clauses"; and

[Dr. B. Gopala Reddi]

(ii) after line 25, add—

“(m) property belonging to the deceased who was a member of armed forces of the Union and who was killed in action during operations against an enemy.”

Mr. Speaker: This amendment is before the House and I will put it to the vote of the House.

Shri Karni Singhji (Bikaner): Sir, once this amendment is put to the vote, I will not be able to speak on my amendment.

Mr. Speaker: The hon. Member may move his amendment also.

Shri Karni Singhji: I do not wish to move my amendment but I would like to speak on it. I am very glad that the Government have accepted the substance of my amendment No. 9 which seeks exemption for the armed forces from the estate duty when killed in service. Ever since 1953, when I had the honour to serve on the Select Committee on Estate Duty Bill, I had been pursuing this particular point and in my minute of dissent which I appended to the 1953 Select Committee report, I had mentioned these two points. I am very glad that the Government and the House, in their collective wisdom, are accepting the main substance of my amendment. I do hope that at some later stage the House will reconsider the services of the police force who are killed in certain specified and difficult circumstances—for example fighting the dacoits; the armed constabulary which is policing the Indo-Pakistan borders who stand to lose their lives every day. This point, I hope, will be taken up at some later date.

In the light of the Government amendment which has been moved as a result of mine, which substantially accepts my stand, I most heartily agree not to move my amendment. I

am certain that this precious gesture of the Cabinet and the hon. Finance Minister and the House will be very greatly appreciated by all the armed forces of the Union.

Shri Prabhat Kar: In part (ii) of the amendment, the wording is: “killed in action during operations against an enemy”. I do not know whether it sounds all right.

Mr. Speaker: Singular includes plural. “Operations against an enemy”—there may be only one enemy. Everybody knows when we are fighting somebody, it is the enemy. “Killed” means by the enemy. I do not know if a friend will kill him. It is the enemy who comes there in the battle. There are a number of enemies, but they do not come for the operation there. There may be enemies outside.

Shri Prabhat Kar: I think it would be better if we say “killed in action during operations”.

Mr. Speaker: If a lion or tiger kills him?

Shri Prabhat Kar: It must be in operation.

Mr. Speaker: Suppose he goes out and a wolf eats him away.

Shri V. P. Nayar (Quilon): He must get the advantage in that case. If for an operation he goes into the jungle and is eaten by the man-eaters, I think he is equally entitled to the protection of the law.

Mr. Speaker: That is beyond the scope of the amendment.

The question is:

Page 4,—

(i) line 19, for “clause” where it occurs for the second time, substitute “clauses”; and

(ii) after line 25, add—

“(m) property belonging to the deceased who was a member of the armed forces of the Union and who was killed in action during operations against an enemy.”

The motion was adopted.

Mr. Speaker: The other amendments are barred.

The question is:

“That clause 12, as amended, stand part of the Bill.”

The motion was adopted.

Clause 12, as amended, was added to the Bill

Clause 13.— (Substitution of new section for section 34)

Dr. B. Gopala Reddi: I beg to move:

Page 4, lines 31 and 32,—

for “(i), (j) and (1)” substitute “(i), (j), (1) and (m)”.

Mr. Speaker: It is only a consequential amendment.

Shri Prabhat Kar: What is the aim, we should know.

Mr. Speaker: “(m)” has been added already.

Shri Jaganatha Rao (Koraput): “(m)” relates to the armed forces, the amendment just passed.

Shri Naushir Bharucha (East Khadesh): I want to move my amendments.

Mr. Speaker: I am coming to that.

The question is:

Page 4, lines 31 and 32,—

for “(i), (j) and (1)” substitute “(i), (j), (1) and (m)”.

The motion was adopted.

Shri Naushir Bharucha: I beg to move:

(i) Page 4, omit lines 35 to 40.

(ii) Page 4, line 28,—

after “determining” insert “the rate of”.

Amendment 12 is aimed at omitting lines 35 to 40, that is, clause (c) relating to joint Hindu family will be omitted. By amendment 36 I have said the words “the rate of” may be inserted after the word “determining”.

I may say that so far as amendment 36 is concerned, I presume that it is the intention of the Government also that the aggregation is for purposes of calculating the rate of estate duty payable, or the slab in which, estate duty should be paid. There is no objection, therefore, I presume on the part of Government accepting this amendment which only clarifies the position. I may point out that the original section 34 in the Estate Duty Act has the wording “for determining the rate of estate duty”. Therefore, I have simply put that amendment to clarify the position.

With regard to omitting lines 35 to 40, that relates to the joint family belonging to the *Mitakshara* and other schools of law. I need not expand on that. I feel that the Hindu joint family has not been given a square deal, and just because it happens to be an institution peculiar here, I do not see why it should be handicapped with a particular disadvantage.

Mr. Speaker: The amendments are before the House.

Pandit Thakur Das Bhargava: I had a similar amendment, amendment No. 1.

Mr. Speaker: It is the same as 12.

Pandit Thakur Das Bhargava: Yes. Therefore, I want to support this amendment.

So far as this amendment is concerned, we heard the hon. Minister's reaction. He was of opinion that as a matter of fact the *Mitakshara* families

[Pandit Thakur Das Bhargava]

are put to a great advantage if this amendment is not there. That was his reason.

So far as the question of rate is concerned, he was pleased to say this really relates to not aggregation but rates. I do not want to expatiate on it. I hope the amendment of my hon. friend Shri Bharucha will be accepted to make the whole thing clear, as fell from your lips also yesterday.

In regard to the amendment proposed, my humble submission is that the position has been rather misconceived. I do not think that so far as taxation or the rights of any person, any citizen of India are concerned, they are based on his belonging to a particular class, creed, religion, sect or caste. We read in the Constitution that all persons are to be treated as individuals. In the preamble of the Constitution we find the words "the dignity of the individual". We do not find the dignity of the family or the dignity of the caste or creed or anything. The words are "the dignity of the individual". I would very humbly plead with the hon. Minister that if his argument were accepted, it will lead to very great mischief in this land. If you were to tax certain castes or creeds or religions or because a person belongs to *Dayabhaga* or *Mitakshara* families, it would lead to such results that the Government itself would be ashamed of.

Shri V. P. Nayar: Why not *Aliyasantana* or *Marumakkattayam*?

Pandit Thakur Das Bhargava: My argument equally applies to all.

Look at the results. What would happen? Suppose a person has only property worth Rs. 5,000 and he happens to be a member of the joint Hindu family, would it be taxed or not?

Dr. B. Gopala Reddi: How many sons has he?

Pandit Thakur Das Bhargava: He has got nine sons.

Dr. B. Gopala Reddi: Then?

Pandit Thakur Das Bhargava: Then he will be taxed.

Dr. B. Gopala Reddi: He won't.

Pandit Thakur Das Bhargava: A person leaving only property worth Rs. 5,000 will be taxed, whereas according to what fell from my hon. friend, no person who has left property less than Rs. 50,000 should be taxed.

We know that under the Hindu law, persons belonging to the joint Hindu family belonging to Madras, Bombay and Madhya Pradesh have an absolute right to alienate their share in the undivided Hindu family. In the other States such a right does not exist. Suppose a person in any of these States alienates his entire property in the joint Hindu family, he leaves no property, yet the shares of all his lineal descendants, even of those who do not get any interest by birth, for instance the daughters, will all be aggregated. They will all be taxed. This is the anomalous position.

Mr. Speaker: Only the other day the hon. Minister seems to have said that it is calculated only for the purpose of determining the rate and not the estate to be taxed.

Pandit Thakur Das Bhargava: Supposing a person leaves no property or property worth only Rs. 1,000, what does the word 'rate' mean in his case? If all the property is aggregated and another Rs. 5 lakhs come in, the rate will be fixed on the total amount. The rate will not be on Rs. 1,000. The position will be that he leaves no property and yet he is taxed at the rate fixed on the basis of Rs 5 lakhs.

Mr. Speaker: If he leaves no property at all, where does the question of tax come in?

Pandit Thakur Das Bhargava: If he alienates the entire property and he has only the joint family status, then he leaves no property, only the lineal descendants possess properties as they have not alienated their share

of the property. In that contingency, that property must be aggregated and gathered together with the property left by the deceased.

Dr. B. Gopala Reddi: Are the sons partitioned from the father?

Pandit Thakur Das Bhargava: No; only the joint family property is there. If you speak of partition, you are entertaining a proposition which is unheard of. Separate property of no son can be taken. Here it is only the question of the joint family. It may happen that the deceased may have no property, no share so far as the joint family is concerned.

Dr. B. Gopala Reddi: And he is a parasite on the Hindu joint family having alienated all his property?

Pandit Thakur Das Bhargava: Supposing he has got only property worth Rs. 1000 and he has alienated all his property. Is that rare? Many fathers do this. They alienate their entire property—it is taken away in debt.

Mr. Speaker: Let us be clear about this position. We will assume that a person has no separate property, or having had separate property he has disposed of that property and he continues to be a member of a Hindu joint family along with his sons and others. The only question is, if he has lineal descendants—does it include female descendants also....

An Hon. Member: Yes.

Mr. Speaker: There is both male and female under the Succession Act. If he has lineal descendants, then his share alone, not those of his descendants, will be taxed, but the rate will be fixed on the aggregate of the entire property. Is that understood?

Dr. B. Gopala Reddi: Yes.

Mr. Speaker: Therefore, the shares of the lineal descendants will not be taxed. Only his share will be taxed, but the rate will be fixed taking

into consideration the entire joint family property including the shares of the lineal descendants also. Let us understand that before voting.

Dr. B. Gopala Reddi: When the taxable property is nil—of course, the rate will be fixed on the entire property—according to him, what is there to be taxed?

Mr. Speaker: Is a son's share in a joint family property taxable?

Dr. B. Gopala Reddi: He says that it has been disposed of.

Pandit Thakur Das Bhargava: Supposing it is Rs. 500, what difference does it make?

Mr. Speaker: What the hon. Member says is, if he has separate private property which he can dispose of and which he has disposed of, and he has only his share in the joint family, that remains along with the shares of his lineal descendants. It is clear that his share only—if he has four sons, he will have only one-fifth share—will be taxed. But the rate at which he will be taxed is not based on the value of his share only, the rate will be calculated based on the value of the entire joint family. His share and the shares of his lineal descendants will be aggregated for fixing the rate at which he will be taxed. Therefore, that is clear. What is the hon. Member's objection? It is not that I am asking him to vote for or against it, but I want to know what exactly is the position.

Pandit Thakur Das Bhargava: I will give all my objections. Firstly, Sir, aggregation can take place if there is a nucleus of property; otherwise there is no question of aggregation at all. This law does not provide that if a person leaves no property there will be no aggregation.

Mr. Speaker: There is the joint family property.

Pandit Thakur Das Bhargava: If he has alienated the whole of his share....

Mr. Speaker: Including his share in the joint family property?

Pandit Thakur Das Bhargava: Of course. According to law a person is capable of alienating his share in the entire joint family property.

Dr. B. Gopala Reddi: Then he will pay gift tax at that stage, and if there is no property that is passing on at his death there will be no tax at all.

Pandit Thakur Das Bhargava: I understand the hon. Minister to mean that if there is no nucleus of property there will not be any tax.

Mr. Speaker: What is there to be taxed? Estate duty is on whatever property is passed on including joint family property. If during his life time a person has sold everything including his share of the joint family property and he leaves nothing behind, then nothing is passed on.

Pandit Thakur Das Bhargava: Supposing he leaves Rs. 1000 worth of property and the aggregate property comes to Rs. 5 lakhs, what happens then?

Mr. Speaker: The sons will have to pay; whoever takes it.

Pandit Thakur Das Bhargava: That is actually my submission, that the sons cannot be made to pay.

Mr. Speaker: What I am saying is—the hon. Member does not put it that way—the difficulty may arise this way. Whoever receives the property of Rs. 1000 will have to pay Rs. 1500 by way of tax. We will assume that a person leaves only Rs. 1000 worth of property as his share in the joint family and the rest of the members of the joint family continue to possess their entire share. If the entire property of the joint family may aggregate to Rs. 5 lakhs, the rate of

tax payable will be fixed taking into consideration the entire property of Rs. 5 lakhs, which will be an enhanced rate—more than what it will be if the rate is fixed on the share of the deceased only—and in that case whoever receives this share of Rs. 1000 may have to pay Rs. 1000 more by way of tax.

Dr. B. Gopala Reddi: If he surrenders the entire property—that is another matter—the deceased man will be declared insolvent for this purpose.

Pandit Thakur Das Bhargava: Section 53 of this Act says that a person is only liable to the extent he receives property. What would happen is, according to section 53 no person will be able to pay.

Mr. Speaker: Those are extreme cases—Government will lose.

Pandit Thakur Das Bhargava: Then, what will be the rate in the case of other persons?

Mr. Speaker: I am not here to argue about the goodness or soundness of this position, but all that I am anxious is that before putting it to the vote of the House I must know what exactly I am putting before the House. Therefore, I want to make clear, both for myself and also the hon. Members here, as to what exactly Government proposes to do and what exactly the hon. Member's objection is. I do not either side with him or oppose him, it is open to him to take any view. The point is clear that to the extent of share that a person leaves, only to that extent the property will be liable for payment of estate duty. But the only difference is that the calculation of the rate of duty will not be confined to the property which passes on, but it will be calculated as though the entire property of the deceased and the joint family consisting of his lineal descendants is passing on his death. It is on that assumption that the rate will be fixed, but it will be levied only on the share which passes on.

Shri K. Periaswami Gounder (Karur): The maximum rate is only 40 per cent.; it will never go beyond 40 per cent.

Mr. Speaker: I am not talking about 40 or 50 per cent. If the rate was fixed only on the property left behind it would have been 5 per cent. or 10 per cent., but now it may reach even 40 per cent. Pandit Thakur Das Bhargava's complaint is that it may reach even 40 per cent. if other shares of the property are also tagged on to his share because of the fact that it continues to be a joint family property.

Pandit Thakur Das Bhargava: I will come to the third point. It is said: "interests in the joint family property of the lineal descendants". This word "interest" does include liability also. "Interest" does not mean positive interest only. If there is liability of lineal descendants, where will it go? The liability must also be shared. "Interest" means both positive as well as negative property, and also liabilities.

Mr. Speaker: "Interest" always means "minus debt".

Pandit Thakur Das Bhargava: Let us take another case. Supposing the whole family is insolvent and there is a decree of Rs. 3 lakhs against the father as well as the sons, and the father has got a good self-acquired property also, no tax will be payable at all because the interests of the lineal descendants will amount to five times the amount of debts on the father.

Dr. B. Gopala Reddi: No, Sir; self-acquired property of sons will be kept apart, it has nothing to do with joint family and his share in the joint family.

Pandit Thakur Das Bhargava: I take it, if a person has a decree against him to the tune of Rs. 3 lakhs and four sons, the only property

which will be available for imposition of estate duty will be one-fifth share of the property of the family, and if there is any separate self-acquired property it will be kept separate for all time and it will not be aggregated.

Dr. B. Gopala Reddi: Self-acquired property of sons will not be aggregated for ratable purposes.

Pandit Thakur Das Bhargava: I understand that so far as estate duty is concerned a person has to pay duty like this on his interest in the joint family property plus his separate property also. In that case his separate property will be there and his joint family property plus liabilities to the tune of Rs. 3 lakhs, in which his one-fifth share will be taken as well as four-fifth of his sons' liabilities will also be taken. His separate property will be taxed on the basis of the tax on the joint property of the deceased and his sons. I have given you an example in which all your estate duty will amount to zero.

13 hrs.

Mr. Speaker: It does not matter. The deceased is not going to take the property to heaven or hell.

Pandit Thakur Das Bhargava: Only the treasury will take it away.

Mr. Speaker: The treasury must get along for the benefit of the entire community.

Whatever share the deceased was possessed of that alone will be taxed but at a higher rate on the aggregate of all the other properties. But if the other fellows are also insolvent there is no higher rate. Cipher plus cipher continues to be cipher.

Pandit Thakur Das Bhargava: Now look at the discrimination. In regard to income tax you know that the exemption limit is Rs. 3,000. If a house consists of ten persons, including the earning member, that one

[Pandit Thakur Das Bhargava]

earning member of the joint Hindu family has to pay the income-tax on behalf of nine persons. This is the discrimination we have been complaining of.

Previously the limit in regard to the individual was Rs. 1 lakh. In regard to joint Hindu family the limit was Rs. 50,000. No person had to pay any tax, no member of a joint Hindu family had to pay any tax unless he had property worth Rs. 50,000 to pass on. Now the law is changed in favour of the rich and to the detriment of the poor. If a person has got any amount of property whatsoever, he is chargeable to estate duty. No person should be chargeable with any duty unless he has got property which will pass on his death to the tune of Rs. 50,000. Whereas so far as this unfortunate *Mitakshara* family is concerned, even if the property is Rs. 1,000 which will pass on death, he will be taxed.

Mr. Speaker: Where is it stated? Is there no limit?

Pandit Thakur Das Bhargava: Now the law has been changed very much to their detriment. Previously only a person of a joint Hindu family to whom property worth Rs. 50,000 or more passed on inheritance could be charged. Now any person who has any property could be charged

Mr. Speaker: I thought they wanted to make a distinction between separate property and joint Hindu family property. Originally Rs. 75,000 was the exemption given for separate property; Rs. 50,000 was the share of the property of a deceased member of the Joint Hindu family. It has been raised to Rs 1 lakh. Whatever exemption is given to the separate property is to that extent given to joint family property also. But the grade will be on the aggregate of the property.

Pandit Thakur Das Bhargava: Now there is absolutely no limit so far as

a member of a joint Hindu family is concerned. He may even die a pauper leaving Rs. 5 and yet he is liable.

Mr. Speaker: How?

Pandit Thakur Das Bhargava: Because the words are that the whole property shall be aggregated so as to form one estate and estate duty shall be levied thereon.

Mr. Speaker: I do not think the other clause is abrogated stating that Rs. 50,000 or Rs. 1 lakh will be exempted. That provision has not been abrogated by this amendment.

Pandit Thakur Das Bhargava: Let the hon. Minister make this statement.

Mr. Speaker: I understand the position to be like this. If there is taxable property which the deceased has left, tax on that property will not be calculated as if he left that property only but the ratable duty that will be charged on that property will be at the rate as if he left behind him not only that share but the share of all his lineal descendants also. But the matter of exemption and other things are not affected by this. If he is not liable to pay at all on account of the exemption, he will not be liable to pay. But if he is liable to pay over the exemption, it is not at the rate belonging to that particular portion, but the aggregate rate that will be charged. Am I right?

Shri B. Gopala Reddi: After aggregation if it exceeds Rs 50,000 he will be taxed. Duty can never be higher than the amount. We proceed on that basis.

Mr. Speaker: Supposing the gentleman sells away his property without dividing it among his sons?

Dr. B. Gopala Reddi: That means he has no property at all.

Pandit Thakur Das Bhargava: It is necessary for the deceased to leave

property worth about Rs. 50,000 before his property can be taxed?

Dr. B. Gopala Reddi: If the property left is only Rs. 1,000 and the aggregate amount is Rs. 5 lakhs or Rs. 20 lakhs, anyhow the duty can never be higher than the amount of Rs. 1,000. That property alone can be taxed.

Pandit Thakur Das Bhargava: He is evading the question. Supposing a person leaves property worth Rs. 49,000 and the aggregate amount is Rs. 11,000 more.

Mr. Speaker: Then there is discrimination here. Exemption of Rs. 50,000 or Rs. 1 lakh would not apply to this case at all? If this share is less than Rs. 50,000 normally it would not be taxable. The others are frugal or careful. Simply because the third man is careless he leaves nothing. Why should the exemption go? What is the point in this?

Shri Jhunjunwala (Bhagalpur): I shall illustrate this. The whole family has got property worth Rs. 1,35,000. There are three members. The father dies. Each man's share is Rs. 45,000. Will they be taxed on Rs. 45,000?

Dr. B. Gopala Reddi: Yes, they will be taxed.

Mr. Speaker: Then there is absolutely no exemption so far as joint Hindu family is concerned.

Dr. B. Gopala Reddi: When the aggregate amount is more than Rs. 50,000 it will attract the estate duty.

Mr. Speaker: Then the joint family is given a go-by.

Whereas in *dayabhaga* each man's property is his own, here each man's property is not his own. A man is entitled to his share. Though his share is only Rs. 50,000 if the aggregate Rs. 50,000, the whole property is taxed when it is passed on. What is the principle behind it?

Acharya Kripalank (Sitamarhi): Have they consulted the Law Minister? I do not think our friend is a lawyer; he may not be able to understand these complications.

Mr. Speaker: That does not require law. The only point is, he wants to know why.

Shri Prabhat Kar: What is the Government's intention?

Mr. Speaker: The Government's intention is, if one man dies, another man's property should be taken away, or, if a man dies . . .

Dr. B. Gopala Reddi: That branch alone is being taken. When he died, he was the owner of Rs. 1,35,000. He has two sons. We are taking that branch as a whole. He was the owner of Rs. 1,35,000. He has two other sons. Of course, for taxable purpose, only one-third of Rs. 1,35,000 is taken. For ratable purposes the rate will be that applicable to Rs. 1,35,000.

Mr. Speaker: Let us assume that the man leaves Rs. 50,000 as separate property. There is an exemption. So far as the father leaves a separate property of Rs. 50,000, you are not going to tax a pie upon that.

Dr. B. Gopala Reddi: His share in the joint family is aggregated.

Mr. Speaker: Leave alone his joint family property. That man's property passes to the sons however rich the sons may be and as there is the exemption, that Rs. 50,000 is not taxed. In a joint Hindu family, the sons are poor and the father and all the sons together, have Rs. 51,000, say. The moment the father dies, the entire share of the sons also is taxed.

Dr. B. Gopala Reddi: Self-acquired property of the son would not be aggregated. If he has the share of the joint Hindu family . . .

Mr. Speaker: I am only using it as an analogy. If the share of the father, in a separate property, was Rs. 50,000

[Mr. Speaker]

or Rs. 60,000, to the extent of Rs. 50,000 there is the exemption, in the hands of the sons. They take the Rs. 50,000. If he dies only as a member of the joint Hindu family, that joint property, even though all of them are coming together, may be only Rs. 51,000 or Rs. 60,000, where the exemption is not given even for a pie. Even with this Rs. 10,000 which he leaves for four sons, the entire Rs. 10,000 is liable to come under the provision; even if no exemption is given, why do you make a difference between separate property and joint family property and his share in the joint family? Why is it augmented in the whole family?

Dr. B. Gopala Reddi: This is only for ratable purposes, but there, the entire property is taxed. Rs. 50,000 or Rs. 60,000 will be taxed, but here, the aggregation is only for ratable purposes.

Mr. Speaker: The exemption goes. His complaint is, there is no objection to the rate being increased, though even there, he does not agree to one point; but, all the same, it may be said that in the aggregate you are receiving it only from the share of the property, not exceeding that share. But why are you removing the exemption also so far as the share is concerned, and making a distinction between separate property and joint family property. If he left separate property to the extent of Rs. 50,000 it is exempt, but merely because this is a joint family property you are taxing it, though under other circumstances, if it had been separate property he is entitled to exemption. Not only that. He is asked to pay a higher rate also. That is a double inconvenience. He wants to know the reason or the principle behind it. The hon. Minister will explain later.

Pandit Thakur Das Bhargava: I was submitting that as a matter of fact so far as the property of the joint Hindu family is concerned there is absolutely no exemption at all, not a

single pie of the entire property should be taxed. That was the first point. Secondly, there is the point about the rate. My hon. friend says after all the rate is aggregated. May I remind him of the provisions of the Income-tax Act where also we have got a differential treatment. But then that differential treatment is not the same as here.

Yesterday, you, Sir, were pleased to suggest and pass a remark incidentally on the question of minor sons. You first put the question whether the minor sons' share is to be taken or whether it is the share of all the lineal descendants. That was a most pertinent question. A non-Hindu can come and say, or a man who belongs to the *Dayabhaga* system or a Mussalman or a Christian can come and say, "All right, here is the Hindu; he belongs to the *Mitakshara* family. You are taking his share of his property. But you are taking our entire property and it is taxed." This can be a possible objection, though, according to me, this is no objection, as I shall show later on, because, the community as such is not taxed; the classes are not taxed; the family is not taxed; only the individual is taxed. If I have got an advantage in the Hindu law, do they want to deprive me of it? A Mussalman can marry four wives. Can a Hindu do it?

Dr. B. Gopala Reddi: He could marry eight wives previously.

Pandit Thakur Das Bhargava: Today he can marry four wives, and can divorce a wife by simply saying *taluk*. So far as donations are concerned, he can make gifts also to an extent of one-third of the property. All these things do not apply to the Hindus. Why not they apply these laws equally? They do not apply these laws equally to the Mussalmans and others. What is the meaning of his saying that *Dayabhaga* is a different system and that therefore, they should bring the *Mitakshara* family into the lap of the

Dayabhaga system? I do not understand. I can tell the House that so far as the estate duty is concerned, there must be no such difference for the taxes, and as far as the Hindu joint families are concerned, as the number is large the deaths will be more frequent. You cannot compare them and say because the *Dayabhaga* family contributes to your coffers, that *Mitakshara* families also should contribute equally and in the same way and thus it must be equated in this way. This is not correct and that is not constitutional; you will thus be violating the Constitution. You are really going against the Constitution in bringing an argument of this sort which only baffles me and it cannot have any force.

You can kindly see what is given in the Income-tax Law, and the law relating thereto. The only question that came up in 1949 then was with regard to Rs. 3,500 or Rs. 5,000 in the joint Hindu families, and at that time, the question was solved in a different manner, in a manner which you were pleased to suggest. We provided that in regard to joint Hindu families, where there were two adult members, the limit was to be double the amount, and that if there was a minor son, he would not get the advantage. Even for this purpose, which according to me is thoroughly unconstitutional, they say that the right of minors is taken away. Even minors do not get anything. So far as the right of majors is concerned, it is unthinkable that their right can be taken away, by the estate duty even for the purpose of the rates.

I have given an example of the income-tax in regard to the joint Hindu families. I beg of the hon. Minister to go into the matter kindly. If a Hindu joint family member has got Rs. 4 lakhs worth of property and pays all the taxes, then, each member, if the family consists of four members, gets Rs. 1,000 a month, whereas in the case of a Mussalman family living jointly or a Parsee family or any other family, if they live together and make joint earnings, after paying all the taxes,

each member will get Rs. 4,000 a month. Will the hon. Minister bring his principle here and do justice to the *Mitakshara* family? Will he say that these people do not have Rs. 3,000 less? I submit that all these principles which have been relied upon by my hon. friend are too weak, to which any support could be given. My humble submission is, if you will tax in this manner, there will be nothing but confusion in this land. We only know of one principle: whatever passes on the death of a particular person, that would be the subject-matter of estate duty whether he is a Mussalman, Hindu or anybody else. That is the right principle. Otherwise, you will be offending against the principle of equality given under articles 14 and 15 of the Constitution.

I understand that 80 years ago, when the Englishmen were our masters here, they enacted this law in regard to the Hindu joint family, and they included it in the definition of person and hundreds of crores of rupees have been illegally exacted from them. Now, in the year 1958, the hon. Finance Minister wants that we, with open eyes, should recognise a distinction which does not exist in law and which is not just, and make a distinction between the *Mitakshara* families and the rest of the world—that if any person belonging to any other community has got a property of less than Rs. 50,000, on passing, no estate duty can be levied. And again, so far as these families are concerned, the poorer the family the greater is the tax.

Mr. Speaker: As soon as a son is born, the little child is made to take care of itself. In case the father should die, the child might get the property.

Pandit Thakur Das Bhargava: According to Hindu Law, a child, when he is introduced into this world, gets an independent right not through his father but from the right of the accident of birth.

Mr. Speaker: So, soon after the birth, if he divides himself from his son, then there is no aggregation.

Pandit Thakur Das Bhargava: The result will be, as in the Income-Tax

[Pandit Thakur Das Bhargava]

Act, the families will be broken. The direct result of this will be that it will act as a social monster and will break away every Hindu joint family. All Hindu families will think that as their sons are there, the greater the number of sons, the greater is the likelihood of the person being taxed.

My friend was eloquent in telling us, "After all, what is Rs. 400....."

Mr. Speaker: The hon. Member has said enough and people have understood him. It is only a question of change of heart. I do not know how far the hon. Minister is going to change. What is the good of spending more time upon this? We have spent a lot of time.

Pandit Thakur Das Bhargava: I do not think the hon. Minister will change. He himself has said he is not giving any assurance.

Mr. Speaker: If the hon. Member has cleared his doubt from the Minister, he may resume his seat. What is the good of arguing?

Pandit Thakur Das Bhargava: At least I am arguing before my fellow Members. I am not leaving it here. It is a question of very great importance so far as the principle of taxation is concerned. Therefore, I am appealing to all my fellow Members that they should think twice before giving their vote.

13.22 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

The hon. Minister was very eloquent yesterday in telling us that only Rs. 400 are taken and only once after death. And he is quite right. May I tell him, if in a small family, the father has left only Rs. 10,000 and there are five or six sons; what will happen to that family? It is not a question of Rs. 400 at all. It is a question of the so-called public servants going to the family and for years

harassing the family. I have known how for years they are harassing the family. For years they go on making inventories. The enemies send anonymous letters and they go on with their enquiry for years. May I humbly ask the hon. Finance Minister if he has experienced any case which has been decided in less than 1½ years?

Even yesterday, a person was asking me whether the police can interfere making inventories and harassing him. I know of a case in which the bank was stopped from paying any money to a person and though he was owner of lakhs, he was unable to draw his money and he had to get some loan from his friends for defraying his expenses, because the bank was asked not to pay him any money. So, the question is not one of Rs. 400, but it is a question of vexation and harassment to the middle-class families if you place the limit too low. Otherwise, Rs. 400 is not much. I do not think on that point, people are afraid. People are afraid of the vexation and harassment that this will entail.

I can go on *ad infinitum* giving many examples. Even today, the department of the hon. Finance Minister even taxes labourers. It is idle for the Government of India to boast that they have fixed the limit at Rs. 3000 for income-tax and Rs. 50,000 for estate duty. As a matter of fact, in practice, even labourers who get Rs. 10 per month are asked to pay income-tax. Similarly, even people with Rs. 1000 will have to pay estate duty on their property. Let the world know how the Hindu joint families are treated here. I have said enough and I am not intrigued even by the statement of the hon. Finance Minister that he will not give any assurance. Even Mr. T. T. Krishnamachari spoke similarly and ended by giving an assurance. The hon. Finance Minister said I am repeating his own words—"I am not giving any assurance; but if there are difficulties, I will look into them."

Dr. B. Gopala Reddi: We will certainly look into individual cases.

Pandit Thakur Das Bhargava: This is an individual case. In the case of A you will charge only 4 per cent. but in the case of B 50 per cent. If that is not difficulty, I do not know what it is.

If the assurance is given or not, if he imposes something which is fundamentally constitutionally wrong, he shall have to change. This is a provision which is inequitable, unjust and it shall never be allowed to remain on the statute-book for a long time. This is most discriminatory. We know that under the Moghal rule, the Hindus were paying *Jesya*. But we never knew that this Government will tax the joint Hindu family like this. I know I am using strong words, but strong things require strong words. Therefore, I appeal to every Member of the House to think twice before he gives his vote in favour of this provision, because this cuts at the very root of the Constitution. It cuts at the root of not only the Hindu joint family, but of the very basis of justice.

Shri V. P. Nayar: This is the fourth time.

Pandit Thakur Das Bhargava: This injustice has been perpetrated four times. Therefore, it is all the more binding on him to consider it and it should not be done for the fifth time. I wish that the hon. Minister will be pleased to look at this matter from the angle I have explained and take away this provision.

Shri Mulchand Dube (Farrukhabad): Sub-clause (c) of clause 13 of this Bill runs counter to the entire scope and principle of the Estate Duty Act. Clause 13(c) says:

“(c) in the case of property so passing which consists of a coparcenary interest in the joint family property of a Hindu family governed by the *Mitakshara*, *Marumakkattayam* or *Aliyasantana* law,

also the interests in the joint family property of all the lineal descendants of the deceased member;”

This should be read along with sections 5, 6 and 7 of the Estate Duty Act. Section 5 reads as follows:

“In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, including agricultural land situate in the States specified in the First Schedule to this Act, which passes on the death of such person, a duty called “estate duty” at the rates fixed in accordance with section 35.”

So, it is a duty which is put only on property which passes on the death of a person. It is not levied on any property which does not pass on the death of any persons.

Section 6 makes the matter still clear:

“Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.”

In the case of a joint family governed by *Mitakshara*, the father has no power to transfer the property belonging to his sons. The sons acquire the interest in the property by birth. So, it cannot be said that the father had any disposing power over the property which belongs to his sons. It cannot be said that the property that passes on the death of the father is the property which belongs to the sons also. Therefore, my submission is that sub-clause (c) goes entirely counter to the entire scope and principle of the Estate Duty Act.

Section 7 reads as follows:

“Subject to the provisions of this section, property in which the deceased or any other person had an interest ceasing on the death of

[Shri Mulchand Dube]

the deceased shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the *Mitakshara*, *Marumakkattayam* or *Alyasantana* law."

This also makes it very clear that the duty should be levied only on property to the extent to which it enhances the shares of others. In the case of coparcenary property, it cannot be said what interest a person had at any particular time. It cannot be said whether the father at the time of his death possessed any particular interest or share in the joint family property. For that reason, it was made clear that when he died, for the purpose of estate duty, what will be considered will be the extent to which the interest of the other members of the family has been increased or enhanced by his death. So, it cannot be said that the shares of the sons could be included for the purpose of assessing the estate duty on the death of the father or any other member of the family.

So, I submit that the theory of aggregation propounded by the hon. Minister is not applicable to a joint family at all and it goes counter to the principle laid down by the Estate Duty Act itself. So long as you do not amend sections 5, 6 and 7 of the Estate Duty Act, clause 13, sub-clause (c) will be inconsistent and irreconcilable with sections 5, 6 and 7. Therefore, at the present moment, it will be *ultra vires* this Parliament even to pass sub-clause (c) of clause 13 of the amending Bill.

Shri Jagannatha Rao: As I understand the provisions, unless the interest of a member of a joint Hindu family who dies exceeds Rs. 50,000 in value, this Act cannot be applied.

Pandit Thakur Das Bhargava: Will the hon. Minister accept this?

Shri Jagannatha Rao: I am stating my reading of the provisions. This is my view. Merely because I am sitting with the hon. Minister it does not mean that I am giving the view of the hon. Minister. It is only when the value of the interest of the member of a joint Hindu family is Rs. 50,000 or more the question of aggregation comes in. In section 34, which is now sought to be amended by clause 13 of the amending Bill, the aggregation is being introduced, because the joint Hindu family is now broad-based. Now the female heirs have also got a share or interest in the property. That is how I understand the provisions of the Bill. I cannot for a moment think that it is the intention to bring in the property of a member of the Joint Hindu family which does not exceed Rs. 50,000 in value. It is not so. That discrimination could not have been contemplated at all. If that is so, in my humble opinion, it will violate article 14 of the Constitution. That is how I understand it. I support the principle of aggregation, as it is highly necessary.

Dr. B. Gopala Reddi: If four brothers are living together and the property of the joint Hindu family is worth Rs. 1,50,000 and if A, one of the brothers, dies, then there is no estate duty. If the property is worth Rs. 1,50,000 and the four brothers are living together, as each man's share is less than Rs. 50,000, it would not be taxed. But if, on the other hand, a brother dies and his estate is worth more than Rs. 50,000, say Rs. 1 lakh, and if he has got two sons, that is, in his own branch, then that property will be liable to estate duty. We are taking into account that branch also for the purpose of levying estate duty. Suppose a property is worth Rs. 4 lakhs and there are four brothers. The share of each Branch will come to Rs. 1 lakh. Then we will take Rs. 1 lakh for ratable purposes. On the other hand, if four brothers have got Rs. 1,50,000 and one of them dies, since each branch would be getting less than Rs. 50,000 we will not tax. But if the branch share is Rs. 1 lakh and the

brother has two sons, each getting Rs. 33,000 and odd, then for purposes of tax we take into account Rs. 1 lakh. That rate will be applied only on the property of Rs. 33,000. So, it is not correct to say that for a joint Hindu family there is no exemption at all. If the head of the branch dies and his branch's share of property is worth less than Rs. 50,000 there is no tax, even though the joint Hindu family property may be worth Rs. 1,50,000. So, in my humble opinion, even now the *Mitakshara* family stands in a better position than the *Dayabhaga* family. In spite of the hon. Member's argument, vehemence and all that, having considered the whole subject and having discussed the matter with our officers, I feel that even now the *Mitakshara* family stands in a favourable position when compared with the *Dayabhaga* family.

Pandit Thakur Das Bhargava: How did this issue arise? Why should you consider the interests of the *Dayabhaga* and *Mitakshara* families? Why should you bring in Hindu, Muslim, Parsee, Jain and all that? I do not see this argument at all.

Dr. B. Gopala Reddi: Whatever it is, as I said, it is not a fact that if a branch's property is worth less than Rs. 50,000 it will be taxed. It will be exempt. But if it is above Rs. 50,000 then for ratable purposes the son's share is also aggregated, because they have a beneficial interest in the deceased man's property. They are going to inherit that property. It is not as if they are not going to get a windfall out of the father's death. Apart from their own share, they are also getting the deceased man's share. They have beneficial interest.

Pandit Thakur Das Bhargava: Every son will get his father's property.

Dr. B. Gopala Reddi: So, when he is getting some property, let him pay the tax; not on his own share but on the share which he is going to inherit. After all it is an accident. The

father dies and then the son is going to get that share, in addition to his own share in the property. While doing that, let him pay on enhanced rate, an aggregate rate on the property which is passing to him on the father's death. I do not see any discrimination or unconstitutionality in this. If they are unconstitutional, they will be challenged elsewhere. Then we shall see. So far as I can see, there is nothing unconstitutional or improper about it. I think the *Mitakshara* family should also be prepared to bear a portion of this. I have nothing more to say. I am unable to accept the amendment.

Shri Mulchand Dube: The hon. Minister has not replied to my point about sections 5, 6 and 7. How can clause 13 be re-conciled with sections 5, 6 and 7?

Mr. Deputy-Speaker: He might be of the opinion that there is no conflict.

Shri Mulchand Dube: He does not say that.

Mr. Deputy-Speaker: No reconciliation is required.

Dr. B. Gopala Reddi: I am accepting Shri Bharucha's amendment, amendment No. 36.

Pandit Thakur Das Bhargava: May I know.....

Mr. Deputy-Speaker: Panditji has not succeeded so far.

Pandit Thakur Das Bhargava: I want a clarification. If he is not disposed to agree to my proposal, I cannot force it. He has said several times that exemption has been given, like others, to the joint Hindu family also, if it has got property worth less than Rs. 50,000.

Dr. B. Gopala Reddi: That is the property of the branch, that is to say, a member and his sons.

Pandit Thakur Das Bhargava: I do not follow.

Mr. Deputy-Speaker: He has tried to explain that if the joint Hindu family consists of four brothers and their sons and if the property of the joint family in aggregate amounts to Rs. 1,50,000 and if one of the brother dies, then none of them would be taxed and there would be no estate duty at all, because each of the four shares would become less than Rs. 50,000. Therefore, there will be no estate duty at all. But if it consists of Rs. 2 lakh or Rs. 4 lakh and each branch gets Rs. 1 lakh on the death of one—that is to say, that branch consists of one father and two sons and the father dies—then the property of Rs. 1 lakh would be taxed for the aggregate. His share would be taxed on the rate for Rs. 1 lakh. That is how I understand.

Pandit Thakur Das Bhargava: These two examples I have understood very well. I have given certain examples in which the father leaves less than Rs. 50,000, say, Rs. 5,000. What would happen to that case?

Shri Mukhand Dube: It will not be joint family property.

Pandit Thakur Das Bhargava: Let him not confuse the issue. The issue is this. If a person dies and if he has got property, which is to be inherited, to the tune of Rs. 50,000, will in such cases, the joint family property be taxed or not?

Dr. B. Gopala Reddi: The tax charged will not be more than the amount inherited. If there is no property, there is no tax.

Pandit Thakur Das Bhargava: I do not care for the rates. My point is that any member who has got property worth less than Rs. 50,000 should not be taxed. The question of rate is different. If you have a separate rate, I do not mind; let there be a different rate, as is provided in the Income-tax Act, even though it is against the fundamental principles of taxation. There must be some reason, some justification. There is absolutely no justification for this provision.

Mr. Deputy-Speaker: I am helpless if there is no justification. Now amendment No. 36 has been accepted by Government.

The question is:

Page 4, line 28,—

after "determining" insert "the rate of".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 4,—

omit lines 35 to 40.

Those in favour will say "Aye".

Some hon. Members: "Aye".

Mr. Deputy-Speaker: Those against will say "No".

Several hon. Members: "No".

Mr. Deputy-Speaker: The "Noes" have it.

Pandit Thakur Das Bhargava: There was no "Noes".

Mr. Deputy-Speaker: I heard "No". If the hon. Member wants a division, that is a different matter.

Pandit Thakur Das Bhargava: We want a division.

Mr. Deputy-Speaker: This being the lunch hour, we have to wait. So, is it the desire that there should be a division on that?

Pandit Thakur Das Bhargava: Certainly I want it.

Mr. Deputy-Speaker: Then I will hold it over.

The question is:

"That clauses 14 to 17 stand part of the Bill."

Shri Supakar (Sambalpur): Sir, I want to speak....

Mr. Deputy-Speaker: on where there is no amendment. I do not deny him his right to speak.

Shri Supakar: I meant clause 18.

Mr. Deputy-Speaker: We are coming to that.

The question is:

“That clauses 14 to 17 stand part of the Bill.”

The motion was adopted.

Clauses 14 to 17 were added to the Bill.

Mr. Deputy-Speaker: Though I might be conscious that the voice that comes here has much support behind it, there ought to be voices. Just now it has been doubted that really noes have it. Unless there are voices, how I declare? In order to save time I might declare at one time, but that is not fair

Clause 18.— (*Amendment of section 1, 2 & 4 50*)

Mr. Deputy-Speaker: Are there any amendments?

Shri Naushir Bharucha: Amendment No. 13.

Shri Prabhat Kar: Amendment No 18.

Mr. Deputy-Speaker: Amendment No. 18 is out of order. Amendment No. 13 is also out of order. Amendment No. 32 is also out of order.

Shri Naushir Bharucha rose—

Mr. Deputy-Speaker: We will come to it. We will discuss it. Let me have others' amendments also. Is there any other amendment also? All the four amendments are out of order.

Shri Bharucha can say about his amendment now.

Shri Naushir Bharucha: Under the existing Act it is provided that. . . .

Mr. Deputy-Speaker: He is talking of amendment No. 32?

Shri Naushir Bharucha: No, about No. 13. It is not out of order, because here what is sought to be done is that under the existing Act where the Probate duty was paid the amount of probate duty paid was deducted from the amount of estate duty payable. Then the change made is that half of the probate duty only should be refunded. My amendment is that if the half amount is less than Rs. 2,000, then in that case upto Rs. 2,000 should be exempted. I am exempting it from the tax. I am not adding to it.

Mr. Deputy-Speaker: If the exemption could be made, then it would affect the amount taxable.

Shri Naushir Bharucha: But it will not come under the mischief of article 117 of the Constitution, if it reduces the amount.

Mr. Deputy-Speaker: What about article 274?

Shri Naushir Bharucha: No, it will not affect that. That comes in only when the estate duty divisible amongst the various States is varied.

Mr. Deputy-Speaker: Article 274 says:

“No Bill or amendment which imposes or varies any tax or duty in which States are interested. . . .”

Now, States are interested in this Bill.

Shri V. P. Nayar: There may be an argument that exemption may be neither imposition nor variation. If a duty of 5 per cent. is altered into 4 per cent. then there is variation. But if there is no duty. . . .

Mr. Deputy-Speaker: Exemption also reduces.

Shri V. P. Nayar: Then the statute should be clear.

Mr. Deputy-Speaker: “No Bill or amendment which imposes or varies any tax or duty in which States are interested”

Shri Naushir Bharucha: How are the States interested in this amendment?

Mr. Deputy-Speaker: All this money that is collected shall go to the States.

Shri Naushir Bharucha: If we see article 274....

Mr. Deputy-Speaker: Article 117(1).

Shri Naushir Bharucha: It reduces the amount, so it will not come under that.

Mr. Deputy-Speaker: Article 269 says that the taxes shall be levied and collected by the Government of India but shall be assigned to the States. Therefore, States are interested in article 269. There is no doubt about it.

Then article 274(1).

Shri V. P. Nayar: If a Bill which neither imposes nor varies cannot mean alteration at all. How can it mean? It is very clear that imposition does require permission. Variation also requires permission, but complete abolition does not. It is entirely a different thing from imposition or variation. Exemption is clearly outside the scope of the article. That is what I find on reading article 274.

Mr. Deputy-Speaker: What I could understand was that all this, variation, alterations, reductions, are included in the words used.

Shri V. P. Nayar: You may kindly read the article. We know what is imposition and what is variation. These are the only two acts in respect of which a taxation law ought to be supported by the States.

Mr. Deputy-Speaker: Some tax is being collected under the Estate Duty Bill. Now, it is desired that that amount should not be collected, but something less should be collected.

Shri V. P. Nayar: That is not the point.

Mr. Deputy-Speaker: When we exempt certain items, that would certainly vary the amount that has to be collected.

Shri V. P. Nayar: I put it in another way.

Mr. Deputy-Speaker: Shri Nayar is only taking up a particular item. Though the tax under that item is not being varied but is only being exempted, I am taking the tax as a whole under the estate duty and that amount that has to be collected under that Bill is being varied by the exemption of certain items. That is now I read it.

Shri V. P. Nayar: My interpretation was different. Article 274 lays down particularly in respect of two acts—one is imposition of a tax and the other is a variation of a tax and clearly, you will agree, exemption is neither imposition nor variation, in which case we have to construe it very strictly.

Mr. Deputy-Speaker: That is the most unfortunate part that I differ from him.

Shri V. P. Nayar: I cannot help.

Shri Supakar: Sir, I wish to draw the attention of the Government to certain anomalies which will arise out of this amendment. Section 50 of the original Act says:

"Where any fees have been paid under any law relating to court-fees in force in any State other than the State of Jammu and Kashmir for obtaining probate, letters of administration or a succession certificate in respect of any property on which estate duty is leviable under this Act, the amount of the estate duty payable shall be reduced by an amount which is equal to the court-fees so paid."

Now, the amendment is that it will be reduced by half, that is to say half of the court-fees get deducted. May I know in cases where the court-fee

payable is much higher than the estate duty what happens? Let us take a concrete case of a person who dies with an estate worth Rs. 60,000. We know that he will be liable to pay an estate duty of Rs. 400 only. But suppose for collecting that Rs. 60,000 he has to go to the court for obtaining a succession certificate. He has to pay a court-fee of Rs. 1,800.

Dr. B. Gopala Reddi: Then he does not pay any estate duty at all.

Shri Supakar: I wish to know whether Government will pay him this Rs. 500 that he incurred extra.

The next question is that it would have been better if the Government had taken into consideration an amendment which was sought to be moved by my hon. friend, Shri Jadhav, but which was unfortunately found to be out of order. It would be more equitable instead of giving a deduction of either full or half. It should have been taken into consideration that out of the total estate we deducted the amount of court-fees paid and on the balance we calculated the estate duty. That would have been most equitable and most proper.

Dr. B. Gopala Reddi: That would be disadvantageous to the party. That would be more advantageous to the Government but not to the party.

Shri Supakar: But that will be most equitable.

We find that practically although the Government has come with an amendment of reducing the exemption limit from Rs. 1 lakh to Rs. 50,000, if there are cases which to courts for probate or for succession certificates, I do not think that in cases even above the limit of Rs. 1 lakh where a certain amount of court-fee is paid the Government will be in a position to realise any estate duty specially because the court-fees are payable on the whole amount whereas estate duty is payable only after deduction of certain amounts under section 33

of the original Act which is further amended by this clause 12. I feel that this will create an anomaly. The Government with a sense of illusion are spreading their net wider, but probably the total yield of the tax may be lower than what they expect.

Dr. B. Gopala Reddi: After all, there is no amendment to this effect. But, he is giving us more money than we are asking for. That would be disadvantageous to the party.

Shri Supakar: You will get less than what you expect.

Dr. B. Gopala Reddi: It will be less than what we expect.

Mr. Deputy-Speaker: But more than what he wants.

Dr. B. Gopala Reddi: Previously the entire probate duty was deducted. Now, only a half of the probate duty is being deducted. The rest, if any, will be paid as estate duty. If there is nothing, he will not pay any estate duty.

Mr. Deputy-Speaker: The question is:

"That clause 18 stands part of the Bill."

The motion was adopted.

Clause 18 was added to the Bill

Mr. Deputy-Speaker: The question is:

"That clauses 19 and 20 stand part of the Bill."

The motion was adopted.

Clauses 19 and 20 were added to the Bill.

Clause 21.—(Substitution of new sections for sections 56 to 65).

Shri Supakar: I beg to move:

Page 7,—

omit lines 11 to 19

Mr. Deputy-Speaker: Any other amendment to be moved? No. This amendment is before the House.

Shri Supakar: During the stage of general discussion, there was a heated discussion whether the exemption limit should be reduced from Rs. 1 lakh to Rs. 50,000 and it was very strenuously argued that if the exemption limit is reduced to Rs. 50,000 it will work a great deal of hardship to the middle class families because money value has undergone change. What would have been the reaction of this House if the exemption limit were reduced to Rs. 5,000? I think that would have been perhaps a very progressive standpoint and a very progressive amendment. I wanted to table an amendment to that effect. I resisted the temptation because the Bill, as it is, provides sufficient penalties and punishments for persons who leave an estate of Rs. 5,000 only. I will explain how. Let us take a poor postman or a postal clerk or a person who earns Rs. 100 a month and at the fag end of his life leaves in the postal savings bank an amount of Rs. 5,000 only. And, if I may quote Pandit Thakur Das Bhargava, he may also leave a family of ten sons. So, it comes to a share of Rs. 500 to each son.

Mr. Deputy-Speaker: He would not be doing any service to the country as it stands at this moment.

Shri Supakar: At the 1939 price level, may be, it comes to Rs. 125 only per head. But, what is the liability that he has to undergo? You know that the Government Savings Bank Act provides that where a man leaves a savings bank account for more than Rs. 5000, the heirs have to obtain a succession certificate. A person who goes in for a succession certificate for a sum of Rs. 5000 has to pay Rs. 150 as court fee. He has to engage a lawyer for getting a succession certificate and probably that may account for Rs. 200. That is not all. After having spent about Rs. 350 or 400 for getting a succession certificate for Rs. 5000, the heirs of the poor man may have to go to the Controller for permit or permission of exemption.

What it will cost in terms of rupees and naya paise, it is difficult to imagine. Think of a person living in the distant mofussils. How big are the Controllers and where are their offices situated? If a man has to run to the office of the Controller twice or thrice for obtaining such a permission, think of the harassment and think of the expenses and think of the delay. Apart from the expenses and harassment, delay is the factor which should count in such cases. I am not speaking merely of the heirs of persons who die with a small amount of savings; but this may happen in so many other cases also. This clause was not in the original Act. This is an innovation. I find that the amount of harassment and the expenses that a person's heirs will have to undergo for obtaining the permission of the Controller for exemption, for facilitating the grant of a certificate will be several times that we could contemplate in imposing a high rate of estate duty on an amount of Rs. 5000. It would have been better if, instead of inserting this clause, we had provided that all persons who leave an estate worth more than Rs. 5000 should compulsorily pay an estate duty at such and such a percentage. That is why I move this amendment.

Pandit Thakur Das Bhargava: With your permission, I beg to move amendments numbers 26, 27,.....

Mr. Deputy-Speaker: I asked from the hon. Member. He did not mention. Yes.

Pandit Thakur Das Bhargava: I beg to move amendments 26, 27, 28, 29, 30 and 31 to clause 21.

(1) Page 9, line 13, omit "at any time"

(2) Page 9,—

(i) line 30, after "rupees" insert "not exceeding".

(ii) line 32, after "greater" insert—

"as he considers proper but the penalty shall not be excessive but reasonable according to the circumstances of each case".

(3) Page 9, line 35, for "equal to" substitute "not exceeding"

(4) Page 9, line 38, add at the end—

"but such penalty shall not be excessive but reasonable according to the circumstances of each case".

(5) Page 11,—

(i) lines 12 and 13, omit "which may include an order enhancing the estate duty or penalty"; and

(ii) omit lines 14 to 17.

(6) Page 12,—

(1) lines 3 and 4, omit "and any such orders may include an order enhancing the estate duty payable or penalty"; and

(ii) omit lines 5 to 8

In regard to these, my general argument is this. I am glad that the hon. Finance Minister has got a provision in this Bill, clause 73-A that places a limit, which is very good. Otherwise, the harassment would have continued till the life of the successors and perhaps till the lives of the grandsons also. I am very glad that he has put a limit of five years or three years in clause 73A. There, I find, the words are, "at any time, subject to the provisions of section 73A...". These words "at any time" become quite unnecessary because section 73A is mentional there

In the case of the rest of the amendments, my approach is this. When you prescribe a penalty against any person, you must give discretion to the officer concerned so that the penalty may be according to the enormity of the breach, according to the enormity of the crime or offence or fault. To impose a penalty which is, I should say fixed or rigid, is not fair. I have therefore sought to amend the provision by inserting the words 'not exceeding', and then again, "as he considers proper but the penalty shall

not be excessive but reasonable according to the circumstances of each case". Discretion must be given to meet all contingencies, and all kinds of breaches. If you do not give it, the Controller will say, here the penalty is prescribed, I have no option to decrease it. It will be therefore absolutely necessary, with a view to do full justice to persons, to give discretion to the officer concerned. At the same time, we have got a provision in the Criminal Procedure Code, with regard to fines, that the fine shall not be excessive. Though the discretion of giving a certain penalty is given, yet the law provides that the fine shall not be excessive, and it must be according to the circumstances of each case. Then again, it provides a remedy for doing justice to all sorts of persons in all sorts of circumstances. The absence of those words here makes it incumbent on the officer to give only one penalty; that is a very high attitude to take. I should, therefore, beg of the Minister to look at it from the standpoint of a person who has committed a fault, but who is penitent, and who does not want that he should repeat it; also, the fault may even be due to some inadvertence.

14 hrs.

Dr. B. Gopala Reddi: Suppose we say, 'not exceeding twice the amount'. Will that be all right?

Pandit Thakur Das Bhargava: I have said 'not exceeding' and also 'as he considers proper'.

Dr. B. Gopala Reddi: I am prepared to accept a limit not exceeding twice the amount involved.

Pandit Thakur Das Bhargava: I have kept that very limit, so that in all cases, the officer would be armed with the full powers; I do not want to take away all his powers. But he must be given the discretion to see that the penalty is according to the circumstances of each case, and the penalty

[Pandit Thakur Das Bhargava]

should not be excessive. This is the warning that I want to give, just as it has been given in the Criminal Procedure Code and in all other laws that we have, that a person who commits a fault should not be treated very harshly. I would beg of the Minister to kindly consider these amendments from this point of view.

The next point that I want to urge is included in amendments Nos. 30 and 31. Power has been given in this Bill to officers to even enhance the estate duty or the penalty in some cases. In criminal cases, for instance—and taxation affair is just like a quasi-criminal affair—in all cases of this nature, the rule is that when a person goes to a criminal court or a court of appeal, the court has not got the power to enhance his punishment; so far as the sessions judge is concerned, he cannot enhance. But, here, the appeals will be discouraged. Very many people who have got good cases may be afraid of going to the appellate court, because they may feel 'I have satisfied this one officer, but the higher officer who sits in appeal may take another view and may enhance the duty'. I would submit that if Government think that a person has been let off lightly, and they want to appeal, they may be given the right to appeal. I have no objection to that, because it is fair, and we do not want that our treasury should suffer; and the person who has to pay must pay rightly, and equitably. At the same time, it is no use dangling a sword over him.

I would, therefore, like that the power to enhance the duty may be taken away from these officers, so that anyone who wants to go in appeal may go with a full heart before the officer whenever he wants to seek justice, and not under the fear that though he goes to seek justice, it happens that
 दुब्बे होने गये थे, सुब्बे हो जाये ।
 as the phrase goes. Therefore, I want

that these powers may be curtailed altogether.

Shri L. Achaw Singh: It appears to me that attempts are being made to make the penalty for evasion less and less and be more and more lenient. I find that in spite of the best efforts of Government to plug the loopholes in our tax system, they have not been able to cope with the problem of evasion in an effective way.

The other day, the Finance Minister said that our collection was not satisfactory, and there were *benami* holdings, and there were concealments in the form of gold and jewellery; and thus, large estates have escaped from estate duty. There are thus various devices and methods for avoiding this duty. We find that here also, very few cases of fraudulent evasion are brought before the courts for prosecution, because the tax evaders are given a big immunity from prosecution as well as from publicity, if they are ready to make a full disclosure and they are also ready to pay the modest penalty provided in our laws. I find, therefore, that Government have been very lenient and also very soft with regard to these tax evaders.

In America, for instance, I find that the tax evaders are brought before the courts, and they are made to pay heavy penalties, and when they are called before the courts, a lot of publicity takes place; and the trials also end in long terms of imprisonment. But in India we find that the cases detected are very few; out of ten cases of evasion, I think only one is being detected.

So, I would suggest that the penalty should be more; it should be ten times or twenty times. In the Income-tax Act, it is provided that it is only 150 per cent. In the Estate Duty Act, it is provided that it should be double, which means 200 per cent. This is not sufficient. The penalty should be a deterrent one, and it must be ten times or twenty times.

Dr. B. Gopala Reddi: I accept amendment No. 27(i) by Pandit Thakur Das Bhargava. But it has to be reworded like this.

In Page 9, lines 30, 31 and 32, for the words 'a sum of rupees one thousand or a sum equal to double the amount of such duty, whichever is greater' substitute the words 'a sum not exceeding twice the amount of such duty'.

I am accepting the amendment No. 27(i), and, of course, it is being redrafted in this manner. So, that meets to a large extent the point raised by the hon. Member. The assessing officers will have some discretion according to the offence committed and things like that. The penalty will be a sum not exceeding twice the amount of the duty. Thus, the officer will have a lot of discretion.

With regard to enhancement, I think that where it is an administrative matter, and it is not a criminal offence or a case before a magisterial court, the power to enhance must be there. Again, it follows also the general pattern which is there in the Income-tax Act, the Wealth Tax Act, the Expenditure Tax Act, and the Gift Tax Act. So, we are only trying to bring this on a par with the other Acts, and, therefore, the power of enhancement must also be vested in the officers. It is not a criminal court or a magisterial court here where it cannot be enhanced. In a revenue court or in an administrative matter like this, when it is discovered that the person has concealed something, the court or the officer concerned must have the right to enhance it without referring it back to the lower officer who decided differently.

As for Shri Supakar's point, there is no elaborate inquiry made at this stage. No elaborate inquiry is made when he asks for a succession certificate. What was the point raised by the hon. Member?

Shri Supakar: May I read out the clause?

"In all cases in which a grant of a succession certificate is applied for, a copy of the application shall be furnished by the applicant to the Controller and no order entitling the applicant to the grant of such a certificate shall be made upon his application until he has produced a certificate from the Controller under sub-section (2) of section 57 or section 67 that the estate duty payable in respect of the property mentioned in the application has been or will be paid, or that none is due, as the case may be."

My point is that unless he produces a certificate from the controller, he is not entitled to a succession certificate. So, this causes unnecessary harassment to the person with no corresponding benefit to Government. The only purpose for which this clause was added apparently was to check evasion, but that can be much more effectively done by the income-tax inspectors and the estate duty inspectors going round to the courts and finding out how many and what cases are pending and then setting up an inquiry. The present provision will not yield any income to Government but will subject the comparatively poorer persons to a lot of harassment.

Dr. B. Gopala Reddi: After all, no elaborate inquiry is made. We have issued instructions that it should be issued within a fortnight or so. If there are any cases of delay and things like that, it may be brought to the notice of the Board. We have already issued instructions that such certificates must be given within a fortnight, and as far as the Board is concerned, we have not received any complaints at all. We shall see that it is not delayed.

Shri Supakar: My question was whether something could not be done to avoid harassment in respect of the succession certificate.

Dr. E. Gopala Reddi: It is better if it is retained because even otherwise certain provident fund and other people also require these certificates.

Shri L. Achaw Singh rose—

Mr. Deputy-Speaker: He wants to make it more stringent.

Shri V. P. Nayar: He wants 10—20 times.

Mr. Deputy-Speaker: But that has not been accepted.

Now, I will put Government amendment No 38 incorporating amendments Nos. 27(i) and 28 of Pandit Thakur Das Bhargava.

The question is:

Page 9,—

“(i) lines 30 to 32, for “a sum of rupees one thousand or a sum equal to double the amount of such duty, whichever is greater” substitute “a sum not exceeding twice the amount of such duty”; and

“(ii) line 35 for “equal to double” substitute “not exceeding twice”.”

The motion was adopted.

Mr. Deputy-Speaker: Which is the other amendment to be put?

Shri Supakar: Amendment No. 19 may be put separately at 2.30 p.m. for division.

Mr. Deputy-Speaker: Amendment No. 19 shall stand over. I shall now put all the other amendments to clause 21 to the vote of the House. The question is:

Page 9, line 3,—

omit “at any time”

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 9,—

(i) line 30, after “rupees” insert “not exceeding”

(ii) line 32, after “greater” insert—
“as he considers proper but the penalty shall not be excessive but reasonable according to the circumstances of each case”

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 9, line 35,—

for “equal to” substitute “not exceeding”

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 9, line 38,—

add at the end—

“but such penalty shall not be excessive but reasonable according to the circumstances of each case.”

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 11,—

(i) lines 12 and 13, omit “which may include an order enhancing the estate duty or penalty”; and

(ii) omit lines 14 to 17.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 12,—

(i) lines 3 and 4, omit “and any such orders may include an order enhancing the estate duty payable or penalty”; and

(ii) omit lines 5 to 8.

The motion was negatived.

Mr. Deputy-Speaker: There are no amendments to clauses 22 to 27. The question is:

"That clauses 22 to 27 stand part of the Bill".

The motion was adopted.

Clauses 22 to 27 were added to the Bill.

Clause 28— (Amendment of the Second Schedule)

Shri M. R. Masani: I move amendment No. 8 in List No. 1.....

Mr. Deputy-Speaker: I have declared it out of order. All amendments to clause 28 are out of order.

Shri M. R. Masani: I would like you to appreciate my point of view before you give your ruling. Article 274(1) of the Constitution makes it very clear that a Bill which imposes or varies any tax or duty requires the recommendation of the President. If you will look at amendment No. 8, it says that no duty will be payable on estates of which the principal value does not exceed Rs. 1,00,000. There is neither imposition nor variation; it is exactly a reaffirmation of the *status quo*, the tax or duty that is in effect today; under the Estate Duty Act of 1953, if you will turn to the Second Schedule, you will find in Part (2) 'On the first Rs. 1,00,000 of the principal value of the estate-*Nil*' I am not, therefore, varying or imposing any tax. My amendment is the only one which does not seek to vary the tax or duty. I submit that it is perfectly in order and should be allowed to be discussed.

Mr. Deputy-Speaker: Has the hon. Minister anything to say on this?

Dr. B. Gopala Reddy: We leave it to you. The Select Committee have gone into this question and they think that it amounts to varying the duty.

Shri Nath Pal (Rajapur): The Chair wants his views not on the merit of the amendment, but on the point of order.

Mr. Deputy-Speaker: The hon. Member has referred to the provisions of the Act and said that he is not varying anything so far as the contents of the original Act are concerned. We have not to look into the contents of the original Act, but the Bill as it is introduced, because recommendation of the President has been obtained so far as the provisions in the Bill are concerned. Certain duties are proposed to be levied for which sanction has been obtained. He wants variation so far as those proposals are concerned, the proposals in the Bill, not in the Act. So far as that is concerned, his amendment would vary the tax that would be realised if these provisions are enforced. Now, if there is to be variation in the sanctioned proposals, that also requires the sanction of the President, and because he has not obtained that sanction it is out of order.

Shri M. R. Masani: I would only invite your attention to the language of the Constitution which says 'imposes or varies any tax or duty'. It does not say 'an amendment which seeks to vary a legislative measure or Bill'. The tax or duty today is the estate duty and the estate duty today is exactly what I want to survive in *status quo*.

Mr. Deputy-Speaker: Let me quote from an earlier Ruling on this point..

"When a Bill is introduced, it does not become an Act. Even at that stage, if it imposes taxation, it requires the recommendation of the President. The Bill was introduced originally. Subsequently, in a modified form as reported by the Select Committee it is asked to be taken into consideration. It will cause a lot of inconvenience. I agree, if something is done by the Select Committee and we have to get the President's recommendation for restoring it to its position in the original Bill. I agree that it is not necessary because it will lead to a lot of inconvenience.

[Mr. Deputy-Speaker]

You are not going behind the original proposals. So far as those items are concerned which were touched upon in the Select Committee and if we want to resume *status quo*, whatever might be their effect, I do not think that recommendation is necessary".

In this case the Select Committee had made certain variations, and amendments were moved to restore the original provision in the Bill as it was introduced. The question was whether that required fresh recommendation of the President or not. It was ruled then that this did not require any fresh recommendation because the attempt was to restore the provisions of the Bill in the form in which it was introduced. The provisions of the Bill as introduced are to be taken into consideration, not those of the original Act.

Shri M. E. Masani: In that case, I would like to oppose the passing of this clause of the Bill. The Minister the other day in replying to the debate on the earlier stage of the Bill with his usual charm and in a spirit of sweet reasonableness made out a very conciliatory and an ostensibly acceptable case. Now, he is trying to argue that the 4 per cent duty which is sought to be levied on estates just over Rs. 50,000 is not such a great hardship as many hon. Members had made out, that the amount would amount to only a very small thing and we should not work up any indignation on this issue. The hon. Minister knows perfectly well that this is not the only infliction on the members of the middle class on behalf of whom many of us spoke. We in this country have to consider the sum total of the various forms of taxation that are being levied on that class and many other economic burdens that are being cast on it. There is the cost of living which is the result of inflation born of our Second Five Year Plan. There are the excise duties that have been levied in the last two years; also there are

those various measures of direct taxation like income tax, expenditure tax, gift tax and now the Estate Duty Bill.

I am sure the Minister has heard of the last straw that broke the camel's back. The cumulative effect of all these burdens is that the middle class, which is the backbone of the community, is being pulverised and I think it is a political and economic disaster for which the Government and the country will some day have to pay a very big price.

I am very glad that since we took up this matter two days ago, a very great pillar of Government has come out with exactly the same sentiment to which I am giving expression—that is, no less a person than Dr. B. C. Roy, the Chief Minister of West Bengal. I shall quote a sentence from what he said, as was reported in the Press on August 31.

"I do feel that there is a great point in having the taxation policy of the Government of India revised because it has not given any incentive to capital formation."

Sir, this is a point that many of us made in this House. And I am very glad that a pillar of the ruling party, like Dr. Roy, has come down heavily on our side and against those who are piloting a Bill of this nature.

We ask why this Bill is being pursued. I am a little mystified. In the debate that took place in this House, the hon. Minister tried to make out that there were two points of view and that the House was rather divided. But, how was it divided?

I have taken the trouble to analyse the discussion that took place on this Bill and I find that out of 12 hon. Members who participated, 8 hon. Members very categorically condemned the move for reducing this limit from Rs. 1 lakh to Rs. 50,000. Of the remaining 4, there was one communist;

and, I do not know how much of the *bona fides* of that support is acceptable to the hon. Minister. But, there were 3 other hon. Members who supported the lowering of this limit. Why is the hon. Minister insisting on passing through this House a Bill that the House definitely does not want? If the hon. Minister is very sure of the support of the House....

Mr. Deputy-Speaker: But, if the voice of the communist Member suits the hon. Minister at a particular time..

Shri M. R. Masani: ..I am sure it is accepted. But, I am doubting whether he accepts the *bona fides* of that kind of support for this particular measure. The point is, does the hon. Minister want to see through this House a Bill which has been shown as not acceptable to the House to the extent that people have expressed themselves? The hon. Minister referred to the Select Committee. There were happy times.....

Mr. Deputy-Speaker: The hon. Member should confine himself to the clause and not refer to other things.

Shri M. R. Masani: This measure is an unpopular measure. The Members of Parliament have expressed themselves against it. Why is it that the Government thrusts this measure through an unwilling House? The real secret and the reason why this particular part of the measure is being pressed is, as made out by my hon. friend, Shri Khadilkar, that an issue of prestige is being made out of it. Evidently, Government feel that they would lose face if at this rather late stage they withdraw an essential part of the Bill.

The origin of the Bill is this. It was introduced on the 28th February by the predecessor of the present Finance Minister. If hon. Members will turn to the Bill as it was introduced and to the Statement of Objects and Reasons, perhaps they would appre-

ciate the reason why this reluctance is there to accept a very reasonable amendment, a very reasonable point of view pressed on the House, and that is that that Bill was signed by the then Finance Minister who also happens to be the Prime Minister. But the Prime Minister signed the Bill because it was a legacy from his predecessor who had just then resigned. It is thus the dead hand of the past.

I strongly oppose this disastrous change that is being made and I do hope that Government will not allow prestige considerations to come in their way. I think there will perhaps be State Governments which will have the realism and the magnanimity which this Government is incapable of showing at this stage.

Shri B. Gopala Reddi: I do not want to add anything more to what I have said on this point. This is the essence of the amending legislation. But for this point there was no need to amend the Estate Duty Act at all. We cannot give up the main principle. Since this has been considered *ad nauseum* and also considered by the Select Committee, I am unable to accept the principle underlying the objection raised by the hon. Member.

Mr. Deputy-Speaker: The question is:

"That clause 28 stand part of the Bill."

The motion was adopted.

Clause 28 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 29, 30, and clause 1 and the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clauses 29, 30, and clause 1 and the Enacting Formula and the Title were added to the Bill.

Mr. Deputy-Speaker: Two clauses had been held over. We may take them up now.

Shri V. P. Nayar: Sir, I am sorry to say that all our expectations—when we sent the Bill to a Select Committee—that it would emerge from the Select Committee as a better drafted Bill, have given us only disappointment. Sir, I want to use this particular occasion to reiterate the point which we made in 1953 and which we thought Government will consider. The hon. Minister, when replying to the debate, made an open admission that he was conscious of the fact that there was tax evasion in this country. I am quoting from his speech. He said that:

“Since 1953, many gifts have also been made and many trusts have also been created with a view to avoid the estate duty and things like that.”

It is exactly this point which we brought to the notice of the Government when we discussed the original Bill and, there, we said that if Government were serious in collecting the revenue which ought to be yielded from the estate duty, then they ought to have 5 years' retrospective effect. In fact, we made all possible attempts in the Select Committee to have it dated back to the first date of the declaration of intention to have estate duty. Failing that, we were prepared to accept a compromise and we thought that Government would bring in amending legislation. We wrote in our minutes of dissent very clearly that it was not going to make any mentionable contribution. In the introductory speech the Minister said that after all we know that it will make no mentionable contribution for the success of the Second Five Year Plan which was one of the most important considerations of the Bill. I want the Government to consider how far it has helped the Government's cause. They did not have the wisdom in those days to accept the very valuable suggestions which we threw out.

Then again a point was made by the champion of the middle classes, Shri Masani, about the lowest rate of duty. Last time I gave figures and I heard Pandit Thakur Das Bhargava interrupting us yesterday and saying

that the incidence of income-tax in this country is at the highest. He knows very well that it is a recurring tax while death duty is not a recurring tax. The hon. Minister says that while he is agreeable to place a lower limit he is not prepared to touch the higher slabs. I have no time to give details now.

Last time I gave details and showed how the rates of estate duty calculated in terms of money in the U.K. vary very much from what we have in India. If the hon. Minister has any doubt I would again give him one or two figures to give him an idea of how lenient we have been to the richer taxable sections. It has been very clearly brought out in a book. I find the hon. Minister has been well equipped in this. He has read all the speeches and he even repeated the very words with which the hon. Finance Minister introduced the Bill that it had a long chequered career. But, he does not seem to have taken account of the existing rates of duty in U.K. when he was fixing the different slabs. I have made some calculations and find that ours is very much less than the corresponding rates of duty prevailing in England for such estates. I shall only give one or two examples. Take an estate in India which is valued at Rs. 20 lakhs, for instance. According to the hon. Minister's schedule, which we are going to accept in a few minutes, the estate will be subject to a duty of Rs. 3.79 lakhs—19 per cent. of the entire value of the estate. I do not want to go into the calculations, now. I find a corresponding estate in U.K. will have to pay instead of 19 per cent, nothing less than 22 per cent. If you go to higher slabs, you will find, for instance, an estate worth 1½ crores of rupees in India will have to pay 35 per cent whereas an estate worth that much in U.K. will have to pay 80 per cent. The difference is there. Why is that they do not say about this. Is it equated in terms of what is obtaining in Australia, Canada, or Japan or U.K? Why is it that the

Government shows unwarranted sympathy to the people of the higher incomes?

We want more finances for the Second Plan. We may be prepared to agree that the lower limit may be raised a little bit but why is it that it is not possible for the Government to equate the rate of duty with what is obtaining in England in respect of the higher taxable sections? I have a feeling that these meagre provisions which were sought to be introduced in the original Bill have been whittled down in the Select Committee. This aspect of the problem was not at all considered by the Select Committee in the manner in which it deserves to be considered.

Division No. 3]

Chandramani Kalo, Shri
Dige, Shri
Mahanty, Shri

Arumugham, Shri R.S.
Balakrishnan, Shri
Barman, Shri
Barupal, Shri P.L.
Basumatari, Shri
Bhakat Darshan, Shri
Bidari, Shri
Borooh, Shri P.C.
Brahm Perkash, Ch.
Chandra Shanker, Shri
Chaturvedi, Shri
Chettiar, Shri R. Ramanathan
Das, Shri N.T.
Des, Shri Shree Narayan
Deo, Shri Shanker
Dindod, Shri
Dube, Shri Mulchand
Elayaperumal, Shri
Gandhi, Shri Peroze
Gandhi, Shri M.M.
Ghoshal, Shri
Ghose, Shri N.R.
Gounder, Shri K. Periaswami
Harvani, Shri Ansar
Hansda, Shri Subodh
Heda, Shri
Jain, Shri M.C.
Jinachandran, Shri
Kadiwal, Shri
Kayal, Shri P.N.
Ke, Shri C.M.
Kureel, Shri B.N.

AYES

Matin, Qazi
Patel, Shri P. R.
Proddhan, Shri B. C.

NOES

Madhusudan Rao, Shri
Malviya, Shri Motilal
Mandal, Shri J
Mathur, Shri Harish Chandra
Mehta, Shrimati Krishna
Minimata, Shrimati
Mishra, Shri Bibhuti
Mishra, Shri M.P.
Misra, Shri R.D.
Misra Shri R.K.
Munisamy, Shri N.R.
Murnu, Shri Paika
Murthi, Shri M.S.
Naidu, Shri Govindarajulu
Nayar, Shri V.P.
Nehru, Shrimati Uma
Neswai, Shri
Padam Dev, Shri
Panigrahi, Shri
Panna Lal, Shri
Parmar, Shri Deen Bandhu
Patel, Shri N.N.
Patel, Shri Rajeshwar
Pillai, Shri Thanu
Prabhakar, Shri Naval
Raghubir Sahai, Shri
Raghnath Singh, Shri
Rajiah, Shri
Ram Krishan, Shri
Ramananda Tirtha, Swami
Ramaswamy, Shri K.S.
Ramaswamy, Shri P.

Mr. Deputy-Speaker: He should conclude now.

Shri V. P. Nayar: As you insist, I shall resume my seat.

Mr. Deputy-Speaker: I am sorry; I have to insist. I shall now put the amendment of Shri Naushir Bharucha to the vote of the House.

Sardar A. S. Saigal (Janjgir): Shri Bharucha is not here

Mr. Deputy Speaker: It does not matter. I shall now put amendment No. 12 to the vote of the House. The question is:

Page 4,—

omit lines 35 to 40.

The Lok Sabha divided. Ayes 9;
Noes 96.

[14.37 hrs.

Siva Raj, Shri
Sonule, Shri H. N.
Supakar, Shri

Rane, Shri
Ranga, Shri
Rao, Shri Jaganatha
Rao, Shri T.B. Vittal
Reddy, Shri Rami
Roy, Shri Bishwanath
Rungtung Suisa, Shri
Sadhu Ram, Shri
Sahu, Shri Bhagabat
Saigal, Sardar A.S.
Samantsinhar, Dr.
Satyabhama Devi, Shrimati
Satyanarayana, Shri
Selku, Shri
Shankaraiya, Shri
Siddananjappa, Shri
Singh, Shri M.N.
Sinha, Shri Satyendra Narayan
Sinhason Singh, Shri
Snatak, Shri Nardeo
Subbarayan, Dr. P.
Subramanyam, Shri T.
Sumat Prasad, Shri
Tangamani, Shri
Tariq, Shri A.M.
Thimmaiah, Shri
Tula Ram, Shri
Unrao Singh, Shri
Vedakumari, Kumari M.
Venkatesubbaiah, Shri
Verma, Shri Ramji
Vya, Shri Badhelal

The motion was negatived

Pandit Thakur Das Bhargava: I voting for ayes.

Ch. Ranbir Singh (Rohtak): I am voting for noes; I do not know how it has reflected. Neutral... (*Inter-ruptions.*)

Mr. Deputy-Speaker: If he does not know how it is reflected there, he should not worry. Now, I shall put clause 13 as amended to the vote of the House. The question is:

"That clause 13, as amended, stand part of the Bill."

The motion was adopted.

Clause 13, as amended, was added to the Bill.

Mr. Deputy-Speaker: There is another amendment held over—No. 19. I shall put that to the vote of the House. The question is:

Page 7,—

"omit lines 11 to 19."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That Clause 21, as amended, stand part of the Bill"

The motion was adopted.

Clause 21, as amended, was added to the Bill.

Shri B. Gopala Reddi: Sir, I beg to move:

"That the Bill, as amended, be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

14-38 hrs.

BANARAS HINDU UNIVERSITY (AMENDMENT) BILL

Mr. Deputy-Speaker: The House will now take up the Banaras Hindu University (Amendment) Bill, 1958 as reported by the Select Committee. Four hours have been allotted for all the stages of the Bill.

Shri Braj Raj Singh (Firozabad): Five hours.

Mr. Deputy-Speaker: One hour at the discretion of the Chair. Now, I would like to take the sense of the House as to how these four hours should be distributed among the various stages.

Shri Braj Raj Singh: Four hours for general discussion.

Mr. Deputy-Speaker: And nothing for the clauses? For the present, we have to divide the four hours we have got.

Shri Braj Raj Singh: 3½ hours and half an hour.

Mr. Deputy-Speaker: There ought to be some time for the clauses also. I think three hours may be allotted for the general discussion and one hour for clause-by-clause consideration and the third reading also.

The Minister of Education (Dr. K. L. Shrimali): Sir, I beg to move:

"That the Bill further to amend the Banaras Hindu University Act, 1915, as reported by the Select Committee, be taken into consideration."

Sir, in making this motion, I would not like to take the time of the House and go over all the arguments which I advanced in introducing this measure. The Select Committee has fully considered this Bill and has made two major changes in the Bill. One relates to statute 29 of the draft Bill with regard to the constitution of the Selection Committee. In the draft Bill it was stipulated that the Selection Committee should consist of such