aggravated by whatever has been said against the House, the Privileges Committee and the Deputy-Speaker in a recent issue of the Blitz. Why is this being done? The whole point is taht this House has not suggested that he may be punished or penalised. Even nobody's right to sit in the Parliament, to comment on whatever happens in the Parliament is going to be taken away. This House only feels taht what he has done is something which he should not have done and he should express regret. Why is he unwilling to do it? That seems to be the whole problem. Therefore, to make this song—Sir, I may be permitted to use that expression—that Mr. Raghavan is being penalised or Mr. Karanjia is being penalised is not right. This House is not interested in penalising anybody. We are interested in maintaining a certain dignity, a certain decorum, certain good manners. Even between two friends, two individuals, when there is an exchange of hot words, surely one will try to make it up by saying straightaway that he is sorry for the words he used. Why is it that normal good manners are not followed here? That is either because, as the Prime Minister said, this gentleman seems to specialise in vulgarity—if that is so I have nothing to say—or there is something much more stubborn behind it. In either event, I feel that now that the matter has been activised to this extent, the House should unanimously pass the motion that has been moved by my hon. friend, Dr. Ram Subhag Singh. Earlier, I had assured the Deputy-Speaker that in arriving at any decision, as far as I am concerned, my effort would be to see that unanimity is maintained. May I beg of my Communist friends that, as vital issues are involved in this, let us not make this an issue on which we are going to disagree when the voting comes? When the voting comes, let us all support the motion of Dr. Ram Subagh Singh. Let it appear, as in fact it is, that when the Prime Minister spoke, he spoke not just as the Prime Minister but as the Leader of the whole House, echoing the sentiments of every single member in this body.

Shri Naushir Bharucha *rose*—

Mr. Speaker: I think there has been sufficient discussion. So, I will now put the motion to the vote of the House. The question is:

> "That this House agrees with the Thirteenth Report of the Committee of Privileges presented to the House on the 11th August, 1961."

The motion was adopted.

Mr. Speaker: The other two motions are barred. I will not take the necessary steps to summon Shri R. K. Karanjia to the Bar of the House to carry out the sentence pronounced upon him by the House. I will also cancel the Lok Sabha Press Gallery Card and the Central Hall Pass issued to Shri A. Raghavan, and the same will not be issued to him again till he tenders to the House a full and adequate apology.

14.22 hrs.

INCOME TAX BILL, 1961—*contd.*

Mr. Speaker: The House will take up further consideration of the motion moved by Shri Morarji Desai that the Bill to consolidate and amend the law relating to income-tax and super-tax, as reported by the Select Committee, be taken into consideration. Out of 10 hours allotted for this Bill, 1 hour and 40 minutes have been taken. 8 hours and 20 minutes remain. Shri M. R. Masani will continue his speech.

Shri Naushir Bharucha (East Khandesh): How much time will be devoted to the first reading and how much for clause by clause consideration? I am of the view that 7 hours may be devoted to the first reading and 3 hours, if necessary, extended by another hour in your discretion, for clause by clause consideration.

Mr. Speaker: Will that be enough?

Shri M. R. Masani (Ranchi—East): I think 6 and 4 hours would be better, because there are many clauses and we should not rush with the discussion of the clauses.

Mr. Speaker: Why not they speak on the clauses which are somewhat contentious?

Shri Prabhat Kar (Hooghly): There cannot be many amendments to the clauses.

Mr. Speaker: All right. I accept 7 hours and 3 hours.

Shri M. R. Masani: Mr. Speaker, I just started to speak yesterday when the House adjourned. I had stated that, in order to understand this Bill, one had to consider the relationship between the tax-collector and the taxpayer. A very delicate relationship had existed throughout history because the tax-gatherer, unfortunately, had been looked upon in all countries and at all times as a not very welcome person, a person who had to be an exacter, a harasser and many times a tyrant. In our own times, much of that feeling still survives.

In a Bill of this nature, legislation of this type, it is important that it should satisfy certain tests so that the relationship that is to subsist between these two categories is as harmonius and mutually considerate a one as possible. Not only are courtesy and consideration due to the citizen, who is the assessee, on the part of the officer, but the citizen has also to appreciate that the income-tax officer is no different from himself. It is not as if all income-tax officers are vindictive in persecuting the assessee; nor as if all assessees are trying to evade their payment of tax and trying to dodge their obligations. I would say that both categories are, by and large, honourable and honest citizens. The income-tax staff does its duty, an unpleasant, one of probing into one's affairs, and we should show it every sympathy and every respect. On the other hand, it is equally important that officers of Government, such as income-tax officers, should show the same consideration and respect for the assessees, treating them as honourable citizens, and not start with a prejudice that a man is a potential criminal or tax-evader. I say that because, sometimes, it is assumed that all income-tax officers are good and all assessees bad, and sometimes the other way. And it seems to me both attitudes are equally unfair because, after all, an income-tax officer, if he was not an income-tax officer, would become an assessee himself if he was in another office, and an asseesee might easily take a job in the income-tax department and the roles could be reversed. They are all members of our society and our community. I am saying that because sometimes it is suggested that the tax law should be harsh because we must pursue the evader, as if evasion is a normal pursuit.

14.25 hrs.

[SHRI HEDA *in the Chair*]

Let me, first of all, ask the House to consider whom we are discussing when we talk of the assessee. An assessee is, by and large, a lower middle-class man. He is a man with modest means and, in most cases, a man with a fixed income, in respect of which tax is deducted at the source. It is only a handful of assessess who are rich people and who have diversified sources of income and in whose case the question of evasion or even avoidance at all arises. Just to make this point clear, because I am sure there are hon. Members in this House who keep thinking of the income-tax asseesee as somebody rich, somebody to be envied, somebody to be pulled down, I may say that of all those who pay income-tax in our country currently, those with an income of Rs. 7,500 a year or Rs. 625 a month, a very modest income for a family,

those earning Rs. 625 or below a month constitute 63·02 per cent of the total body of assessees. Six out of ten of our assessees are lower middle-class people with an income of Rs. 600 or less. Taking one step higher, 86·84 per cent or 87 per cent of our assessees have incomes of less than Rs. 1,250 per month. This shows that all except about 13 per cent of the assessees are middle class people with reasonably confortable or very modest means, and it is this class of people we are legislating for when we consider a Bill of this nature, and not anti-social tycoons or the rich man who is avoiding his tax. When we forget the rule and make the exception the rule, we are in danger of losing our moorings.

There are reasons why people avoid taxes and evade taxes. My hon. friend, Shri Morarka, in his excellent speech with which we started the debate, pointed out two reasons why evasion becomes rampant. The first reason is that evasion is aggravated, or temptation is created, when the level of taxation exceeds reasonable figures, as it does in our own country. As taxation of the higher brackets becomes excessive, as it has become in India, these people resort to evasion. Then it becomes necessary for Company Directors, who should be busy trying to cut down their costs and produce goods for the market at economic prices, to divert their attention of finding ways of avoiding tax, because it is found that the avoidance of tax becomes more profitable than the cutting down of the cost of production. Secondly, as Shri Morarka has stated, reason for evasion taking large proportions is the feeling that your money is being wasted, that your money, which is taken from you in the form of taxes, is not being applied or utilized in a manner that you would like to see or as it appeals to a reasonable man. When bureaucracy grows, when wasteful State projects are indulged in, when gantism and gigantism take shape in the nature of planning, then the citizen says "why should I give my money for this? I will rather keep a little more for myself". This is a phenomenon which is not known only in our country; it is a universal phenomenon. Professor Parkinson, the well-known authority on public administration, in his book *The Law and The Profits*, refers to both, factors. He says:

> "To turn to the predicament of the great majority, it is otherwise that some otherwise law-abiding people would evade taxes, in any case. Their number would be small, because their margin of profit, was less. With a tax of about ten per cent of income, the cost of evasion or even of avoidance becomes for most people more than the amount of the tax. Even with tax at twenty per cent, the skill now devoted to evading the tax might be more profitable and directed towards increasing the income."

But he points out that when the tax goes much higher, then it becomes much more profitable to evade tax than to put in the same effort to produce more, or to earn more in an honest way. Similarly, he says that the wasteful expenditure of modern States, particularly of Welfare States, predisposes the taxpayer to avoid paying tax, because he does not think that his money is put to effective and proper use.

Now, Sir, it is necessary, if we want taxation to be on a sound basis and to be paid properly, that our tax law should be simple and clear. This Bill has tried to simplify our tax law, to make it more intelligible to the layman. I am sure that no member of the Select Committee would claim that we have succeeded in that task. We have moved in that direction. We are glad that we have made some progress. Maybe twenty or thirty years from now, somebody will be able to put this law into King's English.

Today there are many sections of this law which will require a lawyer

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or expert to read. Even in the Select Committee there were occasions when all of us were confused as to what exactly a section meant and we had to invite an official of the Department to explain what a particular clause meant in its effect. When that is the fate of Members of Parliament, what would be the position of the average man in the street, or the assessee? We are, therefore, let us admit, a long way away from that simplicity and that clarity which is required of a law of this nature. Even now, there are many parts of income-tax law which will remain incomprehensible to all except income-tax experts and the Central Board of Revenue.

Shri Ranga (Tenali): Even to them sometimes not.

Shri M. R. Masani: The Bill has sought on the one hand, to simplify the tax measures and on the other hand to tighten up the law so that evasion may be avoided. That, Sir, is a perfectly legitimate pursuit and I think the hon. Minister will agree that no Member of the Select Committee showed the slightest desire to help anyone to evade the law. We all stand with him four square in our desire to see that tax is honestly paid and is capable of being collected.

Sir, the Bill has been improved in the Select Committee in several respects for which, like Mr. Morarka, I too am grateful. I think we owe a great deal to the consideration shown to different points of view by the hon. Minister who piloted the Bill and I am glad that the Select Committee particularly went in for two reforms. One was to extend the exemption of gratuity from taxation. It is true that the exemption is strictly limited and is within unduly modest or restricted limits. Because those limits apply in government service, they have been made applicable to all employees, even outside. I for one cannot accept the logic of that. If an enlightened employer has greater enlightenment than the Government, or is in a better position than the Government to pay a larger retirement gratuity, I do not see why the benefit of that gratuity should not go to the employee without payment of taxation. The Government of India is hardly a model employer to set the pace for others. As one of those who lag behind, they are trying to restrict the right of other employers to give a generous gratuity. But I welcome this and I appreciate the action of the Government in accepting this, because it will be a relief to lakhs of modest, lower middle-class employees in employment outside Government to whom this little concession had been denied so far. I am very glad that even though within limits, this concession has been made.

The second thing about this Bill, as it has emerged from the Select Committee, which appeals to me, particularly as one who occasionally writes, is the consideration that has now been shown to what may be called creative elements in our society—artists, musicians, actors and writers. These classes have been shown consideration in two respects—by being allowed to insure their lives to a slightly larger extent than others and by giving the Department the discretion to allocate their income over a period of years rather than only one year, over three years. This is very important. It is often alleged that screen stars secrete a large part of their salary by taking money in cash and that what they receive by cheque or on the record is only a small part of the fee they are paid. That, I believe, is true. There is large scale evasion and abuse of law at that point. But let us consider a little more sympathetically why it happens. It happens because in a particular year a screen star may perform in a very successful film and he or she may get a very large fee for that. But the lives of screen stars and artists in general are very short and limited ones particularly in the case of women with rare exceptions. Authors, while they do not have a

short life, enjoy an intermittent one, because inspiration dries up and a man who writes a successful book or novel is not able to sell another book for the next two or three years. It is, necessary, therefore, that in the interests of encouraging literature and art, we should show a little concession and appreciation of the erratic nature of the earnings of these artists, compared with the rest of us who go to office or go in for business month in month out, year in year out.

I am very glad that it has been possible for the Select Committee to show this consideration and one can only express the hope that, given this relief, the proclivity to evade payment of tax, to which I referred just now, will lesson a little in appreciation of what has been done for this class of our people.

Now, Sir, having welcomed certain aspects of the Bill, I would now like to come to other aspects which are not as welcome. I think an opportunity has been missed during this legislation to put right certain inequities and certain unfairnesses that have existed in our tax law. Some of them have been put right, but many others survive. I would like to give only two or three examples which involve broad questions of principle or policy. My remaining disagreements with the Bill, which are embodied in my minute of dissent, I shall deal with when the clause by clause consideration of this measure is taken up next week.

In so far as major issues of policy or principle are concerned, I shall mention two which figure in the report of the Select Committee on the Bill. The first, Sir, is embodied in clause 179 to which my hon. friend Mr. Morarka also made a critical reference yesterday. Sir, the industrial development of this country so far and the industrial development of the leading industrial countries all over the world, whether it is the United States, or Germany, or Britian or elsewhere, has been based on cooperation about which we all get lyrical, a form of cooperation which was devised in the last couple of hundred years by which people with modest incomes and savings could pool their savings for the purpose of industrial production. That form of co-operation is the joint stock company. The joint stock enterprise was invented by the genius of man in response to the needs of large scale industrial production. You, Sir, or I, might not have enough to produce even a button. But when you and I and everyone else pool our small resources of Rs. 100 or Rs. 200 or Rs. 500 in the form of shares in a cooperative society called a limited liability company or corporation, we make it possible for all our small savings to be pooled for the production not only of a button, but even of locomotives or steel or somethink quite big as that. It is the limited liability company that has made possible the industrial revolution in the more advanced countries.

What is the essence of the limited liability company? It is that our cooperative society or joint stock company has a different personality from ourselves. You and I as shareholders are one thing, but our Company, by whatever name it is called, is a different legal personality. You and I are liable to the extent of our share in the liability of the company, but not beyond. If your share and mine is one-thousandth of the capital of the company, then our liability is restricted to a thousandth part of the liability of the company and, whatever misfortunes the company may suffer, nobody can touch us except to that extent of the money we have invested. This is very fundamental. If we once start monkeying or tinkering with this very sacred principle of limited liability of those who participate in joint stock enterprise, we are in danger of slipping down a very slippery slope, a slope that might destroy this instrument which human ingenuity has devised for the service of man and his needs. It is not a thing to be lightly indulged in. I am sorry to say that in the Bill, as it

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originally was. there was a violent effort made to break through the structure of limited liability. I am equally sorry to say that the Select Committee was not able to defeat this move and that the mischief has survived in the Bill as it is before the House today. That mischief is found in clause 179 of the Bill which says:

> "Notwithstanding anything contained in the Companies Act, 1956, when any private company is wound up after the commencement of this Act, and any tax assessed on the company, whether before or in the course of or after its liquidation, in respect of any income of any previous year cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves...."

Kindly mark the words 'unless he proves'.

> "that the non-recovery cannot be attributed....."

There are two negatives.

> "to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company."

Originally, the attempt was even more ambitious. It was to make substantial shareholders also liable in an unlimited manner. The Select Committee, seeing the danger, was able to limit it. I feel that the danger and mischief still remain. Once this principle of limited liability is invaded there is no knowing where we shall stop. This means that a man who is invited to become a director of a private company must think a hundred times before he accepts such an assignment, because who knows whether five or ten years later, long after he ceases to be a director of the company and the company goes in for some misfortune, he will be told, "Now you prove that you were not careless, that you did not commit any offence; otherwise, you will be liable". To what extent? Unlimited. For a man with limited resources his whole fortune or estate may be swept away in paying for the company's liabilities under this clause. Nothing less than this is the meaning of this clause 179. I think it is a pernicious clause and I hope that even now this Parliament can be awakened to the danger of what is involves as a threat to the future of industrial enterprise in this country.

Shri Amjad Ali (Dhubri): What about misfeasance and negligence of duty?

Shri M. R. Masani: Yes; it says:

> "unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company."

It is an elementary principle of jurisprudence that you cannot prove a negative. No man can prove that he did not commit a murder; that he did not steal. It is for those who allege the crime to prove it positively. Every man is assumed to be innocent unless he is proved to be guilty. This is the reverse of any decent principle of jurisprudence. Here the man must prove a negative namely, that he did not do anything wrong. How do you prove that? The onus is on the wrong side. I could have understood this clause—it is not that I would have agreed with it even then—assuming for a moment that limited liability was to be truncated and somebody said that where it could be proved that the director was guilty of these things, he could be proceeded with beyond his limited liability. But that is not the law. The law now suggested is that he will be mulcted. Only if he can prove a negative to the satisfaction of the other side, he may be exempted.

Yesterday, Shri Morarka, quite rightly, argued that this clause was retroactive or retrospective in its operation. He rather gently conceded that he might have been wrong, but I would like to assure him that he is right in saying that the operation of this clause is retrospective or retroactive.

An. Hon. Member: Very modest.

Shri M. R. Masani: It means that a man who was a director before today, or a few months ago or, maybe, a year or two ago, who took on the obligation of directorship as the law then laid down which was that he would not be liable beyond his share in the company, when we pass this Bill this month or next month he becomes liable for something that happened before the Bill was made operative. He comes under a new liability created retrospectively for him.

Shri Naushir Bharucha: You are referring to new directors coming in.

Shri M. R. Masani: You insist on misunderstanding him. I understood him correctly.

Shri C. D. Pande (Naini Tal): It should be made applicable to newcomers.

Shri M. R. Masani: Shri Morarka's argument was that if it was now said that from now on anyone who becomes a director with full knowledge of what the law is and is subjected to this, he does not seem to mind it. But I mind it even then for I think it is against limited liability. But I understand his argument. He is quite right. It has been a very well understood principle of jurisprudence never to create a crime or an offence retrospectively, never to levy a new punishment for something which has already happened; in other words, never to punish anybody for something which was not criminal or an offence at the time it was done.

These are semi-penal provisions. This is quasi-criminal jurisdiction. You are mulcting a man beyond the normal law of the country. Is it right that, living as we do under a free society and a democratic government, we should depart so lightly and so cheerfully from well established principles of jurisprudence throughout the free and democratic world? I think there are dangers here of this country being taken away from the moorings in which we have been brought up, the Anglo-Saxon principles of jurisprudence which have been the foundation on which our individual liberties and our fundamental rights are today guaranteed. We may certainly develop them, but let us not destroy them. Therefore I want to state my complete dissociation and opposition to clause 179, against which I shall vote.

Confidence is a very delicate plant. We, on the one hand, talk about increasing production and ask people to serve the country by producing and then we pass or try to pass a law like this, which strikes at the root of that confidence. I certainly would not become a director of a private limited company after this clause is passed. I would consider it putting myself in great jeopardy, because I would not be the sole person who would decide whether I should get into trouble or not, and then ten years later go and prove that I was not responsible for carelessness. It is something that is asking too much of human nature.

Clause 79 is also responsible for similar departure from sound principle. Clause 79 is on the subject carrying forward and setting off losses. How does it offend against the principle of corporate entity and limited liability? As I said earlier, a joint stock company or a corporation is a separate entity from the human beings who make it up. It is a notional entity. It has a personality and an identity of its own. Clause 79 says that unless you can prove that 51 per cent of the voting power in a company at a particular time is held by those same people who held it sometime earlier, you cannot carry

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forward or set off losses. In other words, again, in this matter the human beings who make up the company and the company itself are sought to be mixed up. The corporation remains a corporation even if every single human being has died and new people have come in. If every share has changed hands, the corporate enterprise remains the same corporate enterprise. This is the very foundation of company law. To say that a majority of those who were there must remain a majority of the present company is going behind the very essence of a company. We are not here concerned with human beings. We are concerned with corporate enterprise.

Again, in this case of clause 79, by trying to look behind the company and into the persons or the human beings involved, we are violating a fundamental concept of Company Law. I, therefore, feel that both these clauses need to be reconsidered and I do hope that whatever feeling or opinion can be expressed in the House may even at this late stage make it possible. Otherwise, no one who believes in these principles of limited liability and corporate enterprise can possibly identify himself with these clauses.

I now come to the second main point of principle. That concerns charitable institutions. Charitable institutions are dealt with by clauses 11, 12 and 13 of the Bill. Here again, may I say, because I want to be fair at every stage to the hon. Minister and to the Select Committee, that a rising out of the discussions that took place considerable improvement has been made in all these clauses and a point of view that charity should not be hampered and that difficulties should not be placed in the way of those who run charitable institutions has found partial acceptance. But, unfortunately, certain blemishes remain. At this stage I shall deal only with one of them, a matter to which reference has been made already by the hon. Minister in his opening speech, and that is in regard to denominational charities, charities that are for the benefit of particular denominations or sections of our people, not of all people without discrimination.

I hope every hon. Member knows that I am not interested myself in denominations. I have never regarded myself or any other citizen of this country as being anything but an Indian first and last. I am not interested in communal or religious or any other divisions, and to me the idea of giving money to people of one kind or one race or one religion or one origin is absurd. It would not occur to me and if I wanted to give money to a charity I would give it to a good charity, whoever benefited from it would not concern me very much; certainly not what religion, race or community they belonged to.

But I am not legislating for myself and my hon. friend is not legislating for himself. We are supposed to legislate for human beings in our country as we find them. That is part of democracy, that we do not imagine people to be different from what they are. The luxury of imagining that people are different from what they are should be left to fascist and communist dictators; democrats have to legislate for human beings as they are. Yes, Sir, by legislation we certainly try to push society further, to help the right instincts and to discourage wrong instincts. But there are definite limits wihin which the function of legislation, this educative functions of legislation, can be practised.

I say you cannot make men good by coercion; you cannot make men nationalists by taxation. Today the average Indian—whether we like it or not, let us face it, everyone in public life knows it to his cost—is not an Indian first and last. He certainly is an Indian. But he also is

either a Hindu or a Muslim or a Parsi or a Christian. He also is a Brahman or a non-Brahman or a Kshatriya or a Harijan or something else. He has many consciousnesses; he has not got just one national patriotic consciousness. What I say is known to be true by every one of us here. We may pretend for public consumption that it is not true, but it is true. Our public life is infested by caste and communal considerations. I deplore it. I deplore it as much as my hon. friend the Finance Minister, and I shall join hands with him in trying to educate our people against that trend.

But, while most people in our country feel as Hindus or Parsis or Christians or Catholics or Branhmans or non-Brahmans or Harijans, are we in a position to say: "Only *that* is charity which is given to an institution where these distinctions do not pertain"? That the moment you give it to people who are nearer to you by birth or religion or part of the country or language, that it becomes invalid, it ceases to be treated as charity, it has to be treated as business. This, Sir, is the meaning of two clauses in the Bill as it has been reported upon by the Select Committee. I refer to clause 88(5)(iii) and clause 13(b).

Mr. Chairman: The hon. Member's time is up.

Shri M. R. Masani: Mr. Chairman, you will kindly give me more time.

Mr. Chairman: He has taken half an hour.

Shri M. R. Masani: If I may say so, there are not too many speakers who will be interested in this and you may therefore give a few of us time.

Clause 88(5)(iii) is an old clause. Even under the present law it has been laid down that if a donation or a charity is made to an institution which is confined by race, religion or characteristics of that kind, it shall not be free of tax. I do question that, and I think it is a good opportunity to remove this unfortunate ban.

It has been said that "charity begins at home." But the Bill would like to suggest that charity should begin at the other end: you may give it to a stranger or a man who is remote from yourself, a man in Madras may give in charity to oosmebody in the North but not to any Tamil-speaking people, because then it would become communal, it would become linguism! This is all wrong. It is true that the wider our charity becomes, the better. Why confine it to India? Why not look forward to the day when we can think of our fellow human beings in any part of the world—in Africa or in Europe or in America or in the Far East—as our brethren? I look forward to that day. But surely, we are not going to say: "Unless your charity is universal, if it is parochial and national, it is not going to be tax-exempt"!

Similarly, if a man is limited in his outlook, if he thinks of his caste, his community, his language, his family, his clan, his tribe, you may say that he has a limited mind. But are you going to punish him? Are you going to say: "I do not think it is a good charity"? Normally, the selfishness is expanded: first you think of yourself, then you think of your family, then of your relations, and then of your clan or your tribe, and so on. And ultimately you think of the nation and the world and humanity.

Every step forward should be encouraged and not retarded. What will be the result of this? The result of this banning of donations to this extent will be that a man who wants to give a donation will say: "Oh, you want to tax it, then I won't give it to charity". He will keep the money and hoard it. Is that what we want? The result of this clause on donations is that it dries up the springs of charity. Instead of encouraging a man to be charitable, you are retarding the charitable instinct and you give him an excuse to say: "If you want to tax it, I will not give it."

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Whom are we helping by this? Does it get wider or narrower? It will only encourage the selfishness of the man and give him an excuse for not doing the right thing.

Therefore, I say that you cannot legislate run into nationalism. As an educative process we could all try it. It will take a long time. Meanwhile, let us accept people as they are.

Then we come to a new clause, where this principle of donations being discriminated against, is being applied for the first time to the charity itself . Clause 13(b) is a very dangerous clause. This was not in the Bill. The Bill as circulated to the public, as read by the people, the Bill on which evidence was led before the Select Committee, did not have this clause. But clause 13(b)(i) smuggles in, for the first time, a provision which makes a violent departure. Shri Naushir Bharucha was perfectly right in pointing out two days ago that nobody outside, except a few of us here, even know that this is being proposed. The thousands of the so-called charities which, after all, help lakhs of our people—whether communal or not—do not know what is being planned. They do not know that a new clause is being brought in which will make a similar activity in future punishable by taxation. This is a most dangerous provision. I am sure that, if it had been in the original Bill, a howl of protest would have gone round the country, the press would have taken cudgels, and evidence would have been led before the Committee which would have persuaded the Committee to modify the Bill. But because the clause was not there and because it was sprung on the Select Committee and adopted, we now have a clause which is in danger of being passed without Parliament and the people knowing what is being done.

This clause says:

> "Nothing contained in section 11 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—
>
> (a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;
>
> (b) in the case of a trust or charitable or religious institution created or established after the commencement of this Act,
>
> (i) if the trust or institution is created or established for the benefit of any particular race, religious community or caste".

I oppose this sub-clause. I think it is an unfortunate, a misguided effort to do the right thing in the wrong way. It amounts to this—that money that would have gone to needy people would now be grabbed by the Government as part of income-tax. It is an attempt to enforce "secularism" by the wrong method, by legal coercion, which is bound to defeat itself. This will not stop people being communal. This will only stop them from doing in an open and decent way what they want to do. If a man wants to help his own kind, his own clan, his own religion, or his own language, he is going to do it. No amount of laws like this is going to stop him. He will do it in an underground way; he will do it privately, unofficially, informally. He will not show it.

Lastly, since you wish me to conclude, I come to my third point, and that is about a Government amendment of which notice has now been given after the Select Committee has become *functus officio*. The hon. the Finance Minister has given notice of nine amendments. Most of them are perfectly unexceptionable and I have no objection to them, because they do not materially make any change, but there is one amendment against which I must raise my voice. That is

amendment No. 9, the last amendment in List II. It seeks to amend a clause which the Select Committee has recommended.

Shri Prabhat Kar: He has tabled more amendments today.

15 hrs.

Shri M. R. Masani: I am not up-to-date. I cannot keep abreast of the Finance Minister's changes of mood and mind. I am trying to keep abreast of them.

I am referring to pages 157 and 158 of the Bill. There is clause 243. This clause was passed by the Select Committee. The hon. Finance Minister was a party to it. It reads as follows:

> "(1) If within a period of six months from the date on which a claim for refund is made under this Chapter, the Income-tax Officer does not grant the refund, the Central Government shall pay the claimant simple interest at four per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of six months aforesaid to the date of the order granting the refund."

There is an Explanation which says:

> "If the delay in granting the refund within the period of six months afroesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable."

It says that the issue whether a period should be excluded or not will be determined by the Commissioner whose decision should be final.

A very reasonable clause, a good clause and, as Shri Morarka said yesterday, a clause meant to help in expediting settlement of income-tax cases. Hardly was the ink dry on the report when the Finance Minister came forward with this amendment, at the instance of his Department, which is now amendment No. 9, which says:

> "If the Income-tax officer does not grant the refund,
>
> (a) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months from the date on which the total income is determined under this Chapter,
>
> (b) in any other case, within six months from the date on which the claim for refund is made under this Chapter . . ."

What it does is to postpone the payment of interest from six months after the claim to three months after the determination of the claim. The amendment which the Finance Minister now seeks to introduce forgets to mention how much time may pass between the making of the claim and the making of the determination. It could be three months, it could be three years, it could be thirty years. I am not saying that it will be that. Here, we are subjecting the citizen to the mercy of the bureaucracy and the administration which, by keeping a claim dangling, can deny your right to interest. In other countries, a very serious view is taken of this. In the United States and in Britain, it is believed that the man is entitled to propmt refund. He may be a man of modest means. He may need the refund to carry on his livelihood. By delaying payment, you are denying him his livelihood and therefore you pay interest. You are compulsorily borrowing his money. It is his money. You are detaining it. If you detain it without his consent, the least you can do is to pay him interest.

Why this amendment? The Select Committee, as a whole, decided on that in order to give an incentive to the Income-tax department to get on with assessments. We know they are

[Shri M. R. Masani]

notoriously slow in disposing of assessments of even small people. Even small peoples' assessments are often kept pending for two or three years, for no reason at all, except that the Income-tax Department has its hands full. As I said in the beginning, I have sympathy for the Income-tax Officers. If they are overworked, let there be more of them. But, certainly, you cannot first say that you have not got enough Income-tax Officers and then ask the citizen to wait for years and say that you cannot pay interest. That does not seem to be right. If the Finance Minister is satisfied that the Taxation Department is inadequately staffed, let him develop it. I am sure he will realise ten times the amount that he will be spending on the salary of these very low paid people. I am not against more Income-tax Officers being employed. I am not unsympathetic to the Income-tax staff. I am saying; it is not my business as an assessee whether you do your job properly or competently. It is your business to see that you do your job properly. It is your business to do it. If you keep me waiting, you must pay me. I think it is an unfortunate thing that this amendment should come before the House, when the Select Committee had laid down a very sound principle in clause 243 that in all cases, in six months after a claim, you either meet the claim or deny it or you start paying interest.

What are those cases where this loophole is sought to be opened, for keeping the amount dangling for years? It says:

> "In any case where the total income of the assessee does not consist solely of income from interest on securities or dividend,"

Let us imagine—a man is a clerk. He gets Rs. 400 a month as salary. He happens to have two or three shares which bring in Rs. 25 or 30 a year. He comes under this clause. His income is not solely from dividend. It is partly earned income and partly income from investment. Under this clause, you may keep him waiting for years! You may say, no, until I determine your claim and three months thereafter, your interest will not run. In the end, it may be established that the money was due to him.

The Minister of Finance (Shri Morarji Desai): May I say, Shri M. R. Masani knows which are the cases that would come here. This is not a case which would come.

Shri M. R. Masani: I point out what the law is. What the hon. Finance Minister has in his mind may be something different. It is said that there are complicated cases where six months would be too short. Let them be described. That it not the reality. The reality, as hon. Member says, is that small men's cases are kept waiting for two or three years.

Shri Morarji Desai: It would not be.

Shri M. R. Masani: This would be way of allowing that to happen even now. The Finance Minister was a party to the Select Committee decision which sought to stop it. It was to stop that the Select Committee unanimously accepted this clause. This is back-tracking within a few days. I say that the persons whose income is described here are not big financial institutions or individuals who pay lakhs in income-tax, but any one whose income is partly from dividend and partly from something else. Many middle class people have income partly dividend and partly from salaries or business income. The moment you find that the income is from more than one source, the Income-tax officer can say, you wait for my decision. I am pointing out that within the scope of this clause, it is so. If six months is too short, make it twelve months. I am agreeable. In place of this amendment, in hard cases, if twelve months are given, I do not mind. But, here is an indefinite post-

ponement of the right which the Bill proposes to give, as reported by the Select Committee. I think it is an unfortunate and retrograde amendment. I hope even now the Finance Minister will not move it at all.

These are two or three instances where I have shown that broad policy or principle dictates second thoughts in regard to the contents of the Bill. In regard to other matters, I shall reserve what I have to say till we discuss the clauses next week.

Shri Prabhat Kar: Mr. Chairman, this is a very important Bill, because it deals with income-tax procedures and it consolidates the whole Income-tax law which the Members have been asking for a long time. It has been said that attempts have been made to simplify procedures. I do not know whether it is possible to simplify income-tax procedures and the procedures under the Income-tax Act because it deals with various aspects and various types of income and to simplify it is a hard job. Yet, I am glad that an honest effort has been made to simplify the procedures.

This Bill affects various interests also, because, there are various types of assessees, small and big and the interests of the assessees, whether small or big, are also conflicting. An attempt has been made to see that unnecessary harassment is not meted out to the assessee. At the same time, the most important thing so far as the amendment and consolidation is concerned is how swiftly the revenue can be collected. Because, today, roughly about Rs. 300 crores are received from direct taxation. There may be controversy about the amount of evasion, whether it is Rs. 200 crores or Rs. 30 or 40 crores. But, it is admitted that there is quite a large amount which is evaded. Furthermore, it is also admitted that quite a large sum of money which has been assessed has not been collected. Naturally, the attempt on the part of Parliament and particularly on the part of the Government is to see how swiftly we can collect all the revenues that are due to the State. The most important attempt in amending the Income-tax law is to see whether the process by which we collect the revenue has been simplified and we can easily collect all the taxes which are due to the Government.

As I said, the interests of the assessee and the Government conflict here. On the part of the Government, the attempt will be to collect as much revenue as possible under the Act. On the part of the assessee, righty, it will be, as part of human nature to pay as little as he could. Therefore, the tussle continues. Naturally, here a difficulty would arise, because we have got various types of assessees, non-resident, resident and not ordinarily resident, individuals and Hindu joint families, corporate bodies, private limited companies, partnerships and trusts and so on.

We have also got different types of income, as was pointed out by Shri Morarka yesterday, namely agricultural and non-agricultural, earned and unearned, capital and revenue, casual and regular and so on. So, with various types of assessees and various types of income, it becomes a tussle between the income-tax authorities and the assessees to determine exactly how much amount is due to the State from the assessees by way of tax.

When it is said that the list has to be simlified, I do not know whether it is possible to do so in the sense that it can be put in one sentence. It cannot be done. In England, the Codification Committee said that:

> "To expect from us a codification of the law of income-tax which the layman could easily read and understand was a vain hope.".

I think that it is an almost impossible task to simplify the Income-tax Bill in such a way that the layman will understand it, and after understanding it, it will be possible for him to

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meet the requirements that are being imposed on him by the law. But, yet, an attempt has been made in this direction, and I am glad that in that respect, to a great extent, the Select Committee has done its job, perhaps quite efficiently, under the present circumstances. I am quite sure that with the experience that we shall get further we shall be able to further simplify it wherever we find that there are difficult propositions.

Now, the main question is whether this Bill has been able to plug all the loopholes, because, as I said, the main object is to collect the maximum revenue. So far as the assessees are concerned, whether they be big or small, their attempt always is to see that they pay less. Immediately comes the question of interpretation, because that is the most difficult task, and interpretation starts a tussle. When the question of interpretation comes, the lawyers, the chartered accountants and all those people come into the picture and then the mess starts, and as a result thereof, one assessment which could otherwise have been completed in a short period is completed after two or three years. In that respect, I would suggest that the steps which will be taken today, under the Bill as it has emerged from the Select Committee, will to a great extent relax the complications. Yet, we should take into consideration the fact that even a simple and short sentence can be interpreted in many ways with the ingenuity of the lawyers. I have got nothing to say against them, but the fact is that with the ingenuity of the lawyers, it can be interpreted not only in two ways but in a hundred ways, and, therefore, the authority should take proper care to see that the intention of the Bill is properly understood and properly administered.

Then comes the question of the tax-collecting machinery. Shri Morarka pointed out yesterday that there were two things involved here, namely avoidance and evasion. Avoidance means that you arrange your things in such a way that you do not come within the mischief of the Act. That means in simple language that you manipulate your accounts in such a manner that none of the provisions of the Act can apply to any of your accounts. Then, there is the case of evasion. Yesterday, my hon. friend gave us the example of Duke of Wellington or somebody like that, and said that the Duke arranged his business in such a manner that in spite of his being a Duke and a man of wealth, he could not be caught under the provisions of the Act. In other words, he was required to pay the prescribed amount of income-tax, but with the help of the lawyers and the chartered accountants, he arranged or managed his affairs in such a way that the tax-collecting machinery there could not touch him.

Here also, big business is doing the same thing, with the help of the ingenuity of the lawyers. I need not stress this point, because in the evidence, the Finance Minister himself has made a reference to this point that it is the chartered accountants, the barristers and their advisers that create much of complication. So, evasion means that you manage your affairs in such a way that you do not come within the mischief of the law.

What is the effect of all this? I am only on the point as to what the effect of avoidance and evasion is. For, we here, sitting in Parliament, in view of the planning,—to which Shri M. R. Masani has got strong aversion, as he has just mentioned,—are more after revenue than anything else. Whether it is avoidance or evasion, the net result is that the consequence is the same, namely loss of revenue to the State, which means more tax burden on the honest tax-payers. Naturally, the attempt on everybody's part is to pay less, but we must see exactly that everybody pays the tax which he is required to pay. If we look into the report of the enquiry committee where remarks have been made against such persons, we shall find that today the

highest and the intelligent and best brains have been purchased by the persons not to help in seeing that revenue is properly collected, but to see how to dodge the revenue.

15.18 hrs.

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

Naturally, it will be the attempt on everybody's part either to avoid or to evade. But we should try to see that the man can neither evade nor avoid. These things happen only in the case of big business which has got to pay more taxes.

Shri Morarka pointed out yesterday, and Shri M. R. Masani has also agreed with him that one of the main factors for this avoidance or evasion is the high tax incidence. The high tax incidence is on those persons who earn fabulously high amounts. But today in this country if we look into the life of the common man who is earning, we find that it is on him that the incidence of taxation is high, and it is on him that the income-tax levy is so high. Therefore, I would say that the clamouring on the part of big business should not be there.

The point is that even then, to what extent the high incidence of taxation is due to the high rates of taxation. It has been stated in the Law Commission's report as also the report of the Direct Taxes Administration Enquiry Committee, that it is not merely the question of high taxation, but there are some persons who have got it in their blood to dodge taxes so that they may not pay the taxes to Government.

Shri M. R. Masani has said that today we are spending a huge amount on the Plan, and all that is a wasteful expenditure; he feels that any amount which is paid to Government will become a wasteful expenditure, and, therefore, the attempt is to try to find out ways and means by which Government may not be paid. The point made is that it is not a question of high incidence of taxation, but that Government may indulge in wasteful expenditure because of planning; that is the most important part of his argument; it is because of the planning that the wasteful expenditure occurs, and he feels that if planning were not there, the wasteful expenditure would not have been there, which means that in the private sector no wasteful expenditure occurs and that it is only in the public sector, and because of the planning, that there is wasteful expenditure, and because of the wasteful expenditure, the people feel that they must pay to Government only when they are satisfied that Government are spending properly and in their interests, and if they are not satified, then they feel that they should try to avoid it.

Now it is not the question of high incidence of taxes that is the point; it is that type of mind which operates by dodging taxes. Therefore, we have got to see that in spite of the few persons like him or others who feel that way, under the Income Tax Bill which we are passing we shall be able to tackle them properly so that they are not in a position to avoid the tax due to Government.

Again, there has been too much talk of harassment. I am not saying that there is no harassment. There may be. But if we make a fetish of harassment, it will be difficult for the income tax authorities to work properly. All the time, Shri Masani speaks of the middle classes who are being harassed. I do not know which type of middle class he represents. At least when he talks, he talks of some persons who in our country cannot be considered to be belonging to the middle class. He represents a particular section who are not only the upper class but are the highest class.

As regards the question of harassment, I do not also know how much the income tax authorities are harassed by the assessee. So we should not make a fetish of this aspect of harassment. The point is that if there is proper cooperation on the part of the

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assessee with the ITO, then the question of harassment will not arise. It is only in cases where an attempt has been made to avoid payment of tax that delay occurs and the talk of harassment comes in because the income tax authorities are not satisfied with the returns submitted as they feel that there has been some concealment of income. Therefore, the assessees say, 'We are being harassed by the income tax authorities'.

Therefore, there should be proper co-operation between the assessee and the income-tax autharities. If the assessee feels that so far as the dues to Government are concerned, he must pay them, I am quite sure that there will not be harassment. It may be that in one or two cases, there may be some harassment; it may be that one or two income tax officers may harass assessees, but generally I feel the authorities deal in a good manner with the assessees.

I also agree that all the assessees are not potential tax evaders. As the Direct Taxes Administration Inquiry Committee has pointed out, the suspicion is there only in the case of those persons from whom huge amounts are due and who do not want to part with the money but to try to evade payment of taxes by all sorts of devices.

Now I come to some of the provisions of the Bill. Shri M. R. Masani launched an attack on clause 179, about which Shri Morarka also raised certain points yesterday. So far as Shri Morarka is concerned, his point is a limited grievance. So far as Shri Masani is concerned, he has gone directly against it; he does not want any provision like clause 179. Shri Morarka's main point is, to what extent all the past directors will be liable. He agrees with the principle that if the tax has not been paid and if the company goes into liquidation, the directors should be held responsible. But the point he has raised can be clarified. Clause 179 says:

> "Notwithstanding anything contained in the Companies Act, 1956, when any private company is wound up after the commencement of this Act, and any tax assessed on the company, whether before or in the course of or after its liquidation, in respect of any income of any previous year cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severelly liable...."

That means, the tax has not been paid at a time when that man was a director. It is not that for the last 10 years there have been 10 directors and a person would be liable for a particular year even though he was not there during that year. If it happened during the last two years and only 8 of those directors were there, only they would be affected. Only those persons under whose directorship the payment was not made will be affected. Then it goes further:

> "....unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company".

For the period during which he was director and during which payment was not made, naturally he will be held directly responsible, because if the payment was not made, it was beacuse he did not want to make it. The only question is about sleeping directors. I do not know whether there should really be sleeping directors. If a person is a director, he has got his responsibilities as director to discharge.

So it is not that all the directors of the past will be held responsible for it; only those directors during whose tenure the payment was not made will be held responsible for it and will be punished.

Shri Morarka (Jhunjhun): That was precisely my point. When we are legislating today, we can say that hereafter all the directors will be responsible for non-payment or whatever default is there. But what about those directors who became directors in 1957 or 1959 and are no more there as directors today? If the company goes into liquidation hereafter, why should you make them offenders? Retrospectively and thus rope them in, because at that time the law was different?

Mr. Deputy-Speaker: This was explained.

Shri Prabhat Kar: One condition is that during the period 1957 or 1955 the tax must not have been paid. Otherwise, the question does not arise. If the company goes into liquidation and if the payment was due for the year 1959, the director who terminated his directorship in 1957 will not be liable under clause 179, because it has been clearly stated that it applies to the relevant year. Any director who had already left the company in 1957 shall not be liable.

Shri Morarka: I am talking about a director who was there in 1959.

Shri Prabhat Kar: So far as the first point is concerned, there is a safeguard.

The next point is this: Suppose the Act comes into operation today. Because there was no liability on them earlier, should it be made applicable to them? They were under the impression that there is a limited liability so far as directors are concerned. Today there is unlimited liability. So what is the position? That is the only point that comes in.

Now there have been so many Acts passed where this type of liability which has been created with retrospective effect has been there, although there was no such liability at that time. Anyway, this matter can be clarified further by the Finance Minister when he replies. But so far as clause 179 is concerned, it is a proper clause which has been incorporated in the present Bill.

Then the point was raised by Shri Masani as regards carry-forward of losses. In his opening remarks, the Finance Minister has dealt with this point. A new company may take over and get the relief. I do not know how the point can be argued by Shri Masani. It has been said that 51 per cent of the shareholders must be the same shareholders; that means it must be a continuation of the old company. Otherwise, some persons may do it with a view to avoid or reduce the liability to tax. I think there is no logic in Shri Masani's argument. This question cannot be taken up. Already it has been answered by the Finance Minister.

The next important point is about clause 13(b), which deals with a trust or an institution created for the benefit of a particular race, religion, communist or caste. He has said he is not in favour of indulging in communalism, he does not want it, and that these things cannot be stopped by legislation. The point is not that there should not be any such trusts, the point is whether there should be any relief from income-tax. For instance, let us take the schools. I do not think there is any school, entrance to which is restricted to one particular community. Whether the trust or the school is called Hindu, Anglo-Indian or Missionary, so long as the beneficiaries or the students are not restricted to any one particular community, there will be tax relief, and it does not come under clause 13(b)(i). Therefore the apprehensions expressed in regard to schools are without foundation.

Further, today an amendment has been introduced by the Finance Minister, and I think it is proper to exclude the Scheduled Castes, Scheduled Tribes and backward classes from the scope of this clause. Nobody is debarred from creating a trust the beneficiaries of which belong to only a particular community, but if he

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does so, he has to pay income-tax. That is all. The only exemptions are the Scheduled Castes, Scheduled Tribes and backward classes.

Clauses 270 to 273 deal with punishments. The Direct Taxes Enquiry Committee has gone into this question. We have already increased the punishments and taken other steps such as publishing the names of defaulters. In spite of all this, very few cases have come up. Shri Achaw Singh has in his Minute of Dissent made the suggestion that there should be deterrent punishment. He has pointed out that in U.S.A. and in other places the tax evader is charged from 12 to 20 times. I agree with him. I wish to add that the cases should be taken up properly and vogorously pursued.

On the question of tax clearance certificates, the Finance Minister has said that he is not taking it up at this moment, that he is leaving it to the States. We find that action is generally avoided by the States. There was a suggestion that the Centre itself should take it up. I do not know what steps have been taken so far. I feel only if this is done there will be a proper administration of the income-tax law.

So far as the department is concerned, I feel that the staff is inadequate to cope with the work. It is not a question of the number of cases that will come up, but the amount of revenue that we collect. There are so many taxes today like the super tax, the wealth tax, the estate duty etc., all of which are administered by this department. It has become almost imperative that the staff should be increased.

Though it is not the subject matter of the Bill, I would like to say that the emoluments paid in this department should be quite good, because the people in it are exposed to all sorts of temptations. Today in this country there are hundreds of people who would rather pay the lawyer and fight the cases than pay the tax due. If they pay by way of tax half the amount they pay their lawyers, half the trouble would be over, but they would not do so. These are the people we have to tackle. So, to enable the staff to do their work with honesty and integrity, I suggest that they be paid adequate emoluments.

An attempt has been made to simplify the Bill, which is commendable. A couplet of Tagore comes to my mind in this connection. He says:

Sahaj Kathai likhte amay kaha je
Sahaj kathai jaina lekha sahaje

It means that it is not easy to write in simple language. It is easy to talk in difficult language, and difficult to talk in simple language. Similarly, it is very difficudt to simplfy the income-tax law. I am glad that attempt has been made.

Shri Somani (Dausa): At the very outset I would like to welcome the changes and modifications that have been introduced into the Bill by the Select Committee. The original Bill contained certain provisions which would have really caused hardship and harassment, and I must congratulate the Select Committee in general and the Finance Minister in particular for introducing certain changes which will go a long way in removing the apprehensions that were voted at the time of the introduction of the Bill in this House.

The present Act has been characterised by the Law Commission as very illogical, obscure and complicated. As the Finance Minister pointed out yesterday, the present Bill has been framed on the basis of a very exhaustive and comprehensive review by the Law Commission and the Tyagi Committee. Later on, this Bill has been a matter of close scrutiny by the Select Committee. I hope and trust that the Income tax Act which

will emerge now after so much exhaustive and comprehensive review will not be subject to frequent changes year after year, as has been the case up to this time.

A lot has already been said about tax evasion and tax avoidance and I would not like to labour this point further. While everything possible must be done and the Bill would take proper care to see that no leakage of revenue takes place and all legitimate dues to the Government must be paid, still the fact must be faced and the point has already been made by the previous speakers that the level of taxation in our country is almost the highest. In certain cases when the assessees are called upon to pay more than 100 per cent. you can very well realise the nature of the hardship by such a tax level to the honest assessees. There is every justification for the Finance Minister to review the taxation level in a manner which will leave some incentive for saving and which may not cause such hardship as is the case at present.

I shall now refer to clauses 11 to 13 of the Bill relating to charitable trusts. I very much welcome certain relaxations which have been made, particularly, the relexation under which all business income of charitable trusts in future will be exempted so long as those trusts are recognised. So far the income only from the business carried out for the primary purpose of the Act was exempt. This exemption has now been liberalised. I hope and trust that this will increase the flow of funds to charities. This is a step in the right direction. Similarly, certain restrictions about accumulation have also been modified. I would like to submit to the hon. Finance Minister that this conception of the smallness of trust in terms of the annual income of Rs. 10,000 has to be considered in the present context of inflationary conditions and at a time when our economy is expanding so fast, it would have been more appropriate if the smallness of the trust had been defined in terms of an annual income of Rs. 25,000 and I hope and trust that the hon. Finance Minister will even at this stage accept this small modification.

Another point about which Mr. Masani had a lot to say and about which I would like to draw the attention of the hon. Finance Minister is about the need for charities for certain purposes. I would like in this connection to give certain instances of ancient and historical temples, Perhaps the hon. Finance Minister is himself aware of the need to renovate certain of our ancient temples. Unlese certain steps are taken to encourage the flow of charity in that direction, we will really be depriving those temples of receiving the necessary help which they deserve. The famous temple of Dwaraka is under the jurisdiction of the Archaeological Department of the Government of India and is looked after by the Government of Gujarat. I am in correspondence with the Chief Minister of Gujarat and he has sent me certain statements and quite a few lakhs are needed for the renovation of that ancient temple. Certain business friends have shown their willingness to contribute for the renovation of such an ancient Hindu temple and I do not see why our income-tax Bill should not allow such contributions to be exempted as is the case for other charities. There are so many similar ancient and big historical temples in the South which are in a very dilapidated condition. At a time when some important changes are being made in relation to the clauses on charitable trusts, power should be given to the Central Board of Revenue so that wherever the Government are satisfied that such ancient and religious institutions deserve certain help then necessary exemptions may be allowed; thus the flow of charity in that desirable direction may be encouraged. Similarly, exemption should be allowed for charities that may be done for Indians residing outside our country. At a time when our cultural and commer-

[Shri Somani]

cial contacts with so many foreign countries are developing, it is desirable that the Government should encourage certain charitable acts which the citizens here may like to undertake for certain charitable purposes in other countries. Of course the money remittance will be subject to all the formalities of the foreign exchange but so far as the present scope of the Bill is concerned, I do plead with the hon. Finance Minister to allow the charities undertaken even for outside this country should be brought within the purview of this exemption.

I would now like to refer to clause 32 regarding depreciation. I know I am making out some new suggestions. But this is a time when we are on the verge of such a programme of gigantic industrial development under our Third Plan. We should take every possible opportunity to see that the primary objective of our economic development is promoted in all possible ways. Previously, the additional depreciation used to form part of the Income-tax Act and it was perhaps in 1959 it was allowed to lapse; the hon. Finance Minister did not renew this concession. When we are recasting this Bill, if it is not possible for the hon. Finance Minister to accept this as a general proposition, some additional depreciation should be allowed for industrial development in the backward areas. The Third Plan provides a lot for removing the regional disparities. In spite of all that the Government have been doing, these disparities are growing rather than lessening. So much has been said in the Third Plan about the removal of these disparities. I came across a very interesting statement made recently by the committee of economic development in the U.S.A. The U.S.A. is a highly industrialised and prosperous country. Yet there also there are pockets of unemployment and distress. This committee which consisted of prominent people, businessmen, economists, taxation experts, etc. has come with a suggestion. I am quoting a few sentences from that report:

> "Special rapid amortization privileges should be made available to firms expanding or building new plants or installing new equipment in distressed areas. This type of incentive to industry has proved effective in the past and can stimulate an increase in employment in these areas."
>
> This Committee supports the principle of permitting a faster write-off of the costs of investment as a spur to national economic growth. We believe application of the same principle, with write-off at an even faster rate in areas of chronic labor surplus, would produce an increase in investment in these areas. Rapid amortization privileges, permitting a write-off of investment in 5 years, were effective in securing an adequate construction of defense plants.
>
> Accelerated amortization or depreciation increases the rate of cash flow. If the privilege is limited, the firms enjoying it have the equivalent of an interest free loan from the Federal government for the period covered.
>
> It should be made available for new or expanding plants, or for new equipment, in chronic labour surplus areas. The privilege should apply only where an increase in employment in the area will result from the plant expansion, new plant or new equipment. Such a tax concession is of limited duration, and would be repeated only when new plant and equipment were acquired. If the area ceased to be a chronic labor surplus area, the privilege would no longer be granted."

I am making this point at a time when Government is committed to a policy of bringing about faster deve-

lopment in the backward regions of various States. I also understand that Dr. Lokanathan of the National Council of Applied Economic Research is making a study of defining backward areas. It is not a question of a particular State. The States of Maharashtra and West Bengal are quite progressive States but there are certain backward areas also in those States. The idea of Dr. Lokanathan is to define and formulate certain criteria on the basis of which certain areas in particular States will be declared as backward, so that they will be eligible for certain special concessions which will divert and stimulate investment for the development of those areas. I am making this submission to the hon. Finance Minister have with a limited purpose, because I am not going into the entire, detailed steps that should be taken in this connection. The present purpose is only to insert a clause for additional depreciation allowance under clause 32 to ensure that any industries which are developed in those areas will be eligible to that additional depreciation.

I may also submit that this does not involve any loss of revenue so far as the Government is concerned. After all, depreciation is limited to 100 per cent cost of the building, plant and machinery and so on. It is thus only a deferred liability by which certain facilities are available to those who might be prepared to invest in new enterprise in areas which are at present comparatively backward. I hope and trust that this small concession which may act as a stimulant to industrial development in these areas will be favourably considered by the Government.

I have also to make some suggestions in regard to clauses 45 to 55 which deal with capital gains tax. Here again, I have some suggestions to make which will meet the national objectives which we have in view. I suggest that any person or company who may be liable to capital gains tax, when he sells his holdings in any of the shares, should be exempted from the capital gains tax under certain conditions; one condition may be that if the amount is first invested in Government securities and if later that amount is invested in new industrial undertakings, he will be given this exemption on capital gains tax. This will serve two basic objectives of our national economy. One is that this so-called concentration in a few hands will, to that extent, be broad-based. With that incentive, it will be possible for holders of shares in particular companies to unload and sell them in the market to a large number of investors who are ready to invest because of the sound working of the companies. To the extent those resources are released, those resources will be employed in creating new industrial enterprises. So, on the one hand, the tempo of industrialisation is accelerated by the release of funds which otherwise would remain blocked because of the fear of capital gains tax. There may be certain individuals who simply because they will have to pay capital gains tax will not like to part with their holdings. But in case certain exemption is given to subserve the interest of our national economy, then I think it will be quite in conformity with the objectives that we have in view, namely, of diffusing our industrial and economic structure and at the same time releasing certain funds which otherwise will not be available.

Here again, I appeal to the hon. Finance Minister to see whether this small concession which, from the point of revenue may not be a substantial loss, and yet may repay dividends to a great extent by really creating conditions for industrial development. I hope and trust that from that point of view, the hon. Finance Minister will review this modification also in its proper perspective.

Another point I would like to enquire from the hon. Finance Minister is about the modification which is proposed to be made in clause 84. At present there is a tax holiday for five

[Shri Somani]

years for all new industries. Some sort of uncertainty is proposed to be created by inserting a clause under which the Government will take powers to make such enquiries as they may deem fit and declare any industry as not being eligible for an exemption from this tax holiday clause for any period which they might decide. This concession of a tax holiday for five years has acted as a good stimulant to our industrial development and I do not see any justification for introducing any element of uncertainty in this concession. If at all there arises in any future time any ground for review, the hon. Finance Minister can do it any time, and I do not see why an enabling clause to create this uncertainty in the minds of investors has to be formulated. Especially, when an investor invests in a particular company on the basis that that company will be exempt from taxation during the first five years of its production, I do not see why in the midst of that period of five years, the Government should take the power to declare that that industry will no longer enjoy exemption from taxation. I think this is really something undesirable and it should not be incorporated in the Bill.

So far as the hedging and speculative operations are concerned, in respect of clause 73, I would like to have a clarification whether the operation of industrial companies in the future markets with a view to avoid certain risks will not be affected by this clause. My submission is that so far as hedging and other facilities are concerned, nothing should be done under the Income-tax Act to interpret speculative operations or losses in a manner where the industrial company might suffer in its day-to-day business of hedging operations.

There are certain other clauses about which I would not like to take the time of the House at present. When the clause-by-clause consideration starts, I may have something to say on them. My submission is that so far as this relaxation about the period which is now fixed is concerned, I think this relaxation to a great extent removes the uncertainty in the previous period and to that extent it is welcome.

So far as other detailed clauses are concerned, I will come to them when the discussion on the clauses starts.

16 hrs.

Shri Naushir Bharucha: Sir, I think the Select Committee on the Income-tax Bill deserves our thanks, because of the tremendous amount of labour it has put in and for producing a Bill, which, while seeking to do justice to the assessee in many respects, on the whole may be regarded as a document certainly worth acceptance.

Mr. Deputy-Speaker: He may continue next time.

16·01 hrs.

REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL

Report of Select Committee

Shri Jaganatha Rao (Koraput): I beg to present the Report of the Select Committee on the Bill further to amend the Representation of the People Act, 1950 and the Representation of the People Act, 1951, and to make certain minor amendments in the Two-Member Constituencies (Abolition) Act, 1961.
