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REPORTS OF THE SELECT COMMITTEES ON BILLS 1954

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- | <i>Ref.</i> | | <i>Reported</i> |
|---------------|---|-----------------|
| ✓ 1. 8.7.52 | Report of the Select Committee on the Essential Goods (Declaration And Regulation Of Tax On Sale Or Purchase) Bill, 1952. <i>Ref. CB II -</i> | 18.7.52 |
| ✓ 2. 8.7.52 | Report of the Select Committee on the Notaries Bill, 1952. | 18.7.52 |
| ✓ 3. 11.7.52 | Report of the Select Committee on the Commissions of Inquiry Bill, 1952. | 25.7.52 |
| ✓ 4. 12.8.52 | Report of the Select Committee on the Forward Contracts (Regulation) Bill, 1952. | x 5.11.52 |
| ✓ 5. 11.8.52 | Report of the Select Committee on the Administration of Evacuee Property (Amendment) Bill, 1952. | 5.11.52 |
| ✓ 6. 9.7.52 | Report of the Select Committee on the Indian Income-Tax (Amendment) Bill, 1952. | 7.11.52 |
| ✓ 7. 11.11.52 | Report of the Select Committee on the Constitution (Second Amendment) Bill, 1952. | 18.11.52 |
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HOUSE OF THE PEOPLE

THE ESSENTIAL GOODS (DECLARATION AND REGULATION OF TAX ON SALE OR PURCHASE) BILL, 1952.

(REPORT OF THE SELECT COMMITTEE)

date of reference . 8. 7. 52
" presentation 18. 7. 52



सत्यमेव जयते

PARLIAMENT SECRETARIAT
NEW DELHI.
July, 1952.

THE ESSENTIAL GOODS (DECLARATION AND REGULATION OF TAX ON SALE OR PURCHASE) BILL, 1952

Members of the Select Committee

Shri C. D. Deshmukh—*Chairman*.

Shrimati B. Khongmen.

Dr. Ram Subhag Singh.

Shri Tulsidas Kilachand.

Acharya Shriman Naryan Agarwal.

Shri P. T. Chacko.

Shri B. Das.

Shri Gurmukh Singh Musafir.

Col. B. H. Zaidi.

Shri S. V. L. Narasimham.

Shri S. V. Ramaswamy.

Shri G. D. Somani.

Shrimati Sucheta Kripalani.

Shri Rajaram Girdharlal Dubey.

Shri Keshava Deva Malaviya.

Shri Arun Chandra Guha.

Shri Liladhar Joshi.

Shri Balwant Singh Mehta.

Shri Dex Kanta Borooah.

Shri Sarangadhar Das.

Shri Mahavir Tyagi.

Shri M. V. Krishnappa.

Dr. Shaukatulla Shah Ansari.

Shri N. R. M. Swamy.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to declare, in pursuance of clause (3) of Article 286 of the Constitution, certain goods to be essential for the life of the community was referred, have considered the Bill and I now submit this their Report, with the Bill as amended by the Committee annexed thereto.

The Schedule to the Bill is the most important part of the Bill and it is only in the Schedule that the Select Committee have recommended certain amendments. Certain existing items in the Schedule have been amended or rearranged and certain new items have been added. The Select Committee note as follows upon the changes proposed in the Schedule which are not formal or consequential.

[References to this items in this Report are to the items as amended by the Select Committee and references in brackets are to the items of the Schedule as in the original Bill.]

Item 2.—In this item the Select Committee has included cocoanuts, edible tubers and vegetable seeds. Orchids have been excluded because the Select Committee was given to understand that there is an expanding business done in this commodity in the State of Assam. Sugar-cane has been omitted from item 7 and has been included in this item as being more appropriate. The Select Committee has also made a slight drafting alteration in order to make it clear that no medical preparation which may be made from any one or more of the articles mentioned in this item is included here.

Items 4, 5 and 6.—Items 4, 5 and 6 are new.

Item 8 (original item 5).—This item has been re-drafted so as to include all hand-loom cloth, cotton, silk or woollen. Coarse and medium cotton cloth, woven on power looms, has also been included. The expressions "coarse cloth" and "medium cloth" have been defined so that there may be no ambiguity about their meanings.

Item 9 (original item 7).—This item has been amplified to include certain additional articles.

Item 10.—This is a new item.

Item 11 (original item 6).—Manures and parts of agricultural machinery and implements have been included in this item.

Item 12.—This is a new item.

✓ *Item 13 (original item 8).*—This item has been slightly amplified. Electrical energy has been omitted because it is doubtful whether the expression 'goods' in article 286(3) of the Constitution includes electricity, in view of the fact that in List II of the Seventh Schedule to the Constitution there is a separate entry (entry 54) relating to the consumption or sale of electricity, whereas the expression used in article 286(3) of the Constitution is "taxes on the sale or purchase of goods", an expression which finds its counterpart in entry 53.

Items 15 and 16.—These are new items.

2. The Bill was originally published in the *Gazette of India*, Part II, Section 2, dated the 24th May, 1952.

3. The Select Committee think that the Bill has not been so altered as to require circulation under rule 94(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

C. D. DESHMUKH,

Chairman of the Select Committee.

New Delhi;

The 18th July 1952.

MINUTE OF DISSENT

We are sorry we are not able to agree with our colleagues in regard to the propriety of retaining the words "made after the commencement of this Act" in the Act as it may finally be adopted by Parliament.

2. The main purpose of enacting this measure is to introduce uniformity of legislation throughout the country in respect of the taxation of goods considered by Parliament to be essential for the life of the community in India as a whole. Different States have followed different policies in levying sale taxes on such commodities. Till the inauguration of the new Constitution they were legally within their power in doing so. But to our mind, the language of Article 286, clause 3 of the Constitution is not only absolutely unambiguous but peremptory. It appears to reflect clearly the intentions of those who framed the Constitution.

3. The addition of the words "made after the commencement of the Act" can have no other effect than to negative the very concept of uniformity and seem to be entirely uncalled for. It may be argued that if these words are not incorporated in the clause, all State legislation enacted prior to the passing of the Act and levying sales taxes on commodities enumerated in the schedule may stand in danger of being automatically declared to be null and void, and it may create new problems and difficulties. If this is so, it will only mean that some measures may have to be devised to prevent any sudden and serious dislocation in the financial structure of the States. We concede that it may have to be done. But the addition of the words in question far exceeds the limitations of what, after all, can only be a claim for some accommodation and adjustment.

4. Two points are, in our opinion, quite clear; firstly, that the policy of uniformity of taxation in this particular sphere, brought about by and flowing out of central control, can be taken to have been laid down in the Constitution by virtue of Article 286 and, secondly, that the Constitution does not contain any saving clause exempting pre-existing State legislation from the operation of Article 286. On the contrary, the language of Article 286, clause 3, appears so unconditional and decisive that the operation of the clause seems to be intended to take retrospective effect.

5. And, after all, if there is any doubt or ambiguity in regard to the interpretation of the sub-clause as it exists in the Constitution, the proper course is to have it interpreted by the highest Judicial authority *viz.* the Supreme Court, and not allow it to be materially altered by an ordinary law of Parliament. We, therefore, definitely suggest that the words "made after the commencement of this Act" be deleted from clause 3 of the Essential Goods (Declaration and Regulation of Tax on sale or purchase) Bill, 1952.

TULSIDAS KILACHAND.

G. D. SOMANI.

NEW DELHI;

The 18th July, 1952

THE ESSENTIAL GOODS (DECLARATION AND REGULATION OF TAX ON SALE OR PURCHASE) BILL, 1952

(AS AMENDED BY THE SELECT COMMITTEE)

(Words underlined indicate the amendments suggested by the Committee; asterisks indicate omissions).

A

BILL

to declare, in pursuance of clause (3) of article 286 of the Constitution, certain goods to be essential for the life of the community.

BE it enacted by Parliament as follows :—

1. **Short title.**—This Act may be called the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952.

2. **Declaration of certain goods to be essential for the life of the community.**—The goods specified in the Schedule are hereby declared to be essential for the life of the community.

3. **Regulation of tax on sale or purchase of essential goods.**—No law made after the commencement of this Act by the legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared by this Act to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.

THE SCHEDULE

[See section 2.]

Goods declared essential for the life of the community

1. Cereals and pulses in all forms, including bread and flour, including atta, maida, suji and bran (except when any such article is sold in sealed containers).

2. Fresh and dried fruits, sugar-cane, coconuts, vegetables, edible tubers, vegetable and flower seeds, bulbs and plants, * * * excluding orchids (except (i) any medicine prepared from any one or more of such articles; and (ii) when any such article is sold in sealed containers).

3. Fresh milk, whole or separate, and milk products, including butter, ghee, chana, khoa, but excluding sweetmeats.

4. Meat, fish and eggs (except when any such article is sold in sealed containers).

5. Edible oils, and oilseeds from which edible oils are extracted.

6. Gur.

7. Salt.

8. All cloth, woven on hand-looms, coarse and medium cotton cloth made in mills or woven on power-looms.

Explanation 1.—“Coarse cloth” means any cloth in which the count of warp yarn employed (excluding the border) is below 17s. (whether single or folded).

Explanation 2.—“Medium cloth” means any cloth in which the count of warp yarn employed (excluding the border) is 17s. or finer but is less than 35s. (whether single or folded).

9. Raw cotton, including ginned and unginned cotton or kapas, ***** cotton thread, cotton yarn, cotton seeds, jute seeds, raw jute, * sun-hemp, and mesta.

10. Hides and skins.

11. Fertilisers and manures, agricultural machinery and implements, including parts of such machinery and implements.

12. Cattle feeds.

13. Coal including coke and other derivatives, petroleum and petroleum products, including kerosene and motor spirit * * *.

14. Iron and steel.

15. Books, exercise books and periodical journals.

16. Antibiotics and sulpha drugs.

... extracted.

8. All cloth, woven on hand-looms, coarse and medium cotton cloth made in mills or woven on power-looms.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Essential Goods
(Declaration and Regulation of Tax on Sale or Purchases)
Bill, 1952

(As amended by the Select Committee)

HOUSE OF THE PEOPLE

THE NOTARIES BILL, 1952.

(REPORT OF THE SELECT COMMITTEE)

Date of reference
" presentation "

8.7.52

18.7.52



PARLIAMENT SECRETARIAT
NEW DELHI.

July, 1952.

THE NOTARIES BILL, 1952

MEMBERS OF THE SELECT COMMITTEE

Shri Hari Vinayak Pataskar—*Chairman*.

Shri N. C. Chatterjee.

Shri Kamal Kumar Basu.

Dr. A. Krishnaswami.

Shri Rayasam Seshagiri Rao.

Shri B. S. Murthy.

Shri Munishwar Dutt Upadhyay.

Shri Balwant Nagesh Datar.

Shri Nemi Chandra Kasliwal.

Shri Narendra P. Nathwani.

Shri Chimanlal Chakubhai Shah.

Shri Nageshwar Prasad Sinha.

Shri Khushi Ram Sharma.

Shri S. V. Ramaswamy.

Shri C. C. Biswas, and

Shri Kotha Raghuramaiah.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to regulate the profession of notaries was referred, have considered the Bill and I now submit this their report, with the Bill as amended by the Committee annexed thereto.

Clause 2.—In order to make the definition of “instrument” in clause 2(b) more comprehensive, the committee think that it will be better to insert the words “modified” and “suspended” therein and have amended clause 2(b) accordingly.

In the definition of “legal practitioner” in clause 2(c), the committee think that agents of the Supreme Court should be specifically included and have also slightly redrafted the clause to make the intention clear.

The committee are of opinion that notaries public who were appointed either under the Negotiable Instruments Act, 1881, or by the Master of Faculties in England should be allowed to practise for at least two years instead of one year without being appointed as notaries under this Act. The proviso to clause 2(d) has been modified accordingly.

Clause 3.—The committee are of opinion that it is not desirable to discriminate among notaries and to appoint some notaries to perform only a limited class of functions and not all the functions mentioned in clause 8. The words “on such conditions, if any, as it thinks fit”, have been omitted accordingly.

The committee further hold that the qualifications which a notary should possess should be prescribed by rules. The clause has been amended accordingly.

Clause 5.—The committee consider that it shall not be necessary for a person who has been appointed a notary under this Act to file an application to have his name entered in the register. The clause has been amended accordingly.

The committee recommend that persons who were appointed as notaries public on payment of fees should not be made liable to pay the prescribed fees under this clause and exemption should be granted to them under clause 15(2)(c).

Clause 8.—The committee consider that it should be specifically stated that notaries may demand better security and clause 8(1)(b) has been amended accordingly.

As notaries cannot be appointed under clause 3 to perform only a limited class of functions, the proviso to clause 8(1) is unnecessary and has been omitted.

Clause 9.—The proviso to clause 9(1) has been re-drafted to make the intention clear.

The amendment made to clause 9(2) is only a consequential one.

New clause 13.—The committee consider that protection should be given to notaries in respect of cognizance of offences. They think that such protection should be given only to notaries who commit an offence acting or purporting to act in the discharge of their functions under this Act. This clause has been inserted to achieve this object.

Clause 15 (original clause 14).—The committee consider that the qualifications which a person should possess for being appointed as a notary should be prescribed by rules and have amended clause 15(2)(a) accordingly.

Clause 15(2)(c) has been amended to make the intention clear that exemption from payment of fees may be either partial or full.

Clause 16 (original clause 15).—The definition of "notary" in the Negotiable Instruments Act has become superfluous as the power to appoint notaries under that Act has been taken away. The definition of "notary" in section 3 of that Act has, therefore, been omitted and this clause has been amended accordingly.

2. The Bill was published in Part II—Section 2 of the Gazette of India, dated the 24th May, 1952.

3. The committee think that the Bill has not been so altered as to require circulation under Rule 94(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

NEW DELHI;

18th July, 1952.

H. V. PATASKAR,

Chairman of the Select Committee.

THE NOTARIES BILL, 1952.

(AS AMENDED BY THE SELECT COMMITTEE)

(Words sidelined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions)

A

BILL

to regulate the profession of notaries.

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement. (1) This Act may be called the Notaries Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir. 5

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “India” means the territories to which this Act extends;

(b) “instrument” includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded; 10

(c) “legal practitioner” means any advocate or agent of the Supreme Court or any advocate, vakil or attorney of * * * any High Court or any pleader authorised under any law for the time being in force to practise in any court of law; 15

(d) “notary” means a person appointed as such under this Act:

Provided that for a period of two years from the commencement of this Act it shall include also a person who, before such commencement, was appointed a notary public either under the Negotiable Instruments Act, 1881 (XXVI of 1881), or by the Master of Faculties in England, and is, immediately before such commencement, in practice in any part of India; 20

(e) “prescribed” means prescribed by rules made under this Act;

(f) “Register” means a Register of Notaries maintained by the Government under section 4; 25

(g) “State Government”, in relation to a Part C State, means the Lieutenant Governor, or, as the case may be, the Chief Commissioner.

3. Power to appoint notaries.—The Central Government, for the whole or any part of India, and any State Government, for the whole or any part of the State, may * * * appoint as notaries any legal practitioners or other persons who possess such qualifications as may be prescribed. 30

4. Registers.—(1) The Central Government and every State Government shall maintain, in such form as may be prescribed, a Register of the notaries appointed by that Government and entitled to practise as such under this Act.

5 (2) Every such Register shall include the following particulars about the notary whose name is entered therein, namely:—

(a) his full name, date of birth, residential and professional address;

(b) the date on which his name is entered in the Register;

10 (c) his qualifications; and

(d) any other particulars which may be prescribed.

5. Entry of names in the Register and issue or renewal of certificates of practice.—(1) Every notary who intends to practise as such shall, on * * * payment to the Government appointing him of the prescribed

15 fee, if any, be entitled—

(a) to have his name entered in the Register maintained by that Government under section 4, and

(b) to a certificate authorising him to practise for a period of three years from the date on which the certificate is issued to him.

20 (2) Every such notary who wishes to continue to practise after the expiry of the period for which his certificate of practice has been issued under this section shall, on application made to the Government appointing him and payment of the prescribed fee, if any, be entitled to have his certificate of practice renewed for three years at a time.

25 **6. Annual publication of lists of notaries.**—The Central Government and every State Government shall, during the month of January each year, publish in the Official Gazette a list of notaries appointed by that Government and in practice at the beginning of that year together with such details pertaining to them as may be prescribed.

30 **7. Seal of notaries.**—Every notary shall have and use, as occasion may arise, a seal of such form and design as may be prescribed.

8. Functions of notaries.—(1) A notary may do all or any of the following acts by virtue of his office, namely:—

35 (a) verify, authenticate, certify or attest the execution of any instrument;

(b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;

40 (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;

(d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;

(e) administer oath to, or take affidavit from, any person;

45 (f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents;

50 (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate;

(h) translate, and verify the translation of, any document from one language into another;

(i) any other act which may be prescribed.

* * * * *

(2) No act specified in sub-section (1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal. 5

9. Bar of practice without certificate.—(1) Subject to the provisions of this section, no person shall practise as a notary or do any notarial act under the official seal of a notary unless he holds a certificate of practice in force issued to him under section 5: 10

Provided that nothing in this sub-section shall apply to the presentation of any promissory note, hundi or bill of exchange for acceptance or payment by the clerk of a notary acting on behalf of such notary.

(2) Nothing contained in sub-section (1) shall, until the expiry of two years from the commencement of this Act, apply to any such person as is referred to in the proviso to clause (d) of section 2. 15

10. Removal of names from Register.—The Government appointing any notary may, by order, remove from the Register maintained by it under section 4 the name of the notary if he—

(a) makes a request to that effect; or 20

(b) has not paid any prescribed fee required to be paid by him; or

(c) is an undischarged insolvent; or

(d) has been found, upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practise as a notary. 25

11. Construction of references to notaries public in other laws.—Any reference to a notary public in any other law shall be construed as a reference to a notary entitled to practise under this Act.

12. Penalty for falsely representing to be a notary, etc.—Any person who— 30

(a) falsely represents that he is a notary without being appointed as such, or

(b) practises as a notary or does any notarial act in contravention of section 9,

shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both. 35

13. Cognizance of offence.—(1) No court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf. 40

(2) No magistrate other than a presidency magistrate or a magistrate of the first class shall try an offence punishable under this Act.

14. Reciprocal arrangements for recognition of notarial acts done by foreign notaries.—If the Central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by 45

5 notaries within India are recognised for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by notaries within such country or place shall be recognised within India for all purposes or, as the case may be, for such limited purposes as may be specified in the notification.

15 **15. Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

10 (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

15 (a) the qualifications of a notary, the form and manner in which applications for appointment as a notary may be made and the disposal of such applications;

(b) the certificates, testimonials or proofs as to character, integrity, ability and competence which any person applying for appointment as a notary may be required to furnish;

(c) the fees payable for appointment as a notary and for the issue and renewal of a certificate of practice, and exemption, whether wholly or in part, from such fees in specified classes of cases;

(d) the fees payable to a notary for doing any notarial act;

(e) the form of Registers and the particulars to be entered therein;

(f) the form and design of the seal of a notary;

25 (g) the manner in which inquiries into allegations of professional or other misconduct of notaries may be made;

(h) the acts which a notary may do in addition to those specified in section 8 and the manner in which a notary may perform his functions;

30 (i) any other matter which has to be, or may be, prescribed.

16. Amendment of Act XXVI of 1881.—In the Negotiable Instruments Act, 1881,—

(i) in section 3, the definition of “notary public” shall be omitted;

(ii) Chapter XVII shall be omitted.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Notaries Bill, 1952

(As amended by the Select Committee)

THE COMMISSIONS OF INQUIRY BILL, 1952

Date of reference 11.7.52
 .. presentation 25.7.52



सत्यमेव जयते

PARLIAMENT SECRETARIAT
NEW DELHI

July, 1952

THE COMMISSIONS OF INQUIRY BILL, 1952

MEMBERS OF THE SELECT COMMITTEE.

Dr. Kailas Nath Katju—*Chairman*.
Shri N. Somana.
Shri Nandlal Joshi.
Pandit Mukut Bihari Lal Bhargava.
Shri H. C. Heda.
Shri Shankargauda Veerangauda Patil.
Shri Narendra P. Nathwani.
Shri K. G. Deshmukh.
Shri Jagannath Kolay.
Shri Kamakhya Prasad Tripathi.
Shri Tek Chand.
Shri Pannalal R. Kaushik.
Shri M. L. Dwivedi.
Shri Tribhuan Narayan Singh.
Shri Banarsi Prasad Jhunjhunwala.
Shri Shiva Datt Upadhyaya.
Shri Rayasam Seshagiri Rao.
Dr. N. M. Jaisoorya.
Shri P. T. Punnoose.
Shri Umashankar Muljibhai Trivedi.
Shri Hukam Singh.
Shri K. S. Raghavachari.
Shri Frank Anthony.
Shri G. D. Somani.
Shri Bhawani Singh.
Shri Tulsidas Kilachand.
H. H. Maharaja Rajendra Narayan Singh Deo.
Shri B. Shiva Rao.
Shri Tekur Subrahmanyam.
Dr. Panjabrao S. Deshmukh.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers was referred to, have considered the Bill and I now submit this their Report, with the Bill as amended by the Committee annexed thereto.

Upon the changes proposed, which are not formal or consequential, it may be noted as follows:—

Clause 3.—The Committee think that a time limit within which a Commission should complete its inquiry and submit its report should be specified in the notification appointing the Commission.

Clause 3(1) has been amended accordingly.

Under the existing proviso to clause 3(1), it is not competent for any State Government, except with the approval of the Central Government, to appoint a State Commission to inquire into any matter which is being already inquired into by a Central Commission for so long as that Central Commission is functioning and for two years thereafter. The Committee consider that the restriction imposed on a State Government to appoint a Commission for two years even after the Central Commission has ceased to function is unnecessary and should be omitted. They are further of opinion that there should also be a prohibition on the Central Government to appoint a Central Commission when a State Commission is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States. The proviso to clause 3(1) has been re-drafted to achieve this object.

Clause 4.—The Committee think that the Commission should also be empowered to requisition copies of public records. Clause 4(1)(d) has been amended accordingly.

New Clause 5 [original clauses 4(2), 4(3) and 4(4)].—The Committee are of opinion that it is not necessary to vest in all the Commissions appointed under section 3 all the powers referred to in sub-clauses (2) to (4) of clause 4. If, however, the appropriate Government is satisfied, having regard to the nature of the inquiry and other circumstances of the case, that such powers should be vested in any particular Commission, the appropriate Government may, by notification, vest such powers in that particular Commission. Clause 5(1) has been inserted for the aforesaid purpose.

In clause 5(3), the Committee think that no officer below the rank of a gazetted officer should be authorised by the Commission to have the powers of search and seizure. Clause 5(3) has been amended accordingly.

The Committee consider that sub-clauses (5) and (6) of clause 4 should be inserted as separate clauses. They have been inserted as new clauses 8 and 10.

Subsequent clauses have been re-numbered.

New Clause 8.—This clause reproduces the provisions of the original clause 4(5).

New Clause 9.—The Committee consider that protection should be given to the Government and the Commission and every member or officer of the Commission in respect of action taken in good faith. This clause has been inserted to achieve this object.

New Clause 10.—This clause reproduces the provisions of the original clause 4(6).

Re-numbered Clause 11.—The Committee consider that even under this clause, the appropriate Government should specify in the notification whether all or only some of the provisions of this Act should apply to a particular inquiring authority. This clause has also been slightly re-drafted to make the intention clear.

2. The Bill was published in the *Gazette of India*, Part II, Section 2, dated the 7th June, 1952.

3. The Committee think that the Bill has not been so altered as to require circulation under Rule 94(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be now passed as amended.

NEW DELHI;
The 25th July, 1952.

KAILAS NATH KATJU,
Chairman of the Select Committee.

MINUTE OF DISSENT

I am in general agreement with the report except in the particular mentioned below.

The power similar to those contemplated in clause 5(3) of this Bill may be necessary only to prevent evasion of taxation. This Bill is not expected to cover such cases. So clause 5(3) may be omitted as it is unnecessary.

K. S. RAGHAVACHARI.

NEW DELHI;

The 25th July, 1952.

THE COMMISSIONS OF INQUIRY BILL, 1952

(AS AMENDED BY THE SELECT COMMITTEE)

(Words *sidelined* or *underlined* indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers.

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Commissions of Inquiry Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir. 5

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “appropriate Government” means— 10

(i) the Central Government, in relation to a Commission appointed by it to make an inquiry into any matter relating to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution; and

(ii) the State Government, in relation to a Commission appointed by it to make an inquiry into any matter relating to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution; 15

(b) “Commission” means a Commission of Inquiry appointed under section 3; 20

(c) “prescribed” means prescribed by rules made under this Act.

3. Appointment of Commission.—(1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly: 25 30

Provided that where any such Commission has been appointed to inquire into any matter—

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint 35

another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof.

4. Powers of Commission.—*The Commission shall have the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed.

5. Additional Powers of Commission.—(1) Where the appropriate Government is of opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all or any of the provisions of sub-section (2) or sub-section (3) or sub-section (4) should be made applicable to a Commission, the appropriate Government may, by notification in the Official Gazette, direct that all or such of the said provisions as may be specified in the notification shall apply to that Commission and on the issue of such a notification, the said provisions shall apply accordingly.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry.

(3) The Commission or any officer, not below the rank of a gazetted officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found, and may seize any such books of account or documents or take extracts or copies therefrom, subject to the provisions of section 102 and section 103 of the Code of Criminal Procedure, 1898 (Act V of 1898) in so far as they may be applicable.

(4) The Commission shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898) and any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860). 5

* * * * *

6. Statements made by persons to the Commission.—No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement: 10

Provided that the statement—

(a) is made in reply to a question which he is required by the Commission to answer, or

(b) is relevant to the subject matter of the inquiry. 15

7. Commission to cease to exist when so notified.—The appropriate Government may, if it is of opinion that the continued existence of a Commission is unnecessary, by notification in the Official Gazette, declare that the Commission shall cease to exist from such date as may be specified in this behalf in such notification, and thereupon, the Commission shall cease to exist. 20

8. Procedure to be followed by the Commission.—The Commission shall, subject to any rules that may be made in this behalf, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private) and may act notwithstanding the temporary absence of any member or the existence of a vacancy among its members. 25

9. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the appropriate Government, the Commission or any member thereof, or any person acting under the direction either of the appropriate Government or of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder or in respect of the publication, by or under the authority of the appropriate Government or the Commission, of any report, paper or proceedings. 30 35

10. Members, etc. to be public servants.—Every member of the Commission and every officer appointed or authorised by the Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860). 40

11. Act to apply to other inquiring authorities in certain cases.—Where any authority (by whatever name called), other than a Commission appointed under section 3, has been or is set up under any resolution or order of the appropriate Government for the purpose of making an inquiry into any definite matter of public importance and that Government is of opinion that all or any of the provisions 45

of this Act should be made applicable to that authority, that Government may, subject to the prohibition contained in the proviso to sub-section (1) of section 3, by notification in the Official Gazette, direct that the said provisions of this Act shall apply to that authority, and on the issue of such a notification, that authority shall be deemed to be a Commission * * appointed under section 3 for * the purposes of this Act.

12. Power to make rules.—(1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the term of office and the conditions of service of the members of the Commission;

(b) the manner in which inquiries may be held under this Act and the procedure to be followed by the Commission in respect of the proceedings before it;

(c) the powers of civil court which may be vested in the Commission;

(d) any other matter which has to be, or may be, prescribed.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill to provide for the
appointment of Commissions of Inquiry and for vesting
such Commissions with certain powers.

(As amended by the Select Committee)

HOUSE OF THE PEOPLE

THE FORWARD CONTRACTS (REGULATION) BILL, 1952

(Report of the Select Committee)

Date of reference

12.8.52

" Presentation

5.11.52



PARLIAMENT SECRETARIAT

NEW DELHI

November, 1952

THE FORWARD CONTRACTS (REGULATION) BILL, 1952

Members of the Select Committee.

- Shri T. T. Krishnamachari (*Chairman*).
- Shri Chimanlal Chakubhai Shah
- Shri V. B. Gandhi
- Shri Ghamandi Lal Bansal
- Shri Mukand Lal Agarwal
- Shri Raghubir Sahai
- Shri Sinhasan Singh
- Shri C. R. Bassapa
- Shri Balwant Sinha Mehta
- Shri Asim Krishna Dutt
- Shri Lalit Narayan Mishra
- Shri Mathura Prasad Mishra
- Shri R. P. Navatia
- Shri Ahmad Mohiuddin
- Dr. Ram Subhag Singh
- Shri P. T. Thanu Pillai
- Shri G. R. Damodaran
- Shri K. T. Achuthan
- Shri Satis Chandra Samanta.
- Shri Jagannath Kolay
- Shri C. R. Chowdary.
- Shri Umashankar Muljibhai Trivedi
- Shri Tulsidas Kilachand
- Shri Amjad Ali
- Shri Rayasam Seshagiri Rao
- Shri G. D. Somani
- Shri Dev Kanta Borooah
- Shri Bhawanoji A. Khimji
- Shri Bhagwat Jha Azad
- Shri Satish Chandra
- Shri Radhelal Vyas
- Shri Feroze Gandhi
- Shri D. P. Karmarkar
- Shri Chintaman Dwarkanath Deshmukh

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith was referred, have considered the Bill and I have now to submit this their Report, with the Bill as amended by the Committee annexed hereto.

Clause 3.—The Select Committee think that this provision should be made more flexible and that the reference therein to a full-time member-Secretary should be deleted. This clause has been redrafted accordingly.

Clause 4.—Sub-clause (e) has been slightly amended so that the Commission will be enabled to undertake the inspection of accounts of a recognised association whenever it thinks fit, without having to wait for a direction from the Central Government in this behalf.

Clause 5.—The Select Committee have amended sub-clause (2) to provide expressly for the prescription of additional particulars which every application for recognition should contain.

Clause 6.—It is now expressly provided in the redrafted sub-clause (1) that the recognition granted to an association may be subjected to conditions and shall specify the goods or classes of goods with respect to which the association has been recognised.

Sub-clause (4) has been amended to provide for the publication of the recognition in the local Official Gazette also, and further to provide that the recognition shall have effect as from the date of its publication in the Gazette of India.

Clause 8.—Sub-clause (2) (c) has been amended so as to authorise the inspection of the accounts of members of a recognised association also, while the amendment to sub-clause (3) is intended to ensure that all persons who have had dealings with any of the other persons specified in that sub-clause are under an obligation to produce the accounts in their possession if so required.

Clause 10.—The Select Committee feel that there is no need to specify any particular provision of the Act with reference to which a recognised association may be directed to make rules: nor is it necessary to restrict the discretion of the Central Government to fix a period for compliance with its directions. They also think that the modification of any rules under sub-clause (2) should be left to the discretion of the Central Government and not be made dependent upon an agreement between the association and the Central Government. This clause has been amended accordingly.

Clause 14.—The Select Committee feel that where the period of suspension is likely to exceed one month, the governing body should be given an opportunity of being heard in the matter and a proviso has been added accordingly.

Clause 18.—The Select Committee have carefully considered the provisions of this clause and the various views expressed thereon. But in their opinion the law should not be made applicable to non-transferable specific delivery contracts at all except to the extent to which such contracts are likely to be used for speculative purposes. To prevent such use,

a provision preventing the formation of associations which will provide facilities for that purpose is all that in their opinion is needed. Sub-clause (1) is intended to give effect to this purpose.

Sub-clause (2) gives the Central Government power to exempt transferable specific delivery contracts from the operation of all or any of the provisions of Chapters III and IV in any area and this, in the opinion of the Select Committee, would be a better method of dealing with this matter than to rely on the power of exemption given under clause 27.

Clause 20.—The amendment is designed to provide penalties for the contravention of the provisions contained in clauses 8(3) and 18 (1).

Clause 21.—A new sub-clause (g) has been added providing for the punishment of dissemination of false statements or information affecting or tending to affect the course of business in forward contracts.

2. The Bill was published in the Gazette of India, Part II, Section 2, dated 9th August, 1952.

3. The Select Committee think that the Bill has not been so altered as to require circulation under Rule 99(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

T. T. KRISHNAMACHARI.

Chairman of the Select Committee.

NEW DELHI;

The 5th November, 1952.

MINUTES OF DISSENT

I

This Bill, intended to regulate and control Forward Trading and to check unhealthy speculation, will have very limited effect. On a Notification being issued by Government under Section 15, no Forward Contract can be effected in the commodity and in the area mentioned in the Notification except through a Recognised Association. Unrestricted forward trading and consequent speculation may go on in all other commodities and in all other areas. The Government can take some action in such cases under Section 17 but that would be rare and generally belated. Under section 15, the Government is likely to control Forward Trading only in important agricultural commodities like cotton, jute and oil seeds and only in important centres like Bombay, Calcutta etc.,

In fact, a hedge market is necessary only for agricultural commodities. Forward Contracts for specific delivery, transferable or non-transferable take place in almost all commodities but no hedge market or a future contract is necessary for that purpose. But war time legislation has shown that specific delivery contracts can be and are abused for heavy speculation unless controlled and hence they have also to be brought under this Bill.

It is well-known that heavy speculation is going on in all kinds of commodities like Chamak (Artificial Silk Yarn), cloves, pepper, cardamom, mercury, turmeric, copra, oil and in many other commodities. Mushroom Associations spring up even in small towns to provide facilities for such speculation. These Associations under their bye-laws take wide powers for themselves, particularly with regard to compulsory squaring up of transactions and dispensing with actual delivery of goods. Traders and merchants, small and big speculate through these Associations, but it is generally the big speculator who succeeds to the ruin of the small one. Because of such unhealthy speculation in all these commodities and cornering of markets by speculators, the producer, the manufacturer and the consumer is at the mercy of the speculator. It is a large and growing menace, which if not checked, is likely to affect seriously the economy of the country. The crisis in Forward Markets in March-April of this year ruined thousands of people as also producers, manufacturers and consumers because of excessive over-trading by the speculators.

There are two ways of checking such unhealthy speculation. One is to prohibit forward trading except in commodities permitted by the Government. This is not difficult to achieve, particularly when non-transferable specific delivery contracts are being exempted from the operation of this Act. If, however, such a general ban is considered difficult of enforcement at present on account of administrative difficulties, another way to achieve the same object is to prohibit the organisation of unrecognised associations which provide facilities for such speculation. It is these Associations with wide powers to themselves which facilitate speculation. The Governing Bodies of such Associations are formed of interested parties and vested interests. Experience shows that it is only when an Association of this kind provides facilities for large scale forward trading that speculation becomes easy. Unless such Associations are abolished and prohibited, this bill will not touch even the fringe of the

problem. It should not be difficult to do so, particularly when non-transferable specific delivery contracts are taken out of the operation of this Act. 95 per cent., if not more, of Forward Contracts are of non-transferable nature, made between party and party which are and can be performed by the parties themselves. When non-transferable contracts are found to have been abused for speculation, it is only because of the existence of an Association which provides facilities to do so.

I would, therefore, add a clause in the Bill on the following lines after clause 14:—

“(1) No person shall organise or assist in organising any association, for the regulation and control of Forward Contracts except for the purpose of obtaining recognition under Section 5.

(2) No person shall be a member of any association having for its object regulation and control of Forward Contracts, unless it be a recognised association.”

I would strongly urge upon the Government to consider this proposal.

There are some other provisions of the Bill as amended by the Select Committee on which I would like to say something but they are of a minor nature and I need not discuss them in this note.

NEW DELHI;

C. C. SHAH.

The 5th November, 1952.

II

We are in disagreement with our colleagues on what we consider to be a major issue and have therefore thought it necessary to write this minute of dissent for the purpose of explanation our point of view.

2. *Main object of the Bill.*—The main object of this Bill is to regulate and control Forward Contracts in order to prevent unhealthy trading outside a recognised association and its injurious effects. In fact the only criterion for judging the adequacy and effectiveness of the present legislation is to find out whether its provision can definitely result in the realisation of that objective. We are convinced that the change agreed to by a majority of our colleagues in Clause 18 of the Bill (as it was introduced on 11th August 1952) will defeat the very object for which the Bill is said to have been framed and introduced.

3. *War time.*—During war time forward trading was altogether prohibited under the Defence of India Rules, but as this was found to be inconvenient, trading in a new category of forward contract, viz., non-transferable specific delivery contract at a specified price to a specific party and for specific delivery was permitted. Even the elaborate definition of such contracts was found to be vague and difficult of interpretation. Whatever reasons there might have been for creating this new variety of forward contract during war time, the same do not exist any more and the Bombay Act passed in 1947 (i.e. after the war) makes no mention of this variety of contract.

4. *Present time normal.*—In normal times—and now eight years after the cessation of hostilities the war time abnormalities must be taken not

to be there—there can really be only two methods of transacting business: by making (a) ready delivery contracts and (b) Forward Contracts. The Bombay Forward Contracts Control Act of 1947 has recognised only these two categories of contracts and this Act has worked satisfactorily.

5. *Regulation of Forward Contracts necessary.*—In the case of ready delivery contracts there is no scope for speculation because the delivery of goods and payment of price therefor take place almost immediately. In the case of Forward Contracts there is a time lag between the date of the contract and the date of its performance with a likelihood of fluctuations in prices between these two dates. There is possibility of benefitting as also of losing by such fluctuations. It is conceded that within reasonable limits and under proper regulations, doing business on the basis of an intelligent anticipation of price variations is permissible and in some measure helps in stabilizing market conditions. Unfortunately it has been found by experience that the temptation to take advantage of the changing prices in the hope of making profits without much regard to the interests of the consumers proves too strong to a small section of the people. It is the effort of the Government to stop such undesirable activities and coercive powers of the law are acquired and invoked for the purpose. The present Bill is intended for achieving that object.

6. *Bill No. 109 of 1950.*—In 1950 when the Forward Contracts (Regulation) Bill was introduced in Parliament it contained a Clause that its Chapters III and IV should not apply to Non-transferable Specific Delivery Contracts. Responsible commercial opinion took objection to this exclusion on the ground that it would definitely leave a loophole for unhealthy speculation and that under its guise undesirable activities would go on unhampered. The matter was also raised in Parliament and it was pointed out that uncontrolled speculation was going on in Phatka (Jute) and oil-seeds in various States by utilising the so-called non-transferable specific delivery contracts as ordinary forward contracts in spite of forward trading as such being not permitted. The State Governments were even asked by the Central Government to take action in the matter. When the Bill went up to the Select Committee in 1951 and was being considered by it in detail several instances were cited of the abuses of the exemption of non-transferable specific delivery contracts. It was shown to the Committee that such contracts virtually became in actual practice ordinary forward contracts and the exemption that was granted was thus abused.

7. *Report of Select Committee dated 20th August 1951.*—After taking evidence, the said Select Committee came to the conclusion that Clause 18 of the Bill required to be amended and the Clause was re-drafted providing that Chapters III and IV shall apply to non-transferable specific delivery contracts in such areas as may be specified in a notification issued simultaneously with the notification under Clause 15. This shows that the Select Committee was conscious of the fact that the area for regulation of non-transferable specific delivery contracts by a recognised Association would be smaller than, and not coterminous with, the larger area for which an association may be recognised under the Act for Forward Trading.

8. *Bill No. 109 of 1950 lapsed and present Bill introduced.*—Thereafter with the dissolution of Parliament the Bill lapsed. It was reintroduced in August 1952 practically in the same form in which it had been finalised by the Select Committee of 1951. Its Clause 18 provided that non-transferable specific delivery contracts should not be exempted from the operation of its Chapters III and IV as recommended by the Select Com-

mittee of 1951. The Minister for Commerce, Shri T. T. Krishnamachari, while introducing the Bill, in the House of the People on 11th August 1952 justified the bringing of the non-transferable specific delivery contracts within the purview of the Bill on the ground that if that was not done there would be "speculation outside the recognised Association under the guise of non-transferable specific delivery contracts".

9. *Select Committee's alteration of Clause 18.*—In the context of all this recent history, it is surprising that a majority of the present Select Committee which considered this Bill has now taken a different view and has recommended exemption to such non-transferable specific delivery contracts. We are unable to understand the reasons for this change of opinion. The cases of abuse cited previously have not been challenged. No fresh evidence has been brought to prove that the exemption does not really work as a loophole for facilitating unauthorised forward trading outside Government regulations. In fact the possibility of that abuse is as real today as it has been in the past and will continue to be so in future also. Obviously there is some misapprehension somewhere which has led to such a curious and, in my considered opinion, harmful amendment to the Original Clause. In practice it will tend to give rise to a large volume of unauthorised forward trading outside the recognised association, thereby creating unhealthy and chaotic conditions.

10. *Abuse of Non-transferable specific delivery contract.*—It may be argued that even in the Clause as it stands amended by the Select Committee provision has been made to enable Government to apply Chapters III and IV to non-transferable specific delivery contracts if it is found that their exemption from the operation of these Chapters does leave a loophole for unregulated forward trading. But the experience of the last few years has precisely been that such a loophole is inseparable from the fact of the exemption and that it is inevitably exploited in a manner which does harm to the interests of the community. It is much wiser to prevent the occurrence of the mischief and the damage that it is bound to cause than to permit it to be committed and to suffer its evil consequences before prohibitive action is taken.

11. *No bona fide trader affected by original Clause 18.*—There seems to be a belief in some quarters that if non-transferable specific delivery contracts are brought within the purview of the Bill, the small upcountry trader will be severely handicapped and that the *bona fide* trader may be greatly inconvenienced. Such a belief is entirely unfounded and misplaced. The recognised association will generally be recognised only for a city or for some such limited area and, except in a few exceptional cases its authority will not extend beyond that area. Even in the case of an association recognised for areas larger than a city area, the control of the Association over non-transferable specific delivery contracts would be limited to the city area. This was the intention of the original Clause 18 of the present Bill No. 90 of 1952. No *bona fide* upcountry trader will have, therefore, any difficulty whatever in carrying on his normal business and entering into contracts for non-transferable specific delivery. The imaginary conflict between the urban trader and the upcountry trader does not really exist. There is no question of big business being enabled to wipe out a small business because of the non-exemption of the non-transferable specific delivery contracts from the operation of the Bill.

12. *Bombay Act has worked satisfactorily.*—The Bombay Forward Contracts Control Act of 1947 has been in operation for over five years. As has been stated above it recognises only two categories of contract viz., forward contracts and ready delivery contracts. Yet its working has not resulted in any dislocation in trade nor inconvenienced any *bona fide* traders. In fact the measure has been quite successful in effectively controlling forward trading without causing hardship to business or trade or anybody else.

13. *Restrictions on trade.*—After all, any law which is intended to regulate and control forward contracts will, in the nature of things, impose certain restrictions, but care has to be taken to see that such restrictions and regulations do not become so unduly rigid or so unduly pliable as to result in avoidable hardship or avoidable evasions. The attempt to regulate trade through the agency of properly organized associations and the introduction of unitary control in respect of vital commercial transactions are steps in the right direction. There cannot therefore be any valid objection to the work of regulating business in non-transferable specific delivery contracts (at least in specified areas) being entrusted to such associations. In fact that would be the proper course to follow. It cannot be construed, *prima facie*, as creating wittingly or unwittingly privileged conditions in favour of the members of recognised associations. The constitution, functions and powers of these bodies are subject to scrutiny, regulation and approval by the Government. That in itself is a sufficient safeguard against any eventuality detrimental to the interest of the country or the people.

14. *Conclusion.*—We are therefore, definitely of opinion that Clause 18 of the Bill as it was introduced on 11th August 1952 should stand as it was and that the amendment suggested by our colleagues should not be accepted. If the amendment is accepted the fundamental object of regulating and controlling forward contracts will be entirely frustrated.

TULSIDAS KILACHAND.

NEW DELHI;

G. D. SOMANI.

The 5th November, 1952.

III

I agree with this report of the Select Committee in its entirety. As I pointed out at the meeting of the Select Committee on the 7th October, 1952, I do not agree to the words "as well as the company" occurring in clause 22 line 47 of the Bill printed along with the draft report, briefly for the following reasons.

The Bill does not provide for any special procedure for the trial of offences for which penalty has been provided in Chapter V. Therefore, trial of all contraventions must needs be governed as provided for offences against other laws at the end of schedule II of the Criminal Procedure Code. But in the Criminal Procedure Code there is no provision for placing in the dock a company as defined in the Bill. Obviously making a company accused will militate against a number of provisions of the Criminal Procedure Code, example those relating to custody of accused, appearance of accused before courts, framing of charges and reading and explaining the

same to the accused. Moreover the retention of these words is redundant for the persons mentioned in sub-clauses (1) and (2) include almost all the persons whom it may be necessary or desirable to prosecute. I fail to appreciate who else is contemplated to be proceeded against by the addition of these words. Even as these sub-clauses stand the phraseology adopted therein is not happy as the provisions in the two sub-clauses may prove over-lapping. "Every person who was in charge of, and was responsible to the company for the conduct of the business of the company" of sub-clause (1) may be identical with "such Director, Manager, Secretary or other Officer" of sub-clause (2).

The only argument that was advanced for the inclusion of "company" in the array of accused was the ground that in two previous enactments the same wording has been employed. I respectfully submit that in Legislation customary prescription is hardly a valid ground. I refuse to bow before or recognise this argument.

On the contrary I can also give examples of previous Legislation in support of my contention, where and I think wisely in accordance with law "company" has not been placed in the array of accused. One such example is found in section 12 of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act III of 1947.

In my opinion it is more logical and legal to follow the example of this enactment and drop out the words "as well as the company" in sub-clause II of clause 22.

MUKAND LAL AGGARWAL.

NEW DELHI;

The 5th November, 1952.

IV.

I have gone through the copy of the Report of the Select Committee as well as the Bill and the Forward Contracts (Regulation) Bill 1952 as amended by the Committee. I find at the last clause of Section 7 it has been provided as follows:—

"Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification and the Central Government may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date."

It seems to me little ambiguous. In the first part of the said clause all contracts entered into and made before the date of notification have been clearly protected.

Under the circumstances it is not clear what is the necessity of a notification again to protect them over again. It makes the clause bit ambiguous. Perhaps by the last portion of the said clause it is intended to mean that the Government by Notification can provide the manner in which all these outstanding contracts should be performed. If that is so the word "due" is not appropriate. Instead of the word "due" I suggest the word "manner of" or the word "mode of" may be used. I agree with the Bill as amended subject to the above suggestion.

A. K. DUTT.

NEW DELHI;

The 5th November, 1952.

I approve of the report of the Select Committee subject to these minutes.

The provision in Clause 20(1) and in Clause 21 cognizable needs a reconsideration. Offences of this nature are not easily classifiable as grave or tainted with any high degree of moral turpitude. Certainly they are not more serious than an offence under Section 477A of the Indian Penal Code which is noncognizable though punishable with seven years rigorous imprisonment.

The small traders and merchants have already too many technical offences acting as swords of Damocles over them and adding several more to these can only increase the dishonest interference with their legitimate business by the police.

We have no provision in our country whereby the police is made to compensate those who are harrassed without any reasonable or probable cause. Absence of this provision leads to every day harrassment of the general public and specially on such technical matters in measures which are embodied in anti-social legislation. There are hundreds of false cases where the police have extorted moneys or have used this bogey of cognizable offences for their own dishonest ends.

It would be therefore in the interest of society that this clause be omitted from the Act.

U. M. TRIVEDI,

NEW DELHI;

The 5th November, 1952.

THE FORWARD CONTRACTS (REGULATION) BILL, 1952

(AS AMENDED BY THE SELECT COMMITTEE)

(Words sidelined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith.

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the Forward Contracts (Regulation) Act, 1952. 5

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) Chapter I shall come into force at once, and the remaining provisions shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, for different States or areas, and for different goods or classes of goods. 10

2. **Definitions.**—In this Act, unless the context otherwise requires,—

(a) “association” means any body of individuals, whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or purchase of any goods; 15

(b) “Commission” means the Forward Markets Commission established under section 3;

(c) “forward contract” means a contract for the delivery of goods at a future date and which is not a ready delivery contract; 20

(d) “goods” means every kind of movable property other than actionable claims, money and securities;

(e) “Government security” means a Government security as defined in the Public Debt Act, 1944 (XVIII of 1944);

(f) “non-transferable specific delivery contract” means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other document of title relating thereto are not transferable; 25

(g) “option in goods” means an agreement, by whatever name called, for the purchase or sale of a right to buy or sell, or a right to buy and sell, goods in future, and includes a *teji*, a *mandi*, a *teji-mandi*, a *galli*, a put, a call or a put and call in goods; 30

(h) “prescribed” means prescribed by rules made under this Act:

(i) "ready delivery contract" means a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise;

(j) "recognised association" means an association which is for the time being recognised by the Central Government under section 6;

(k) "rules", with reference to the rules relating in general to the constitution and management of an association, includes in the case of an incorporated association its memorandum and articles of association;

(l) "securities" includes shares, scrips, stocks, bonds, debentures, debenture-stocks, or other marketable securities of a like nature in or of any incorporated company or other body corporate and also Government securities;

(m) "specific delivery contract" means a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned;

(n) "transferable specific delivery contract" means a specific delivery contract which is not a non-transferable specific delivery contract.

CHAPTER II

THE FORWARD MARKETS COMMISSION

3. Establishment and constitution of the Forward Markets Commission.—(1) The Central Government may, by notification in the Official Gazette, establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under this Act.

(2) The Commission shall consist of not less than two, but not exceeding three, members appointed by the Central Government of whom the Chairman * * * (* to be appointed by the Central Government) shall be a full-time member and the other member or members shall be full-time or part-time as the Central Government may direct :

Provided that one of the members to be so appointed shall be a person having knowledge of forward markets in India.

(3) No person shall be qualified for appointment as, or for continuing to be, a member of the Commission if he has, directly or indirectly, any such financial or other interest as is likely to affect prejudicially his functions as a member of the Commission, and every member shall, whenever required by the Central Government so to do, furnish to it such information as it may require for the purpose of securing compliance with the provisions of this sub-section.

(4) No member of the Commission shall hold office for a period of more than three years from the date of his appointment, and a member relinquishing his office on the expiry of his term shall be eligible for reappointment.

(5) The other terms and conditions of service of members of the Commission shall be such as may be prescribed.

4. Functions of the Commission.—The functions of the Commission shall be—

(a) to advise the Central Government in respect of the recognition of, or the withdrawal of recognition from, any association or in respect of any other matter arising out of the administration of this Act; 5

(b) to keep forward markets under observation and to draw the attention of the Central Government or of any other prescribed authority to any development taking place in, or in relation to, such markets which, in the opinion of the Commission, is of sufficient importance to deserve the attention of the Central Government and to make recommendations thereon; 10

(c) to collect and whenever the Commission thinks it necessary publish information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to such goods; 15 20

(d) to make recommendations generally with a view to improving the organisation and working of forward markets;

(e) to undertake the inspection of the accounts and other documents of any recognised association whenever it considers it necessary; and 25

(f) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed.

CHAPTER III

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RECOGNISED ASSOCIATIONS

5. Application for recognition of associations.—(1) Any association concerned with the regulation and control of forward contracts which is desirous of being recognised for the purposes of this Act may make an application in the prescribed manner to the Central Government. 35

(2) Every application made under sub-section (1) shall contain such particulars as may be prescribed and shall be accompanied by a copy of the bye-laws for the regulation and control of forward contracts and also a copy of the rules relating in general to the constitution of the association, and, in particular, to— 40

(a) the governing body of such association, its constitution and powers of management and the manner in which its business is to be transacted;

(b) the powers and duties of the office bearers of the association;

(c) the admission into the association of various classes of members, the qualifications of members, and the exclusion, suspension, expulsion and readmission of members therefrom or thereinto; 45

(d) the procedure for registration of partnerships as members of the association and the nomination and appointment of authorised representatives and clerks. 50

6. Grant of recognition to association.—(1) If the Central Government, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require, is satisfied that it would be in the interest of the trade and also in the public interest to grant recognition to the association which has made an application under section 5, it may grant recognition to the association in such form and subject to such conditions as may be prescribed or specified, and shall specify in such recognition the goods or classes of goods with respect to which forward contracts may be entered into between members of such association or through or with any such member.

(2) Before granting recognition under sub-section (1), the Central Government may, by order, direct,—

(a) that there shall be no limitation on the number of members of the association or that there shall be such limitation on the number of members as may be specified;

(b) that the association shall provide for the appointment by the Central Government of a person, whether a member of the association or not, as its representative on, and of not more than three persons representing interests not directly represented through membership of the association as member or members of, the governing body of such association, and may require the association to incorporate in its rules any such direction and the conditions, if any, accompanying it.

(3) No rules of a recognised association shall be amended except with the approval of the Central Government.

(4) Every grant of recognition under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and such recognition shall have effect as from the date of its publication in the Gazette of India.

7. Withdrawal of recognition.—If the Central Government is of opinion that any recognition granted to an association under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may, after giving a reasonable opportunity to the association to be heard in the matter, withdraw, by notification in the Official Gazette, the recognition granted to the said association :

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

8. Power of Central Government to call for periodical returns or direct inquiries to be made.—(1) Every recognised association shall furnish to the Central Government such periodical returns relating to its affairs or the affairs of its members as may be prescribed.

(2) Without prejudice to the provisions contained in sub-section (1), where the Central Government considers it expedient so to do, it may, by order in writing,—

(a) call upon a recognised association to furnish in writing such information or explanation relating to its affairs or the affairs of any of its members as the Central Government may require, or

(b) appoint one or more persons to make an inquiry in relation to the affairs of such association or the affairs of any of its members and submit a report of the result of such inquiry to the Central Government within such time as may be specified in the order or, in the alternative, direct the inquiry to be made, and the report to be submitted, by the governing body of such association acting jointly with one or more representatives of the Central Government; and

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(c) direct the Commission to inspect the accounts and other documents of any recognised association or of any of its members and submit its report thereon to the Central Government.

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(3) Where an inquiry in relation to the affairs of a recognised association or the affairs of any of its members has been undertaken under sub-section (2)—

(a) every director, manager, secretary or other officer of such association,

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(b) every member of such association, *

(c) if the member of the association is a firm, every partner, manager, secretary or other officer of the firm, and

(d) every other persons or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a), (b) and (c),

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shall be bound to produce before the authority making the inquiry, all such books, accounts, correspondence and other documents in his custody or power relating to, or having a bearing on the subject-matter of, such inquiry and also to furnish the authority with any such statement or information relating thereto as may be required of him, within such time as may be specified.

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9. Furnishing of annual reports to the Central Government by recognised associations.—(1) Every recognised association shall furnish to the Central Government a copy of its annual report.

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(2) Such annual report shall contain such particulars as may be prescribed.

10. Power of Central Government to direct rules to be made or to make rules.—(1) Whenever the Central Government considers it expedient so to do, it may, by order in writing, direct any recognised association to make any rules or to amend any rules made by the recognised association within such period as it may specify in this behalf.

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(2) If any recognised association, against whom an order is issued by the Central Government under sub-section (1), fails or neglects to comply with such order within the specified period, the Central Government may make the rules or amend the rules made by the recognised association, as the case may be, either in the form specified in the order or with such modification thereof as the Central Government may think fit.

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(3) Where, in pursuance of sub-section (2), any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and on the publication thereof in the Gazette of India, the rules so made or amended shall,

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notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), or any other law for the time being in force, have effect as if they had been made or amended by the recognised association concerned.

5 **11. Power of recognised association to make bye-laws.**—(1) Any recognised association may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of forward contracts.

10 (2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for—

(a) the opening and closing of markets and the regulation of the hours of trade;

15 (b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of, and payment for, goods, the passing on of delivery orders and for the regulation and maintenance of such clearing house;

(c) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

(d) fixing, altering or postponing days for settlement;

20 (e) determining and declaring market rates, including opening, closing, highest and lowest rates for goods;

(f) the terms, conditions and incidents of contracts including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;

25 (g) regulating the entering into, making, performance, rescission and termination of contracts, including contracts between members or between a commission agent and his constituent, or between a broker and his constituent, or between a member of the recognised association and a person who is not a member, and the consequences
30 of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents and brokers who are not parties to such contracts;

35 (h) the admission and prohibition of specified classes or types of goods or of dealings in goods by a member of the recognised association;

(i) the method and procedure for the settlement of claims or disputes including the settlement thereof by arbitration;

(j) the levy and recovery of fees, fines and penalties;

40 (k) the regulation of the course of business between parties to contracts in any capacity;

(l) the fixing of a scale of brokerage and other charges;

(m) the making, comparing, settling and closing of bargains;

(n) the regulation of fluctuations in rates and prices;

45 (o) the emergencies in trade which may arise and the exercise of powers in such emergencies including the power to fix maximum and minimum prices;

(p) the regulation of dealings by members for their own account;

(q) the limitations on the volume of trade done by any individual member;

(r) the obligation of members to supply such information or explanation and to produce such books relating to their business as the governing body may require.

(3) The bye-laws made under this section may—

(a) specify the bye-laws the contravention of any of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (2) of section 15;

(b) provide that the contravention of any of the bye-laws shall—

(i) render the member concerned liable to fine; or

(ii) render the member concerned liable to expulsion or suspension from the recognised association or to any other penalty of a like nature not involving the payment of money.

(4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and when approved by the Central Government, shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate :

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication, in any case.

12. Power of Central Government to make or amend bye-laws of recognised associations.—(1) The Central Government may, either on a request in writing received by it in this behalf from the governing body of a recognised association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in section 11 or amend any bye-laws made by such association under that section.

(2) Where, in pursuance of this section, any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and on the publication thereof in the Gazette of India the bye-laws so made or amended shall have effect as if they had been made or amended by the recognised association.

(3) Notwithstanding anything contained in this section, where the governing body of a recognised association objects to any bye-laws made or amended under this section by the Central Government on its own motion, it may, within six months of the publication thereof under sub-section (2), apply to the Central Government for a revision thereof, and the Central Government may, after giving a reasonable opportunity to the governing body of the association to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

(4) The making or the amendment or revision of any bye-laws under this section shall in all cases be subject to the condition of previous publication :

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication.

13. **Power of Central Government to supersede governing body of recognised association.**—(1) Without prejudice to any other powers vested in the Central Government under this Act, where the Central Government is of opinion that the governing body of any recognised association should be superseded, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the Central Government may, * after giving a reasonable opportunity to the governing body of the recognised association concerned to show cause why it should not be superseded, by notification in the Official Gazette, declare the governing body of such association to be superseded for such period not exceeding six months as may be specified in the notification, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed may appoint one of such persons to be the chairman and another of such persons to be the vice-chairman.

(2) On the publication of a notification in the Official Gazette under sub-section (1), the following consequences shall ensue, namely:—

(a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;

(b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;

(c) all such property of the recognised association as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purposes of this Act, shall vest in such person or persons.

(3) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing body is superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section, and the Central Government may, from time to time, by like notification vary such period.

(4) On the determination of the period of office of any person or persons appointed under this section the recognised association shall forthwith reconstitute a governing body in accordance with its rules:

Provided that until a governing body is so reconstituted, the person or persons appointed under sub-section (1) shall, notwithstanding anything contained in sub-section (1), continue to exercise and perform their powers and duties.

(5) On the reconstitution of a governing body under sub-section (4), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section (1) shall vest or re-vest, as the case may be, in the governing body so reconstituted.

14. Power to suspend business of recognised associations.—If in the interest of the trade or in the public interest the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, direct a recognised association to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and may if, in the opinion of the Central Government, the interest of the trade or the public interest so requires by like notification extend the said period from time to time :

Provided that where the period of suspension is likely to exceed one month, no notification extending the suspension beyond such period shall be issued, unless the governing body of the recognised association has been given an opportunity of being heard in the matter.

CHAPTER IV

FORWARD CONTRACTS AND OPTIONS IN GOODS

15. Forward contracts in notified goods illegal or void in certain circumstances.—(1) The Central Government may, by notification in the Official Gazette, declare this section to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in section 18, every forward contract for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of a recognised association or through or with any such member shall be illegal.

(2) Any forward contract in goods entered into in pursuance of sub-section (1) which is in contravention of any of the bye-laws specified in this behalf under clause (a) of sub-section (3) of section 11 shall be void—

(i) as respects the rights of any member of the recognised association who has entered into such contract in contravention of any such bye-law, and also

(ii) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

(3) Nothing in sub-section (2) shall affect the right of any person other than a member of the recognised association to enforce any such contract or to recover any sum under or in respect of such contract :

Provided that such person had no knowledge that such transaction was in contravention of any of the bye-laws specified under clause (a) of sub-section (3) of section 11.

(4) No member of a recognised association shall, in respect of any goods specified in the notification under sub-section (1), enter into any contract on his own account with any person other than a member of the recognised association, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he has bought or sold the goods, as the case may be on his own account:

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract :

Provided further that in respect of any outstanding contract entered into by a member with a person other than a member of the recognised association, no consent or authority of such person shall be necessary for closing out in accordance with the bye-laws the outstanding contract, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he has bought or sold the goods, as the case may be, on his own account.

16. Consequences of notification under section 15.—Where a notification has been issued under section 15, then notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract,—

(a) every forward contract for the sale or purchase of any goods specified in the notification, entered into before the date of the notification and remaining to be performed after the said date and which is not in conformity with the provisions of section 15, shall be deemed to be closed out at such rate as the Central Government may fix in this behalf, and different rates may be fixed for different classes of such contracts;

(b) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (a) and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

17. Power to prohibit forward contracts in certain cases.—(1) The Central Government may, by notification in the Official Gazette, declare that no person shall, save with the permission of the Central Government, enter into any forward contract for the sale or purchase of any goods or class of goods specified in the notification and to which the provisions of section 15 have not been made applicable, except to the extent and in the manner, if any, as may be specified in the notification.

(2) All forward contracts in contravention of the provisions of sub-section (1) entered into after the date of publication of the notification thereunder shall be illegal.

(3) Where a notification has been issued under sub-section (1), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts for the sale or purchase of any goods specified in the notification entered into before the date of the notification and remaining to be performed after the said date as they apply to all forward contracts for the sale or purchase of any goods specified in the notification under section 15.

18. Special provisions respecting certain kinds of forward contracts.—

(1) Nothing contained in Chapter III or Chapter IV shall apply to non-transferable specific delivery contracts for the sale or purchase of any goods:

Provided that no person shall organise or assist in organising or be a member of any association in India (other than a recognised association) which provides facilities for the performance of any non-transferable specific delivery contract by any party thereto without having to make or to receive actual delivery to or from the other party to the contract or to or from any other party named in the contract.

(2) Where in respect of any area the provisions of section 15 have been made applicable in relation to forward contracts for the sale or purchase of any goods or class of goods, the Central Government may, by a like notification, declare that in the said area or any part thereof as may be specified in the notification all or any of the provisions of Chapter III or Chapter IV shall not apply to transferable specific delivery contracts for the sale or purchase of the said goods or class of goods either generally, or to any class of such contracts in particular. 5

(3) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the Official Gazette, declare that all or any of the provisions of Chapters III and IV shall apply to such class or classes of non-transferable specific delivery contracts in such area and in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply. 10 15

19. Prohibition of options in goods.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, all options in goods entered into after the date on which this section comes into force shall be illegal. 20

(2) Any option in goods which has been entered into before the date on which this section comes into force and which remains to be performed, whether wholly or in part, after the said date shall, to that extent, become void. 25

CHAPTER V

PENALTIES AND PROCEDURE

20. Penalty for contravention of certain provisions of Chapter IV.—

(1) Any person who— 30

(a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (3) of section 8; or

(b) organises, or assists in organising, or is a member of, any association in contravention of the provisions contained in the proviso to sub-section (1) of section 18; or 35

(c) enters into any forward contract or any option in goods in contravention of any of the provisions contained in sub-section (1) of section 15, section 17 or section 19,

shall, on conviction, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both. 40

(2) Any person who enters into any forward contract in contravention of the provisions contained in sub-section (4) of section 15 shall, on conviction, be punishable with fine.

21. **Ptnalty for owing or keeping place used for entering into forward contracts in goods.**—Any person who—

5 (a) owns or keeps a place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes, or

10 (b) without the permission of the Central Government, organises, or assists in organising, or becomes a member of, any association, other than a recognised association, for the purpose of assisting in, entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or

15 (c) manages, controls or assists in keeping any place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act or at which such forward contracts are recorded or adjusted, or rights or liabilities arising out of such forward contracts are adjusted, regulated or enforced in any manner whatsoever, or

20 (d) not being a member of a recognised association, wilfully represents to, or induces, any person to believe that he is a member of a recognised association or that forward contracts can be entered into or made or performed, whether wholly or in part, under this Act through him, or

25 (e) not being a member of a recognised association or his agent authorised as such under the rules or bye-laws of such association; canvasses, advertises or touts in any manner, either for himself or on behalf of any other person, for any business connected with forward contracts in contravention of any of the provisions of this Act, or

30 (f) joins, gathers, or assists in gathering at any place, other than the place of business specified in the bye-laws of a recognised association, any person or persons for making bids or offers or for entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or

35 (g) makes, publishes or circulates any statement or information which is false and which he either knows or believes to be false, affecting or tending to affect the course of business in forward contracts in respect of goods to which the provisions of section 15 have been made applicable,

40 shall, on conviction, be punishable with imprisonment which may extend to two years, or with fine, or with both.

45 **22. Offences by companies.**—(1) Where an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 5 10

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm 15

23. Certain offences to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), any offence punishable under sub-section (1) of section 20 or section 21 shall be deemed to be a cognizable offence within the meaning of that Code.

24. Jurisdiction to try offences under this Act.—No court inferior to that of a presidency magistrate or a magistrate of the first class shall take cognizance of or try any offence punishable under this Act. 20

CHAPTER VI

MISCELLANEOUS

25. Advisory Committee.—For the purpose of advising the Central government in relation to any matter concerning the operation of this Act, the Central Government may establish an advisory committee consisting of such number of persons as may be prescribed. 25

26. Power to delegate.—The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in such circumstances and subject to such conditions, if any, as may be specified, be exercised by such officer or authority, including any State Government or officers or authorities thereof as may be specified in the direction. 30

27. Power to exempt.—The Central Government may, by notification in the official Gazette, exempt, subject to such conditions and in such circumstances and in such areas as may be specified in the notification, any contract or class of contracts from the operation of all or any of the provisions of this Act. 35

28. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the objects of this Act. 40

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the terms and conditions of service of members of the Commission;

5 (b) the manner in which applications for recognition may be made under section 5 and the levy of fees in respect thereof;

(c) the manner in which any inquiry for the purpose of recognising any association may be made and the form in which recognition shall be granted;

10 (d) the particulars to be contained in the annual reports of recognised associations ;

(e) the manner in which the bye-laws to be made, amended or revised under this Act shall, before being so made, amended or revised, be published for criticism;

15 (f) the constitution of the advisory committee established under section 25, the terms of office of and the manner of filling vacancies among members of the committee; the interval within which meetings of the advisory committee may be held and the procedure to be followed at such meetings; and the matters which may be referred by the Central Government to the advisory committee for advice;

20 (g) any other matter which is to be or may be prescribed.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith.

(As amended by the Select Committee)

THE ADMINISTRATION OF EVACUEE PROPERTY (AMENDMENT) BILL, 1952

date of reference
presentation

11. 8. 52

5. 11. 52



सुख्यम्भस जयते

November, 1952

THE ADMINISTRATION OF EVACUEE PROPERTY (AMENDMENT) BILL, 1952

MEMBERS OF THE SELECT COMMITTEE

Pandit Thakur Das Bhargava—*Chairman*,

Lala Achint Ram,

Shrimati Subhadra Joshi,

Shri Jagannathrao Krishnarao Bhonsle,

Shri Narendra P. Nathwani,

Shri H. C. Heda,

Shri Nemi Chandra Kasliwal,

Shri Ram Pratap Garg,

Pandit Chatur Narain Malviya,

Shri Jwala Prasad,

Giani Gurmukh Singh Musafir,

Shri Syed Mohammad Ahmad Kazmi,

Col. B. H. Zaidi,

Shri Digambar Singh,

Shri Mulchand Dube,

Shri Kanhaiya Lal Balmiki,

Shri Syed Ahmad,

Pandit Lakshmi Kanta Maitra,

Shri Basanta Kumar Das,

Shri Radha Charan Sharma,

Chaudhri Hyder Husein,

Shri Rohini Kumar Chaudhuri,

Shrimati Sucheta Kripalani,

Shri V. P. Nayar,

Shri Vishnu Ghanashyam Deshpande,

Shri Bhawani Singh,

Dr. Manik Chand Jatav-vir,

Shri Avadeshwar Prasad Sinha,

Shri P. N. Rajabhoj,

Shri Ajit Prasad Jain.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill further to amend the Administration of Evacuee Property Act, 1950 was referred, have considered the Bill and I have now to submit this their Report, with the Bill as amended by the Committee annexed hereto.

2. Upon the changes proposed which are not formal or consequential, it may be noted as follows:—

Clause 4 (original).—The Committee has omitted this clause which purports to transfer the power of appointment of Custodians from State Governments to the Central Government because the Committee were given to understand that the State Governments desire that the existing position should continue.

Clause 4 (original clause 5).—The Committee felt that there should be some restriction upon the power of the Custodian to take charge of the management of a company. It has accordingly been provided that the Custodian shall not exercise such power except with the previous approval of the Central Government.

Clause 5 (original clause 6).—The Committee has limited the power of the Custodian to cancel prepartition leases to two specified cases, namely: (i) where the lease has been sublet; and (ii) where the lessee has used the property for a purpose other than that for which it was leased.

✓ *Clause 6 (original clause 7).*—The Committee was of the opinion that where tenancy rights vest in the Custodian some provision should be made for safeguarding the interests of the original lessor. The Committee has accordingly provided that in such cases the Custodian shall not have the power to grant, without the consent in writing of the original lessor—(a) where the original lease is for a specified period, any lease for a period extending beyond the date on which the original lease would have expired; and (b) where the original lease is from year to year or month to month or on any other similar tenure, any lease on a tenure different from that of the original lease.

Clause 7 (original clause 8).—It has been made clear that where an application under section 16 is rejected there will be nothing to prevent the applicant from establishing his title to the property in a civil court.

Clause 8 (original clause 9).—The Committee felt that the words 'for any default of the evacuee' were far too sweeping. It was of the opinion that the exemption from eviction should apply only where an evacuee has made any default after he became an evacuee or within a period of one year preceding the date of his becoming an evacuee. Section 18 of the principal Act as substituted by this clause has been amended, accordingly.

Clauses 12 and 14 (new).—The amendments are consequential upon the omission of Chapter IV relating to 'intending evacuees'.

✓ *Clause 13.*—The limit of five thousand rupees in respect of exemption from confirmation of a transfer has been reduced to three thousand rupees. It has also been provided that in the case of transfers in respect of which the consideration exceeds such limit as may be

prescribed by rules, the previous approval of the Custodian General shall be necessary. The position with respect to pending proceedings for confirmation of transfers has been made clear. A few drafting alterations have also been made.

Clause 16.—The amendments proposed to sub-section (3) of section 56 have been omitted in view of the omission of clause 4 of the Bill. It has also been provided that in future all rules made by the Central Government shall be laid before Parliament.

Clause 17 (new).—This new clause has been inserted to clarify the effect of repeal of Chapter IV relating to 'intending evacuees'. It has been provided that notwithstanding such repeal any property which is already vested in the Custodian under section 22 and any proceedings which are pending under that section shall not be affected.

3. The Bill was published in the Gazette of India, Part II, Section 2, dated the 9th August, 1952.

4. The Select Committee think that the Bill has not been so altered as to require circulation under Rule 99(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

THAKUR DAS BHARGAVA,

Chairman of the Select Committee.

NEW DELHI;

The 5th November 1952.

MINUTES OF DISSENT

I

I disagree with the report of the Select Committee on the Administration of Evacuee Property (Amendment) Bill, 1952. There can be no two opinions about the policy of providing all possible facilities to all the loyal citizens of this country in their ordinary transactions. If there are any genuine cases where this Administration of Evacuee Property Act is causing injustice to the members of a particular community, such injustice has to be removed. But in our anxiety to do justice to those few genuine cases we must not do anything whereby the Evacuee Property pool which has already considerably dwindled, would diminish still further and at the same time the relaxation in rules should not help those persons who had always the intention of leaving India and settling in Pakistan and are just waiting for opportunity to do so. After keeping the above mentioned principle before our eyes, I feel that the Bill in the present form will do greater harm than good.

In the first place the sweeping manner in which the sections in the Principal Act relating to the intending evacuee have been removed, is bound to re-act very unfavourably against the interests of India. In fact it was necessary to strengthen the sections regarding the intending evacuees instead of relaxing them. It is argued that the sub-clauses giving the definition of the intending evacuee have been incorporated in the definition of the evacuee itself by the addition of new clause; but I would like to point out that the date given in the definition was 14th day of August 1947 and now the Bill, as amended, gives the definition of evacuee as "who has, after the 18th day of October 1949, transferred to Pakistan, without the previous approval of the Custodian, his assets or any part of his assets situated in any part of the territories to which this Act extends". This means that a person who has transferred his assets before 18th day of October 1949 would escape the consequences of having done so. In fact there are many cases where the intending evacuees have acquired huge properties in Pakistan and transferred considerable portion of their properties from India to that Dominion and are waiting in India only to dispose of the remaining property. By this elimination of the clause relating to the intending evacuee and relaxation regarding the date, the work of these intending evacuees has become much easier. I would suggest that in addition to retaining the old date of 14th day of August 1947, we have to add a clause whereby persons whose families including the wife and children are continuously staying in Pakistan should come under the category of the intending evacuee. The proposal to drop the clause which includes "any person against whom an intention to settle in Pakistan is established from his conduct or from documentary evidence" is also giving latitude to those persons who want to leave India and go over to Pakistan. In no case persons against whom there is documentary evidence or against whom it can be established from their conduct that they are intending to go to Pakistan, should be exempted from the operation of the Administration of Evacuee Property Act.

(2) I also oppose the clause 6 of the Bill as amended by the Select Committee. The restoration of evacuee property ought to be entrusted to some judicial authority and not even to the Custodian or Custodian-General. The Custodians even, though quasi-judicial authorities, are actual administrators of the evacuee property and hence would not be

able to apply judicial mind to the question and hence I propose that this matter be referred to some judicial officer of the grade of the District Judge. In no case it should be left to the discretion of the Government. Previously this authority was vested in the Custodian-General who was a quasi-judicial Officer and now it has been left entirely to the discretion of the Government.

(3) I also oppose Clause 13 of the Bill as amended by the Select Committee which deals with the validity of transfers respecting property subsequently declared to be evacuee property; though reducing the limit of property transferred to Pakistan from Rs. 5,000 to Rs. 3,000 is some satisfaction. On the whole the Section 40 as amended will do greater harm to the citizens of India than to those who want to leave this country. The Custodian while giving sanction to any transfer should have the power to refuse sanction to any transaction if there is an evidence that the person who is transferring his property is intending to opt to Pakistan provided that the intention to opt to Pakistan is established from the conduct of such person or from some documentary evidence.

It is really unfortunate that the majority in the Select Committee though agreed in principle to the point of view presented by the minority, could not see its way to support the amendments proposed by members belonging to minority groups. It is further to be noted that considerations of prestige particularly on the issue of vesting power into the Judicial Officer of exempting any properties from the operation of evacuee property came in the way of fair discussion on these clauses and hence the report on the Administration of the Evacuee Property (Amendment) Bill cannot be said to be the outcome of free discussion on the merits of the case, and hence I disagree with the report.

A promise was given on the floor of the House by the Hon'ble Minister that the Refugee Associations would be consulted and opportunities would be given to them to express their views on this important Bill. But it is unfortunate that the All India Refugee Association which wanted to place its views before the Committee was not given an opportunity to do so on the grounds that it was too late to do so. In fact such a measure should not be passed in a hurry and opportunity ought to have been given to Refugee Organisations to express their views.

V. G. DESHPANDE.

NEW DELHI;

The 5th November, 1952.

II

The provisions relating to the intending evacuees are sought to be softened as some of our politicians think they are too rigid. But in view of the present position it appears we are not justified in totally removing the provisions relating to intending evacuees. The Pakistan Government has not changed its attitude in any manner whatsoever and the proposed

change has been adversely commented there. Anyhow I see no justification for those who have been found by the authorities to be intending evacuees to be removed from that category. In my opinion no harm will result in the retention of the provisions relating to this clause. I reserve to myself the right to move amendments.

SUCHETA KRIPALANI.

NEW DELHI;

The 5th November, 1952.

Bill No. 91A of 1952.

THE ADMINISTRATION OF EVACUEE PROPERTY (AMENDMENT) BILL, 1952.

(AS AMENDED BY THE SELECT COMMITTEE)

(Words underlined or sidelined indicate the amendments suggested by the Committee; asterisks indicate omissions)

BILL

further to amend the Administration of Evacuee Property Act, 1950.

BE it enacted by Parliament as follows:—

1. Short title and commencement.—(1) This Act may be called the Administration of Evacuee Property (Amendment) Act, 1952.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 2, Act XXXI of 1950.—In section 2 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the principal Act),—* * *

(a) in clause (i),—

(1) at the end of sub-clause (iii), the word “or” shall be inserted, and after that sub-clause and before the *Explanation* thereto, the following clauses shall be inserted, namely:—

“(iv) who has, after the 18th day of October, 1949, transferred to Pakistan, without the previous approval of the Custodian, his assets or any part of his assets situated in any part of the territories to which this Act extends; or

(v) who has, after the 18th day of October, 1949, acquired, if the acquisition has been made in person, by way of purchase or exchange, or, if the acquisition has been made by or through a member of his family, in any manner whatsoever, any right to, interest in, or benefit from, any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan;”;

(2) the *Explanation* to sub-clause (iii) shall be numbered as *Explanation I* and after that *Explanation* as so numbered, the following further *Explanations* shall be inserted, namely:—

5 “*Explanation II.*—For the purposes of sub-clause (iv), the transfer to Pakistan by any person of any reasonable sum of money in accordance with the rules made in this behalf by the Central Government for the purpose of financing any transaction in the ordinary course of his trade or for the maintenance of any member of the family of such person shall not be deemed to be
10 a transfer of his assets within the meaning of that sub-clause.

Explanation III.—For the purposes of sub-clause (v), the acquisition of any right to, interest in, or benefit from, any such property as is referred to in that sub-clause by a firm, private limited company or trust of which any person is a partner,
15 member or beneficiary, as the case may be, shall be deemed to be an acquisition by that person of such right, interest or benefit within the meaning of that sub-clause.”;

(b) clause (e) shall be omitted;

20 (c) in clause (f), for the words beginning with “evacuee property” means’ and ending with the words “to the extent of such right or interest,” the following shall be substituted, namely:—

 “‘evacuee property’ means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), and includes any property which
25 has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer which is not effective by reason of the provisions contained in section 40.”

3. Omission of section 3, Act XXXI of 1950.—Section 3 of the principal Act shall be omitted.

30 * * * * *

4. Amendment of section 10, Act XXXI of 1950.—In sub-section (2) of section 10 of the principal Act, after clause (l), the following clause shall be inserted, namely:—

35 “(ll) in any case where the evacuee property which has vested in the Custodian consists of fifty-one per cent. or more of the shares in a company, the Custodian may take charge of the management of the whole affairs of the company and exercise, in addition to any of the powers vested in him under this Act, all or any of the powers of the directors of the company, notwithstanding that the registered
40 office of such company is situate in any part of the territories to which this Act extends, and notwithstanding anything to the contrary contained in this Act or the Indian Companies Act, 1913 (VII of 1913) or in the articles of association of the company:

45 Provided that the Custodian shall not take charge of such management of the Company except with the previous approval of the Central Government.”

5. Amendment of section 12, Act XXXI of 1950.—In sub-section (1) of section 12 of the principal Act,—

50 (a) for the words “where such allotment, lease or agreement has been granted or entered into after the 14th day of August, 1947” the

following shall be substituted, namely:—

“whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Act.”

(b) the following proviso shall be added, namely:—

“Provided that in the case of any lease granted before the 14th day of August, 1947, the Custodian shall not exercise any of the powers conferred upon him under this sub-section unless he is satisfied that the lessee—

(a) has sublet, assigned or otherwise parted with the possession of the whole or any part of the property leased to him; or

(b) has used or is using such property for a purpose other than that for which it was leased to him.”

6. Insertion of new section 12A in Act XXXI of 1950.—After section 12 of the principal Act, the following section shall be inserted, namely:—

“12A. *Special provisions with respect to transfer of tenancy rights of evacuees.*—(1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, where tenancy rights have vested in the Custodian as evacuee property and the Custodian has granted a lease in respect of such property, the Custodian may, in any case where the lessor under whom the property was held immediately before it vested in the Custodian is not an evacuee, declare, by general or special order, that with effect from such date as may be specified in the order he shall stand absolved of all responsibilities with respect to the property or the lease granted by him.

(2) On the making of any such declaration as is referred to in sub-section (1),—

(a) the lease granted by the Custodian shall be deemed to have effect as if granted by the lessor under whom the property was held immediately before the Custodian assumed possession or control thereof and shall continue to have such effect until it is determined by lapse of time or by operation of law;

(b) all sums realised by the Custodian in respect of the said lease before the date of the declaration referred to in sub-section (1) shall, subject to the deduction of fees, if any, payable to the Custodian, become payable to the lessor against whom the lease has now effect.

(3) Nothing contained in this section shall—

(a) be deemed to empower the Custodian to grant, without the consent in writing of the original lessor or his successor in interest—

(i) where the original lease is for a specified period, any lease for a period extending beyond the date on which the original lease would have expired; or

(ii) where the original lease is from year to year or month to month or on any other similar tenure, any lease on a tenure different from that of the original lease;

(b) render the Custodian liable to any person for any sum in excess of the sum payable to the lessor under clause (b) of sub-section (2), or

(c) prejudice any rights of the lessor or the lessee, to which he may be entitled under any other law for the time being in force, consistently with the terms and conditions, if any, of the lease granted by the Custodian."

7. Amendment of section 16, Act XXXI of 1950.—In section 16 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

"16. Restoration of evacuee property.—(1) Subject to such rules as may be made in this behalf, the Central Government or any person authorised by it in this behalf may, on application made to it or him by an evacuee or by any person claiming to be the heir of an evacuee, and, on being satisfied that it is just or proper so to do, grant to the applicant a certificate stating that any evacuee property, which has vested in the Custodian and to which the applicant would have been entitled if this Act were not in force, shall be restored to him.

(2) If the evacuee or, as the case may be, the heir to whom a certificate has been granted under sub-section (1) applies to the Custodian in writing for the restoration of the evacuee property which has vested in the Custodian and in respect of which the certificate has been granted, the Custodian shall, on the production by the applicant of the certificate and subject to the other provisions contained in this section and in any rules that may be made in this behalf, restore the evacuee property to the applicant.

(2A) On receipt of an application under sub-section (2), the Custodian shall cause public notice thereof to be given in the prescribed manner and after holding a summary inquiry into the claim in such manner as may be prescribed shall—

(a) if he is satisfied with respect to the title of the applicant to the property, make a formal order restoring the property to the applicant; or

(b) if he is not so satisfied, reject the application, without prejudice to the right of the applicant to establish his title to the property in a civil court; or

(c) if he entertains any doubt with respect to the title of the applicant to the property, refer him to a civil court for the determination of his title thereto:

Provided that no order for the restoration of any evacuee property shall be made under this section unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof."

8. Substitution of new section for section 18, Act XXXI of 1950.—For section 18 of the principal Act, the following section shall be substituted and shall be deemed always to have been substituted, namely:—

“18. Occupancy or tenancy rights not to be extinguished.—Where the rights of an evacuee in any land or in any house or other building consist or consisted of occupancy or tenancy rights, nothing contained in any law for the time being in force or in any contract or in any instrument having the force of law or in any decree or order of any court, shall extinguish or be deemed to have extinguished any such rights either on the tenant becoming an evacuee within the meaning of this Act or at any time thereafter so as to prevent such rights from vesting in the Custodian under the provisions of this Act or to prevent the Custodian from exercising all or any of the powers conferred on him by this Act in respect of any such rights, and, notwithstanding anything contained in any such law, contract, instrument, decree or order, neither the evacuee nor the Custodian, whether as an occupancy tenant or as a tenant for a certain time, monthly or otherwise, of any land, or house or other building shall be liable to be ejected or be deemed to have become so liable on any ground whatsoever for any default of—* * *

(a) the evacuee committed after he became an evacuee or within a period of one year immediately preceding the date of his becoming an evacuee; or

(b) the Custodian.”

9. Omission of Chapter IV, Act XXXI of 1950.—Chapter IV of the principal Act shall be omitted.

10. Amendment of section 24, Act XXXI of 1950.—In section 24 of the principal Act, in sub-section (1),—

(a) the word and figures “section 19” shall be omitted;

(b) in the proviso, for the words, brackets, letters and figures “sub-clause (iii) of clause (d) of section 2, or that the property is not evacuee property within the meaning of sub-clause (2) of clause (f) of section 2,” the words, brackets, letters and figure, “sub-clause (iii) or sub-clause (iv) or sub-clause (v) of clause (d) of section 2,” shall be substituted.

11. Amendment of section 25, Act XXXI of 1950.—In section 25 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Any person aggrieved by an order under section 7 declaring his property to be evacuee property on the ground that he is an evacuee within the meaning of sub-clause (iii) or sub-clause (iv) or sub-clause (v) of clause (d) of section 2 may prefer an appeal, in such manner and within such time as may be prescribed, to the district judge nominated in this behalf by the State Government.”

12. Amendment of section 26, Act XXXI of 1950.—Sub-section (3) of section 26 of the principal Act shall be omitted.

13. Substitution of new section for sections 40 and 41, Act XXXI of 1950.—For sections 40 and 41 of the principal Act, the following sections shall be substituted, namely:—

“40. Validity of transfers respecting property subsequently declared to be evacuee property.—(1) No transfer made after the 14th day of August, 1947, by or on behalf of any person in any manner whatsoever of any property belonging to him shall be

effective so as to confer any rights or remedies in respect of the transfer on the parties thereto or any person claiming under them or either of them, if, at any time after the transfer, the transferor becomes an evacuee within the meaning of section 2 or the property of the transferor is declared or notified to be evacuee property within the meaning of this Act, unless the transfer is confirmed by the Custodian in accordance with the provisions of this Act.

(2) Nothing contained in sub-section (1) shall apply to the transfer for valuable consideration of any such property as is referred to therein in any of the following cases, namely:—

(a) where the transfer has been made with the previous approval of the Custodian before the commencement of the Administration of Evacuee Property (Amendment) Act, 1952;

(b) where the transferor has not left or does not leave India for Pakistan within a period of two years from the date of the transfer:

Provided that in the case of a transfer made before the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, the transferor had not left India for Pakistan before such commencement, notwithstanding that a period of two years had already elapsed before such commencement;

(c) where the transfer is made after the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, and—

(i) the value of the property transferred is less than three thousand rupees:

Provided that the transferor does not transfer any other property belonging to him within a period of one year from the date of the transfer; or

(ii) the value of the property exceeds three thousand rupees but the transfer is made with the previous approval of the Custodian or in the prescribed cases with the previous approval of the Custodian General.

(3) An application under sub-section (1) for the confirmation of any transfer may be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them to the Custodian within two months from the date of the transfer or within two months from the date of the declaration or notification referred to in sub-section (1) whichever is later, and the provisions of section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to any such application.

(4) Where an application under sub-section (1) has been made to the Custodian for confirmation, he shall hold an inquiry in respect thereof in the prescribed manner and may reject the application if he is of opinion that—

(a) the transaction has not been entered into in good faith or for valuable consideration; or

(b) the transaction is prohibited under any law for the time being in force; or

(c) the transaction ought not to be confirmed for any other reason.

(5) Where, in respect of any transfer made before the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, the Custodian has rejected any application for confirmation thereof solely on the ground— 5

(a) that although the transaction was entered into in good faith, the consideration paid was not adequate, or

(b) that the application was barred by limitation,

then, notwithstanding anything to the contrary contained in any law or contract or decree or order of a civil court or other authority but subject to any rules that may be made by the Central Government in this behalf, the Custodian may exercise any of the following powers in respect of the transfer, namely:— 10

(i) confirm the transfer if the consideration paid for the transfer is adequate; 15

(ii) confirm the transfer, if the transferee agrees to pay to the Custodian the difference in value between the value of the property as assessed by the Custodian and the amount actually paid by the transferee to the transferor; 20

(iii) if the transferee agrees, take possession of such part of the property as, after dividing it by metes and bounds, is equivalent in value to the difference between the value of the property as assessed by the Custodian and the amount actually paid by the transferee to the transferor; 25

(iv) if the transferee agrees, take possession of the entire property by paying off to the transferee the amount which the Custodian finds as having been actually paid by the transferee to the transferor as consideration for the transfer; or

(v) if the transferee does not agree to any of the courses referred to in clauses (ii) to (iv) inclusive, auction the property and if the sale proceeds exceed the amount actually paid by the transferee, pay to the transferee the amount paid by him and take over the balance and if the sale proceeds are equivalent to, or fall short of, the amount actually paid by the transferee, pay the entire sale proceeds to the transferee: 30 35

Provided that where any application for confirmation of a transfer is rejected on the ground specified in clause (b) of this sub-section the powers conferred on the Custodian by this section shall not be exercised unless the Custodian finds that the transaction has been entered into in good faith.* * * 40

(6) If the application is not rejected under sub-section (4), the Custodian may confirm the transfer either unconditionally or on such terms and conditions as he may think fit to impose.

(7) The Custodian may, in respect of any application for confirmation of a transfer pending before him on the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, which is liable to be rejected on either of the grounds specified in clauses (a) and (b) of sub-section (5), exercise any of the powers conferred on him under that sub-section. 45 50

(8) For the removal of doubts, it is hereby declared that every property transferred in contravention of the provisions of this section which does not confer any rights or remedies in relation to the transfer on the parties thereto shall be deemed to be property declared to be
 5 evacuee property within the meaning of sub-section (1) of section 7 and to have vested in the Custodian in accordance with the provisions of section 8.

41. *Transactions relating to evacuee property void in certain circumstances.*—Subject to the other provisions contained in this Act,
 10 every transaction entered into by any person in respect of property declared or deemed to be declared to be evacuee property within the meaning of this Act, shall be void unless entered into by or with the previous approval of the Custodian.”

14. **Amendment of section 46, Act XXXI of 1950.**—In section 46 of
 15 the principal Act, clause (b) shall be omitted.

15. **Substitution of new section for section 52, Act XXXI of 1950.**—For section 52 of the principal Act, the following section shall be substituted, namely:—

“52. *Power to exempt.*—The Central Government may, by
 20 notification in the Official Gazette, declare that all or any of the provisions of this Act or of the rules made thereunder shall not apply, or shall be deemed never to have applied, or shall cease to apply, or shall apply only with such modifications or subject to such conditions, restrictions or limitations as may be specified in the notification, to
 25 or in relation to any class of persons or class of property.”

16. **Amendment of section 56, Act XXXI of 1950.**—In section 56 of the principal Act,—

(1) in sub-section (2),—

(a) after clause (b), the following clause shall be inserted,
 30 namely:—

“(bb) the transfer by the Custodian of any case pending before any officer subordinate to him or the withdrawal to himself for disposal of any case so pending or the exercise of any similar powers by the Custodian General in respect of
 35 cases pending before any officer subordinate to him;”;

(b) for clause (q), the following clause shall be substituted, namely:—

“(q) the manner in which applications for the previous approval of the Custodian may be made under section 40
 40 and the matters which he shall take into account in granting such approval, and the nature of cases and the circumstances in which the Custodian may confirm or refuse to confirm a transfer under that section:”;

* * * * *

(2) after sub-section (3), the following sub-section shall be
 45 inserted, namely:—

“(4) All rules made under sub-sections (1) and (2) after the commencement of the Administration of Evacuee Property (Amendment) Act, 1952 shall be laid for not less than fourteen days
 50 before Parliament as soon as possible after they are made.”

17. Effect of repeal of Chapter IV, Act XXXI of 1950.—(1) The repeal of Chapter IV of the principal Act shall not affect—

(a) any property which has vested in the Custodian under section 22 of the principal Act before the commencement of this Act, or

(b) any proceeding pending under that section on such commencement,

and any such property shall continue to so vest and any such proceeding may be continued as if this Act had not been passed.

(2) Save as aforesaid, on the repeal of Chapter IV of the principal Act, every order passed under section 19 of the principal Act declaring any person to be an intending evacuee and every attachment of property effected under that section shall cease to have effect and every proceeding pending under that section shall abate.

(3) Save to the extent to which it is otherwise provided in this section, the mention of particular matters in this section shall be without prejudice to the general application of section 6 of the General Clauses Act, 1897 (X of 1897), with respect to the effect of repeals.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill further to amend
the Administration of Evacuee Property Act, 1950

(As amended by the Select Committee)

150

HOUSE OF THE PEOPLE

THE INDIAN INCOME-TAX (AMENDMENT) BILL, 1952

(Report of the Select Committee)

Date of reference 9.7.52
presentation 7.11.52



PARLIAMENT SECRETARIAT,
NEW DELHI

November, 1952

HOUSE OF THE PEOPLE

CORRIGENDA

TO

the Report of the Select Committee on the Indian Income-tax (Amendment) Bill, 1952, together with the Bill as amended by the Select Committee.

- 1) At page 7, in line 14, for 'labour' read 'Lahore'.
- 2) At page 10, in line 29, for 'axes' read 'taxes'
- 3) At page 13, in line 16, for 'exremely' read 'extremely'.
- 4) At page 14, in line 12, for 'account' read 'accountant'.
- 5) ~~At page 21, after line 32, insert the following, namely:-~~
"provided further that in computing the period of limitation for the purposes of sub-section (3) of section 34, the time taken in re-opening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the preceding proviso shall be excluded."
- 6) At page 22, in line 25, after "clause (a)" insert "of"
- 7) ~~At page 26, for the existing line 13, read "sub-section (3D)" shall be substituted;~~
- 8) At page 28, for the existing line 28, read 'and word "(3A)" and "or (3C)" shall be omitted.
- 9) At page 31, in line 31 for 'character' read 'charterer'.

NEW DELHI,

M.N. KAUL,

S E C R E T A R Y

the 14th November, 1952.

THE INDIAN INCOME-TAX (AMENDMENT) BILL, 1952

MEMBERS OF THE SELECT COMMITTEE

Pandit Thakur Das Bhargava—*Chairman*

Shri C. D. Deshmukh,

Shri Mahavir Tyagi,

Shri S. Sinha,

Pandit Algu Rai Shastri,

Prof. Ram Saran,

Shri Ghamandi Lal Bansal,

Shri C. R. Basappa,

Shri Shantilal Girdharilal Parikh,

Shri Hari Vinayak Pataskar,

Shri Radheshyam Ramkumar Morarka,

Shri P. Natesan,

Pandit Chatur Narain Malviya,

Shri Ahmed Mohiuddin,

Shri A. K. Basu,

Dr. Panjabrao S. Deshmukh,

Col. B. H. Zaidi,

Shri C. P. Matthen,

Shri Purnendu Sekhar Naskar,

Shri Sohan Lal Dhusiya,

Shri P. N. Rajabhoj,

Shri Kamal Kumar Basu,

Shri N. C. Chatterjee,

Shri K. A. Damodara Menon,

Shri Tulsidas Kilachand,

Shri S. V. Ramaswamy.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill further to amend the Indian Income-tax Act, 1922 was referred, have considered the Bill and I now submit this their Report, with the Bill as amended by the Committee annexed hereto.

1. Upon the changes proposed in the Bill which are not formal or consequential, the Select Committee note as follows:—

Clause 1.—The provision relating to commencement contained in clause 33 of the Bill has now been transferred to its appropriate place, and its wording has also been modified to make it clear that the whole Act shall be deemed to have come into force on the 1st day of April, 1952, so that the procedural provisions of the Act will apply to pending cases also. This commencement clause is, however, subject to the other special provisions in the Act respecting the extent of retrospective application of certain substantive provisions.

Clause 2.—In the proposed definition of “assessee” the word “whether with or without interest” have been omitted as unnecessary, in view of the words immediately following.

In the proposed definition of “previous year”, certain words have been added to make it clear that section 2(11)(ii) applies only where the income of the firm has been assessed as a unit, and that where it is not so assessed and the partner is assessed direct, section 2(11) (i) will apply.

Clause 3.—The Select Committee have omitted the words “out of the remaining half” from item (iii) of the proposed fifth proviso to section 4(1) of the Act as it is immaterial from which amount any outstanding taxes are paid.

The amendment to *Explanation 2* to section 4(1) has been redrafted to make it clear that no exemption is available in respect of pension payable to High Court Judges appointed after the 14th day of August, 1947.

The Select Committee have also recast the proposed clause (i) to subsection 4(3) so that it is made clear—

(a) that the income is exempt even if it is not applied to religious or charitable purposes in one year but is accumulated for application to such purposes subsequently;

(b) that the charitable purposes should normally relate to something done within the taxable territories and that in cases where such purposes are without the taxable territories, the income will not be exempt unless the Central Board of Revenue grants the necessary exemption; and

(c) that the exempted income is liable to tax when it is diverted to any other purpose or ceases to be set apart for religious or charitable purposes.

The amendment in the proposed new item (xvi) in section 4(3) is to cover bonds issued by industrial enterprises or financial corporations obtaining loans from the International Bank for Reconstruction and Development when such loans are guaranteed by the Central Government.

With respect to the proposed clause (xix) of section 4(3), the Select Committee are of the view that any daily allowance paid to members of any Legislature, whether before or after the commencement of this Act, should not be subjected to tax because it is really not income.

Clause 4.—With respect to sub-clause (e), the Select Committee feel that the existing right of appeal from the orders of Inspecting Assistant Commissioners to the Commissioner should not be disturbed, and this sub-clause has been amended accordingly.

In sub-clause (g), the Select Committee have omitted item (i) in the proposed sub-section (7) to section 5 because all that this provision intends to convey is that the Appellate Assistant Commissioner is subordinate to the Commissioner for the purposes of section 33A, and such a provision should more appropriately be included in the amendment to section 33A in clause 18. This has now been done.

In sub-clause (h), the Select Committee have omitted the provision prohibiting any appellate authority or court from inquiring into the nature of the instructions issued to Income-tax officers respecting assessments to be made by them, as in their opinion, this is an undesirable restriction.

To the proposed sub-section (7C), the Select Committee have added a proviso conferring a right on the assessee to be re-heard or to have any part of the earlier proceeding re-opened if he so desires.

Clause 5.—In the opinion of the Select Committee, the President of the Tribunal should always be a judicial member and consequently the proposed sub-clause (c) has been omitted.

Clause 7.—The proposed amendment to delete the words "*bona fide*" from section 9(1) of the Act is hardly necessary and has been omitted.

Clause 8.—In the definition of "actual cost", it is now made clear that what can be deducted therefrom is any amount advanced by the Government or by any public or local authority for the purchase of such assets.

Clause 9.—The amendment is to give effect to this provision as from the date of the financial integration of Part B States with India.

Clause 10.—The Select Committee feel that the concession available under section 15C of the Act should be extended to small cottage industries also, but in view of the administrative difficulties involved in determining what is generally a new business, in the opinion of the Select Committee, the object could be achieved by suitably adapting the definition of "factory" in the Factories Act in the present context.

Clause 13.—The Select Committee have recast the proposed proviso to sub-section (5) of section 18A as, in their opinion, interest should be payable by the Government in respect of that part of the instalments paid during the year by way of advance payment of income-tax which is in excess of the tax determined on regular assessment.

In sub-clause (d), the new proviso to be inserted at the end of section 18A (6) has been re-drafted because, as it stood, it appeared to be in the nature of an inducement to the assessee not to contest the assessment.

Clause 14.—In the opinion of the Select Committee, the information asked for by an Income-tax Officer should be limited to the purposes of section 22, and where a wealth-statement is required it should be asked for only with the previous approval of the Commissioner. The provisions

of sub-clause (b) have therefore been redrafted accordingly, and incidentally, the first half of that sub-clause which is unnecessary has been omitted.

Clause 16.—There is no justification for taking away the right of appeal which now exists from an order of an Inspecting Assistant Commissioner exercising the powers of an Income-tax Officer to the Commissioner and, therefore, the Select Committee have omitted both sub-clause (a) of this clause and clause 17. The subsequent clauses have been re-numbered accordingly.

Clause 17 (old clause 18).—The addition of the *Explanation* is for the reasons given against sub-clause (g) of clause 4.

Clause 18 (old clause 19).—Certain consequential alterations which should have been made on the commencement of the Constitution by the Adaptation of Laws Order are now being made. The substitution of the word "section" for "sub-section" is to make it clear that the waiver of the time-limit is not only for the completion of the assessment but also for the initiation of assessment proceedings.

Clause 19 (old clause 20).—The proposed sub-section (7) is complimentary to the proposed sub-sections (5) and (6).

Clause 20 (old clause 21).—The amendments are designed to eliminate hardship to assesseees by reason of retention of books of account and documents by an Income-tax Officer for unduly long periods.

Clause 22 (old clause 23).—The Select Committee think that no criminal liability need be imposed on the owner or the charterer of a ship as proposed in section 46A(2), and therefore the last few words of that sub-section have been omitted. The Select Committee also feel that the Income-tax Officer should be vested with a discretion to determine whether the whole or only a part of the tax should be recovered in the circumstances of the case.

Clause 24 (old clause 25).—Apart from a clarificatory amendment in the proposed section 49D(2), *Explanation* (iii), the other amendment is to remove one source of hardship. Generally, the excess profits tax or the business profits tax would be allowed as a deduction in the foreign country in determining the income liable to income-tax in that country, but not so in India. Therefore, if the tax were not taken into account the combined relief on income liable to tax in India and in the foreign country would not be adequate.

Clause 26 (old clause 27).—The proposed clause (a) of section 54(3) does not really expand the scope of the existing clause. The Select Committee also feel that the words "in connection with income-tax proceedings" in clause (gg) of section 54(3) should not be omitted because the misconduct complained of must necessarily be in connection with income-tax proceedings. Necessary amendments have therefore been made.

Old Clause 31.—This clause has been omitted, as in the opinion of the Select Committee, the bar to jurisdiction in section 67 of the Act is sufficient for the time being.

Clause 30 (old clause 32).—The amendment to clause (d) of the proviso is to equate the management expenses permissible in respect of renewal premiums for purposes of income-tax with the management

expenses permissible under the Insurance Act. This will enable new companies with small business to get a higher percentage than older companies.

Clause 31 (old clause 34).—The amendment makes it clear that this clause is really intended to validate assessments made or to be made under section 34 for the years prior to 1st April, 1948, where proceedings in respect thereof were commenced after the date of the amending Act.

2. The Bill was published in Part II, Section 2 of the Gazette of India, dated the 31st May, 1952.

3. The Committee think that the Bill has not been so altered as to require circulation under Rule 94(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

THAKUR DAS BHARGAVA,

Chairman of the Select Committee.

NEW DELHI;

The 7th November, 1952.

MINUTES OF DISSENT

I

The Bill, as it emerges from the Select Committee, continues the subordination of the Income-tax judiciary to the Income-tax executive. The Appellate Assistant Commissioners are officers of the department and are subordinate to the Central Board of Revenue for leave, transfer and promotion. This puts them for all practical purposes under the Commissioner of Income-tax, as Central Board of Revenue would naturally have to act on the advice and recommendation of the Commissioner. In these circumstances, in hearing appeals against the department, the Appellate Assistant Commissioners are not in a position to exercise independent judgement. Even as a judge, he is considered by the department to be so much a party that the department (except in rare cases) does not consider it necessary for the Income-tax Officer or any departmental representative to appear at the hearing of the appeals before Appellate Assistant Commissioners to support the Income-tax Officers' assessment orders. This may be contrasted with the procedure before the Appellate Tribunal where the departmental case is invariably represented by the Departmental Representative. The Appellate Assistant Commissioner who is the judge is considered adequate to represent the department—an unusual responsibility for a judge to undertake. The party really becomes a judge in his own cause. This is a perversion of judicial procedure and is against all cardinal principles of administration of justice. I am strongly of opinion that the correct procedure should always be followed—and this no less in cases where the Government is a party and Government revenue is concerned—by the separation of Income-tax judiciary from the Income-tax executive. There should be a permanent separate Income-tax judicial cadre.

The Income-tax Investigation Commission (with two eminent judges—Sir Srinivasa Varadachariar, *Ex-judge*, Federal Court and Hon'ble Mr. Justice Rajadhyaksha on it) at p.141-42 of their Report observed: "There was some ground for misgivings that the Appellate Assistant Commissioners might be anxious to please the executive heads of the department and their decisions in appeals might, to some extent, be influenced by this consideration. We accordingly asked (Question No. 57) for the views of the public on a proposal that Appellate Assistant Commissioners should be removed from the control of the Central Board of Revenue and placed under the control of the Ministry of Law. Opinion was practically unanimous that the Appellate Assistant Commissioners should be removed from the control of the Central Board of Revenue." The Report goes on to say: "We have no reason to think that Appellate Assistant Commissioners have not been impartial in the discharge of their duties or that the independence of their judgement is vitiated by any consideration irrelevant to the decision of the appeal." The use of the double negative instead of a positive statement is significant. The Report further goes on: "But on the principle that not only should justice be done but that it should appear to be done and should inspire confidence in the persons concerned, we think that the present system requires alteration. We think Appellate Assistant Commissioners should be removed from the control of the Commissioners and the Central Board of Revenue and placed under the Appellate Tribunal. Their leave, transfer and posting should be in the hands of the Tribunal."

Steps should be taken, as early as practicable, to give effect to this unequivocal recommendation of the Income-tax Investigation Commission.

An amendment was proposed, in the Select Committee to clause 4(g) of the Bill referred to them, that the Appellate Assistant Commissioners should be under "the Appellate Tribunal of Income-tax" instead of being under "the Commissioner of Income-tax" but it was rejected by the majority. Hence I am forced to submit this Dissenting Minute to the Report of the Select Committee on the Indian Income-tax (Amendment) Bill, 1952.

NEW DELHI;

A. K. BASU.

The 7th November, 1952.

II

Clause 3 (b) (i).

This clause seeks to delete clauses (i) and (ia) in sub-section (3) of Section 4 of the principal Act and substitutes certain provisions as mentioned in the said clause 3(b) (i). This amendment will nullify the decision of the Labour High Court in the case *Charitable Gadodia Swadeshi Stores—v.—Commissioner of Income-Tax, Punjab*, 1944 (12) ITR 385. The Division Bench of that High Court held that the word "property" as used in Section 4(3) (i) of the Income Tax Act does not bear a restricted meaning but includes securities or business or share in a business. Income from business carried on by charitable or religious trusts was, therefore, exempt under clause (i).

In the *Gadodia* case the author of a trust handed to the trustees a lac of rupees. Under the deed of trust the income of the trust was to be spent for charitable or religious purposes. A part of the trust fund had been utilised for the purchase of a Swadeshi Store. It was held that the income derived by the trustees from the business of the trust was exempt from assessment of income-tax under section 4(3) (i) of Income-tax Act.

If the present amendment is allowed as suggested in clause 3(b) (i), then such income from business of the trust will no longer be exempt from assessment. It would not be proper to narrow down the scope of clause (i). by making Section 4(3) (ia) a proviso to Section 4(3) (i).

Clause 4(g).

This clause wanted to delete sub-section (7) of Section 5 of the principal Act and to substitute the following clause:—

"(7) For the purposes of this Act.—

- (i) Appellate Assistant Commissioners of Income-tax shall be subordinate to the Commissioner of Income-tax within whose jurisdiction they perform their functions; but no orders, instructions or directions shall be given to them so as to interfere with their discretion in the exercise of their appellate functions;
- (ii) Inspecting Assistant Commissioners shall be subordinate to the Director of Inspection, and to the Commissioner of Income-Tax within whose jurisdiction they perform their functions;
- (iii) Income-tax Officers shall be subordinate to the Director of Inspection, the Commissioner of Income-tax and the Inspecting Assistant Commissioner of Income-Tax within whose jurisdiction they perform their functions."

An amendment was moved by Shri Tulsidas Kilachand to the effect that item (g) sub-clause (i) of the proposed sub-section (7) of section 5

be not omitted and in the original clause instead of words "to the Commissioner of Income Tax", the words "to the Appellate Tribunal of Income-tax" may be substituted.

This amendment was perfectly relevant to the Bill as introduced in the House and as it stood when it was referred to the Select Committee. The Chairman of the Select Committee did not rule out the amendment as out of order but left it to the Committee to decide whether the amendment was relevant to the clause. It was held by a majority of the Committee that the amendment was not relevant to the clause. It is submitted that the majority was wrong in taking that view. The amendment was relevant and should have been considered on the merits.

It was not proper for the Select Committee to turn down the recommendation of the Income-Tax Investigation Commission on this subject. The Bill was primarily meant to implement the recommendations of that Commission which was presided over by Shri Vardachariar, former Chief Justice of the Federal Court and included Mr. Justice Rajadhyaksha. The Investigation Commission definitely recommended that the Appellate Assistant commissioners should be removed from the control of the Central Board of Revenue and that they should be placed under the Appellate Tribunal. The Commission further recommended that their leave transfers and postings should be in the hands of the Tribunal. The relevant portion of the Report of the Investigation Commission on this point is quoted below:—

Para 319 at pages 142-3 of the Report:—

"319. Prior to 1939, there were not, as at present, two sets of Assistant Commissioners and a large part of the work of Assistant Commissioners, consisted of hearing appeals against the decisions of Income-Tax Officers. They had also to supervise the work of Income Tax Officers. As a result of the recommendations of the Ayers' Committee, the Appellate and Supervisory functions were bifurcated and each was entrusted to separate sets of Assistant Commissioners. Although this step was one in the right direction and gave a sense of reality to the appeals heard by Assistant Commissioners who were expected to be absolutely free to give their unfettered decisions, it seems to us that the experiment then begun should be carried forward to its logical conclusion; otherwise the scheme would only amount to a half-hearted attempt to remove the influence of the executive as long as Appellate Assistant Commissioners continue to be subordinate to the Central Board of Revenue. Although under the proviso to sub-section (8) of Section 5, no orders, instructions or directions can be given so as to interfere with the discretion of Appellate Assistant Commissioners in the exercise of their Appellate functions, the public will be slow to give them credit for independence and impartiality. We have no reason to think that Appellate Assistant Commissioners have not been impartial in the discharge of their duties or that the independence of their judgment is vitiated by any considerations irrelevant to the decision of the appeal. But on the principle that not only should justice be done but that it should appear to be done and should inspire confidence in the persons concerned, we think that the present system requires alteration. We think that the experiment begun in 1939 should be carried forward and Appellate Assistant Commissioners should be removed from the control of the Commissioners and the Central Board of Revenue and placed under the Appellate Tribunal. Their leave, transfer and posting should be in the hands of the Tribunal."

The recommendations of an experienced body like the Investigation Commission should not have been turned down in the manner in which it has been done. It is not correct to suggest, as was done later in a Note prepared by the Department, that the Commission recommended the transfer of the Appellate Assistant Commissioners to the control of the Tribunal "solely on the sentiment that justice should not only be done but should seem to be done." It is amazing that the recommendations of the Investigation Commission have been reviewed by their successors and the latter have gone to the length of suggesting that the learned Judges who composed the Commission had not adequate knowledge of the working of the Department. This is an extraordinary procedure and it is regrettable that this procedure should have been adopted by persons occupying responsible positions. In fairness to the Income-Tax Investigation Commission it should be pointed out that the learned members of the Commission submitted a very thoughtful and detailed Report consisting of 448 paragraphs and they acted fully in accordance with the terms of reference contained in the Taxation on Income (Investigation Commission) Act (XXX of 1947). It is also to be noted that not only an *ex-Judge* of the Federal Court and a Judge of a High Court were members of that Commission but a very experienced and able Officer of the Department who had thorough knowledge of its working was also associated with them as a member, namely, Mr. V. D. Mazumdar. The report of the Commission was also signed by him.

There may be administrative difficulties but they are meant to be overcome if the principle is sound. The recommendation of the Investigation Commission should not be brushed aside lightly. It is difficult for Assistant Appellate Commissioners to discharge their duties with that impartiality and independence which should be expected from Appellate officers in as much as their future depends upon the revenue authorities. Naturally they are placed in an awkward position. The cardinal principle of justice demands that they should be placed under the Appellate Tribunal. For decades the Indian National Congress and every organisation in this country have demanded the separation of the executive from the judiciary and that has been recognised as a salutary principle in the administration of justice. If the recommendations of the Investigation Commission are implemented then the machinery will inspire the full measure of confidence of the general public. It is also essential in the interest of public revenue. It is of fundamental importance that "justice should not only be done but should manifestly and undoubtedly be seen to be done" (per Lord Hewart in *Rex-v-Sussex Justices* (1924) 1 KB 256 at page 259).

Clause (6).

This clause seems to be exempt from tax "death-cum-retirement gratuity" under the revised pension rules of the Central Government or any similar scheme of the Central Government. This is a desirable amendment. But the relief should not be restricted to payments covered by pension rules of the Central Government or of a State Government. In all fairness it should be extended to gratuity payments made by private employers. To enact a provision like this may be tantamount to discrimination contrary to Article 14 of the Constitution.

Clause 8(b).

The explanation should be deleted because depreciation on the original cost of the asset is allowed so that the assessee might be able to replace the asset depreciated. If the explanation is retained the accumulated depreciation fund will not be sufficient to replace the capital asset. It may

adversely affect a number of displaced persons who have set up small industries with the help of grants from Government. Such refugees will not be able to rebuild or replace the machinery after it is worn out.

Clause 12 (c)

It will not be fair to make the employee pay the tax over again for the default of the employer who had already deducted the tax at the source.

Clause 13 (c)—

On advance payments of tax interest at 2% per annum was allowed. This should not be dropped. The investigation Commission has recommended that the rate of 2% should be increased.

Clause 23

This clause seeks to introduce a new Section 46A in Act XI of 1922 which requires any person who is not domiciled in India or, who even if domiciled in India has no intention of returning to India, to obtain a tax clearance certificate before actually leaving the country. It is extremely desirable that *bona fide* Indian Tax-payers should not be subjected to harrasment and inconvenience because Pakistan has enacted a law of this character and has been subjecting non-Muslims to all sorts of difficulties and impediments. The Pakistan law on the subject is as follows :—

“Copy of Section 44 G of Pakistan Income Tax Act.

44G. Persons leaving Pakistan to obtain certificates.—

1. Subject to such exceptions as may be made by the Central Government, no person who is not domiciled in Pakistan shall leave any Province of Pakistan either by land, sea or air unless he first obtains from the competent authority a taxation certificate stating that he has no liabilities under this Act or under the Business Profits Tax Act, 1947, or that satisfactory arrangements have been made for the payment of all such axes which are or may become payable by that person :

Provided that if the competent authority is satisfied that such person intends to return to Pakistan he may issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within a specified period.

2. If the owner or charterer of any ship or aircraft carrying persons from any place in a Province of Pakistan issues an authority to travel by such ship or aircraft to any person to whom sub-section (1) applies without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be liable to pay the amount, of tax, if any, which has or may become due and payable by such person and shall also be punishable with fine which may extend to two thousand rupees.

Explanation:—

For the purposes of this sub-section the expressions “owner” and “charterer” include any representative, agent or employee who may be empowered by the owner or charterer to issue an authority to travel by the ship or aircraft.

(3) The Central Government may make rules under this section prescribing the competent authority mentioned in sub-section (1) and regulating any other matter necessary for or incidental to the purpose of carrying out the provisions of this section”.

The proposed Section 46A should be confined to persons not domiciled in India who want to leave any State of India.

It is also recommended that sub-section (2) of 46A should be suitably amended so that an Airways Company or a Steamer Company should not be made liable to pay the entire amount of tax which an assessee ought to have paid. Powers should be given to the Court to inflict fine in proper cases not exceeding the amount of the tax.

Clause 34

This clause is meant to negative a Judgment of the Calcutta High Court and seeks to validate notices issued under the existing Section 34 as amended in 1948. It is to be seriously considered how far retrospective effect should be given to provisions of this character. It would be advisable to wait till the judgment of the Supreme Court of India is delivered in the Calcutta case.

N. C. CHATTERJEE.

NEW DELHI,

The 7th November, 1952.

III

I agree with the above minute of dissent given by Shri N. C. Chatterjee.

TULSIDAS KILACHAND.

NEW DELHI,

The 7th November, 1952.

IV

I agree with the minute of dissent given by Shri N. C. Chatterjee with regard to clause 4(g), clause 6 and clause 23 of the Bill.

DAMODARA MENON.

NEW DELHI,

The 7th November, 1952.

V

We do not agree with the majority view of the Select Committee that the President of the Income-tax Appellate Tribunal should necessarily be a judicial member. We are of the opinion that as proposed in the Bill the present invidious distinction between judicial and accountant members should be abolished. Once in the Tribunal, they all hold the same position and perform the same functions in the matter of deciding appeals and making references to the High Courts. A judicial member as such is not better qualified for discharging the more or less administrative functions which are vested in the President. An accountant member is equally well qualified to perform them and it does not seem equitable to debar him from presidentship.

R. R. MORARKA.

S. L. DHUSIYA.

P. NATESAN.

NEW DELHI,

The 7th November, 1952

Clause 4H contain the following:

“and the question” whether any and if so what instructions were issued shall not be enquired into by any Appellate Authority under this Act or by any Court.” The Select Committee have omitted this provision as in its opinion these words constituted an undesirable restrictions on the powers of the Appellate Authority or the Court as the case may be. I am, however, sorry that the Select Committee failed to fully appreciate the significance of the preceding provisions in this Sub-clause. The first three letters of this sub-clause read as follows:-

“The Director of Inspection, the Commissioner or the Inspecting Assistant Commissioner, as the case may be, may issue such instructions as he thinks fit for the guidance of any Income Tax Officer subordinate to him in the matter of any assessment”.

There is no objection to the issue of any general instructions a copy of which may be placed on the file and which may be available to every assessee. The Appellate Authority can also easily take note of such instruction but these words sanction and authorise the issue of any secret instructions in respect of individual assesseees to the Income Tax Officer. These instructions may even be oral or even if they are in writing, the assessee need not necessarily be apprised of their existence, and the Appellate Authority also may never come to know about them.

The most fundamental canon of justice is before you pass any order against any person, you must first apprise him of the facts and then hear what he has to say in his defence. This fundamental axiom of justice is violated by the issue of such instructions at the back of the assessee who may not even know the ground or background of the issue of such instructions in his case. It has been said that such instructions sometimes favour the assessee.

It may be so in some cases but it is not rare to find that instructions to the detriment of the assesseees are given by higher officers specially Inspecting Assistant Commissioners to the Income Tax Officers without the assesseees ever coming to know that the Income Tax Officer's judgment was an inspired one. In fact it is a misnomer to call such an inspired judgment as the judgment of the Income Tax Officer. The assessee in such a case feels as if he has been stabbed from behind by some individual and he can never get confidence in the rightness of the decision of the Income Tax Authorities. Such a course is also unfair to the Income Tax Officer who loses his initiative and finds his intellect mortgaged to some higher officer. In cases when he does not agree with the point of view of his superior officer and he has to perforce pass an order against his will. I think no oral instructions should be allowed to be given in the case of individual and every instruction to the detriment of the assessee must be put on record in black and white. It is simply revolting to find that the assessee is not brought face to face with the Inspecting Assistant Commissioner and he is not afforded an opportunity to explain circumstances which weigh against him in the mind of the Inspecting Assistant Commissioner or some higher officer. One's sense of fairplay and justice is not satisfied when one has to countenance a state of things in which orders can be passed without hearing the person against whom these orders are made in secret and behind his back. Many complaints are made by unknown

people against the assessee and enquiries are also made without the assessee knowing anything about them. If the assessee is not told about these and the higher officials or Assistant Inspecting Commissioners get impressions about particular assessee without giving the assessee any chance of removing them nothing but injustice may result in many cases. It is, therefore, in my opinion absolutely necessary to create confidence among the people that it should be ruled that no order to the detriment of any assessee should be passed as a result of instructions or otherwise by the higher officers unless they are pleased to hear the assessee and no Income Tax Officer should give effect to any such secret instruction unless he affords an opportunity to the assessee to hear what he has to say. In proper cases he can take the statements of the assessee and send the same to the higher officials for consideration. The assessee cannot even urge in appeal anything against such secret instruction as he is not supposed to be apprised of them. This kind of ghost assessment is not only unjustifiable and annoying but is extremely unjust and should not be countenanced. Therefore, the rule should be changed and it must be insisted that the assessee is apprised of such instructions and is heard about them.

II

The Investigation Commission had recommended that the Appellate Assistant Commissioner should not be subordinate to the C.B.R. so far as the promotions, transfers etc. are concerned. I also submitted many a time in the House that this reform was an overdue one and should be implemented as soon as possible. It was expected that the Government will give effect to this recommendation as it was calculated to inspire confidence in the general public and in the words of the Commission not only calculated to do justice but to make it appear that justice was done. This point was raised by several members of the Select Committee but unfortunately this matter could not be gone into as the particular section of the Income Tax Act in which the "direct control" by the C.B.R. was specifically mentioned was not sought to be amended. The principle of separation of the judiciary from the executive is an accepted one. There might be some administrative difficulties but no reform of any kind is possible unless such difficulties are attempted to be overcome. It is regretted that the Ministry did not agree with the desirability of implementing this reform at once but it is not too much to hope that whenever in future the Income Tax Act is sought to be amended, Ministry will be pleased to give effect to this reform. It appears that the Investigation Commission and the Government are themselves very keen that the Appellate Assistant Commissioners may act with impartiality and they take pains in showing by figures that they do act impartially. There is no reason why this oft repeated demand supported as it is by the recommendation of the Investigation Commission should not be met as soon as possible. I would request the Government to take early steps to have the way for such reform and mould its future policy in such a manner that the administrative difficulties if any may disappear and no adverse consequences may follow when the Government are pleased to give effect to this reform. I must, however, submit that like justice, reforms delayed are reforms denied. Early steps should be taken to bring about this reform.

III

The Select Committee decided not to omit the word judicial from sub-section IV of Section 5A of the principal Act. In my humble opinion as between Accountant Members and judicial members there should be no distinction so far as the post of the President of the Tribunal is concerned. It is invidious to make a distinction to this nature between judges who exercise the same powers and functions so far as the actual cases go. This point was considered at length by the Select Committee and it was brought to our notice that many of the Accountant Members of the Tribunal have a much longer standing to their credit than the judicial members and yet these accountant members have no chance of holding a post of President simply because they are accountant members. I fail to see why any inferiority should attach to any account member simply because he is an accountant member. I would, therefore, like that the amendment for deletion of word judicial from sub-section IV should be accepted.

NEW DELHI;

THAKUR DAS BHARGAVA

The 7th November, 1952.

THE INDIAN INCOME-TAX (AMENDMENT) BILL, 1952

(AS AMENDED BY THE SELECT COMMITTEE)

(Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

further to amend the Indian Income-tax Act, 1922.

BE it enacted by Parliament as follows:—

1. Short title and commencement.—(1) This Act may be called the Indian Income tax (Amendment) Act, 1952.

(2) Subject to any special provision made in this behalf in this Act, it shall be deemed to have come into force on the 1st day of April, 1952. 5

2. Amendment of section 2, Act XI of 1922.—In section 2 of the Indian Income-tax Act, 1922 (hereinafter referred to as the principal Act),—

(a) for clause (2), the following clause shall be substituted, 10
namely:—

“(2) ‘assessee’ means a person by whom income-tax * * * or any other sum of money is payable under this Act, and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the loss sustained by him or of the amount of refund due to him;”;

(b) clause (6) shall be renumbered as clause (5A), and after clause (5A) as so renumbered, the following clause shall be inserted, namely:— 15

“(6) ‘Director of Inspection’ means a person appointed to be a Director of Inspection under section 5, and includes a person appointed to be an Additional Director of Inspection, a Deputy Director of Inspection or an Assistant Director of Inspection;”;

(c) after clause (6D), the following clause shall be inserted, namely:— 20

“(6E) ‘Inspector of Income-tax’ means a person appointed to be an Inspector of Income-tax under section 5;”;

(d) for clause (11), the following clause shall be substituted, namely:— 25

“(11) ‘previous year’ means—

(i) in respect of any separate source of income, profits and gains— 30

(a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have

been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then, at the option of the assessee, the year ending on the date to which his accounts have been so made up:

Provided that where in respect of a particular source of income, profits and gains an assessee has once been assessed, or where in respect of a business, profession or vocation newly set up an assessee has exercised the option under sub-clause (c), he shall not, in respect of that source or, as the case may be, business, profession or vocation exercise the option given by this sub-clause so as to vary the meaning of the expression 'previous year' as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit to impose; or

(b) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf; or

(c) where a business, profession or vocation has been newly set up in the financial year preceding the year for which assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub-clause (b), or, if the accounts of the assessee are made up in respect of a period not exceeding twelve months from the date of the setting up of the business, profession or vocation and the case is not one for which a period has been determined under sub-clause (b), then, at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to the date to which his accounts have been so made up:

Provided that when the date to which the accounts have been so made up does not fall between the setting up of the business, profession or vocation and the next following 31st day of March inclusive, it shall be deemed that there is no previous year for the said assessment year and the previous year which would otherwise have been determined according to the option exercised by the assessee shall be deemed to be the previous year for the next succeeding assessment year;

(ii) in respect of the share of the income, profits and gains of a firm where the assessee is a partner in the firm and the firm has been assessed as such, the period as determined for the assessment of the income, profits and gains of the firm;".

3. Amendment of section 4, Act XI of 1922.—(1) In section 4 of the principal Act,—

(a) in sub-section (1),—

(i) after the third proviso, the following further provisos shall be inserted, namely:—

“Provided further that, in the case of a person who was not resident in the taxable territories in two out of the three years immediately preceding the previous year, so much of the income, profits and gains referred to in sub-clause (iii) of clause (b) as accrued or arose to him without India, shall not be included in his total income chargeable in any year subsequent to the year ending on the 31st day of March, 1951, whether his assessment for that year has or has not been completed before the commencement of the Indian Income-tax (Amendment) Act, 1952:

Provided further that, in the case of a person resident in the taxable territories to whom the preceding proviso of paragraph 8 of the Part B States (Taxation Concessions) Order, 1950, does not apply, so much of the income, profits and gains referred to in sub-clause (iii) of clause (b) as accrued or arose to him without India and were not chargeable under this Act, unless brought into or received in the taxable territories, shall not be included in his total income if—

(i) such income, profits and gains are brought into or received in the taxable territories after the 2nd day of September, 1951, and before the 1st day of April, 1954;

(ii) half of the amount of such income, profits and gains is invested, within three months of the receipt thereof in the taxable territories, in securities of the Central Government or of a State Government purchased through the Reserve Bank of India and kept with the said Bank for custody for a minimum period of two years; and

(iii) * * * * the amount of any income-tax, interest or penalty or any other sum due from such person under this Act on the date of receipt of such income, profits and gains in the taxable territories is paid within the said three months.”;

(ii) In *Explanation 2*, the following words shall be added at the end, namely:—

“but any pension payable outside India to a person residing permanently outside India shall not be deemed to accrue or arise in the taxable territories, if the pension is payable to a person referred to in article 314 of the Constitution or to a person, who, having been appointed before the 15th August, 1947, to be a Judge of the Federal Court or of a High Court within the meaning of the Government of India Act, 1935, continues to serve on or after the commencement of the Constitution as a Judge in India.”

(b) in sub-section (3),—

(i) for clause (i) and (ia), the following clause shall be substituted, namely:—

“(i) Subject to the provisions of clause (c) of sub-section (1) of section 16, any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable territories, and in the case of a property so held in part only for such purposes, the income applied or finally set apart for application thereto:

Provided that such income shall be included in the total income—

(a) if it is applied to religious or charitable purposes without the taxable territories, but the Central Board of Revenue may, in the case of a property held under trust or other legal obligation created before the commencement of the Indian Income-tax (Amendment) Act, 1952, the income wherefrom is so applied, by general or special order, direct that it shall not be included in the total income;

(b) in the case of income derived from a business carried on on behalf of a religious or charitable institution, unless the income is applied wholly for the purposes of the institution and either—

(i) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, or

(ii) the work in connection with the business is mainly carried on by the beneficiaries of the institution;

(c) if it is applied to purposes other than religious or charitable purposes or ceases to be accumulated or set apart for application thereto in which case it shall be deemed to be the income of the year in which it is so applied or ceases to be so accumulated or set apart;

(ii) in clause (xii), for the figures “1952” the figures “1954” shall be substituted;

(iii) after clause (xiii), the following clauses shall be inserted, namely:—

“(xiv) Any income received by an employee of a foreign enterprise, not engaged in any trade or business in the taxable territories, as remuneration for services rendered by him during the course of his stay in the taxable territories, where such stay does not exceed in the aggregate a period of ninety days in any year and where such remuneration is not liable to be deducted from the income, profits and gains chargeable under this Act.

(xv) Any income received as remuneration, whether directly or indirectly, from the Government of a foreign State by any person who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by the Central Government and the Government of that foreign State (the terms whereof provide for the exemption given by this clause) and any other income of such person or of the members of his family accompanying him to India, which accrues or arises without the taxable territories, and is not deemed to accrue or arise in the taxable territories, upon which such person or the members of his family are required to pay any income or social security tax to the Government of that foreign State. 5 10

(xvi) Any income from interest on, or from premium on the redemption of, any bonds issued by the Central Government under a loan agreement between the Central Government and the International Bank for Reconstruction and Development, or by any industrial undertaking or financial corporation in India under a loan agreement with the said Bank which is guaranteed by the Central Government, except where the holder of such bond is a person resident in the taxable territories. 15 20

(xvii) Interest on the $3\frac{1}{2}$ per cent. Ten Year Treasury Savings Deposit Certificates issued by or under the authority of the Central Government for an amount not exceeding the maximum amount which an assessee is entitled to deposit in such certificates. 25

(xviii) Interest on securities held by the Issue Department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949. 30

(xix) Any daily allowance received by * * * any person, * * * by reason of his membership of the Dominion Legislature or of the Constituent Assembly or of Parliament or of any Provincial or State Legislature or of any Committee thereof. 35

(e) in the last paragraph, in the definition of "charitable purpose", the word, letters and brackets "clause (ia)" shall be omitted, and for the words "income of a private religious trust" the words "income from property held under a trust or other legal obligation for private religious purposes" shall be substituted. 40

(2) The amendments made by sub-clause (iii) of clause (b) of sub-section (1) shall be deemed to be operative in relation to all assessments for any year whether such assessments have or have not been completed before the commencement of the Indian Income-tax (Amendment) Act, 1952. 45

4. Amendment of section 5, Act XI of 1922.—In section 5 of the principal Act,—

(a) in sub-section (1),—

(i) after clause (a), the following clause shall be inserted, namely:— 0

"(aa) Directors of Inspection,";

(ii) after clause (d), the following clause shall be inserted, namely:—

“(e) Inspectors of Income-tax.”;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Central Government may appoint as many Directors of Inspection as it thinks fit, and Directors of Inspection shall, subject to the control of the Central Board of Revenue, perform such functions of any other Income-tax authority as may be assigned to them by the Central Government.”;

(c) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The Central Government may appoint as many Commissioners of Income-tax as it thinks fit and they shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of incomes or of such cases or classes of cases as the Central Board of Revenue may direct, and where such directions have assigned to two or more Commissioners of Income-tax the same area or the same persons or classes of persons or the same income or classes of incomes or the same cases or classes of cases, they shall have concurrent jurisdiction subject to any orders which the Central Board of Revenue may make for the distribution and allocation of work to be performed.”;

(d) for sub-section (3), the following sub-sections shall be substituted, namely:—

“(3) The Central Government may appoint as many Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers of Class I service as it thinks fit, and the Commissioner may, subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, appoint as many Income-tax Officers of Class II service and Inspectors of Income-tax as may, from time to time, be sanctioned by the Central Government.

(3A) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an income-tax authority may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.”;

(e) in the second sentence of sub-section (5), the words “with the previous approval of the Central Board of Revenue” shall be omitted;
* * * * *

(f) after sub-section (5), the following sub-section shall be inserted, namely:—

“(5A) Inspectors of Income-tax shall perform such functions in the execution of this Act as are assigned to them by the Income-tax Officer or other income-tax authority under whom they are appointed to work, and shall be subordinate to such officer or authority.”;

(g) for sub-section (7), the following sub-section shall be substituted, namely:—

“(7) For the purposes of this Act,—

* * * * *

(i) Inspecting Assistant Commissioners shall be subordinate to the Director of Inspection and to the Commissioner of Income-tax within whose jurisdiction they perform their functions; 5

(ii) Income-tax Officers shall be subordinate to the Director of Inspection, the Commissioner of Income-tax and the Inspecting Assistant Commissioner of Income-tax within whose jurisdiction they perform their functions.” 10,

(h) after sub-section (7A), the following sub-sections shall be inserted, namely:—

“(7B) The Director of Inspection, the Commissioner or the Inspecting Assistant Commissioner, as the case may be, may issue such instructions as he thinks fit for the guidance of any Income-tax Officer subordinate to him in the matter of any assessment, and for the purposes of making any inquiry under this Act (which he is hereby empowered to do), the Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner shall have all the powers that an Income-tax Officer has under this Act in relation to the making of inquiries.* * * * * 15 20

(7C) Whenever in respect of any proceeding under this Act an Income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the Income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor: 25

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be re-opened or that before any order for assessment is passed against him he be re-heard.”. 30

5. Amendment of section 5A, Act XI of 1922.—In section 5A of the principal Act,—

(a) in sub-section (2), the proviso shall be omitted; 35

(b) in sub-section (3), for the words beginning with “A judicial member shall be” and ending with the words and figures “the Auditors Certificates Rules, 1932:”, the following shall be substituted, namely:—

“A judicial member shall be a person who has for at least ten years either held a civil judicial post or been in practice as an advocate of a High Court, and an accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (XXXVIII of 1949) or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant:” 40 45

* * * * *

6. Amendment of section 7, Act XI of 1922.—In sub-section (1) of section 7 of the principal Act, in the proviso to Explanation 2, after the words “liable to income-tax any payment” the words “of death cum retirement 50

gratuity received after the 16th day of April, 1950, under the revised Pension Rules of the Central Government or under any similar scheme of a State Government or any payment" shall be inserted.

5 **7. Amendment of section 9, Act XI of 1922.**—(1) In section 9 of the principal Act,—

(a) in sub-section (1), * * * after clause (ii), the following proviso shall be inserted, namely:—

10 "Provided that for the purposes of making any assessment for the year ending on the 31st day of March, 1952, in respect of the property situated in an area affected by the Assam earthquake of 1950, the allowance on account of repairs referred to in clauses (i) and (ii) shall be increased up to a maximum of one half of the annual value thereof or the amount of expenditure proved to have been actually incurred for repairs, whichever is the less";

15 (b) for the first proviso to sub-section (2), the following proviso shall be substituted, namely:—

20 "Provided that, where the property is in the occupation of the owner for the purposes of his own residence, the annual value shall be determined in the same manner as if the property had been let to a tenant, so however that, where the sum so determined exceeds ten per cent. of the total income of the owner, the annual value of the property shall be deemed to be ten per cent. of such total income".

25 (2) The amendments made by * * * * * clause (a) sub-section (1) shall be deemed to be operative for any assessment for the year ending on the 31st day of March, 1952, whether made before or after the commencement of this Act, and where any such assessment has been made before such commencement it shall be lawful for the Income-tax
30 Officer to revise it, wherever necessary, to give effect to this amendment.

8. Amendment of section 10, Act XI of 1922.—In section 10 of the principal Act,—

(a) in sub-section (2),—

35 (i) in sub-clause (a) of clause (vi), for the figures "1952", the figures "1954" shall be substituted, and in clause (b) of the proviso to that clause, for the words "where full" the words "where, in the assessment of the assessee or if the assessee is a registered firm, in the assessment of its partners, full" shall be substituted;

40 (ii) in clause (via), for the words and figures "in the assessments for each of the five years commencing on the 1st day of April, 1949, and ending with the 31st day of March, 1954", the words and figures "in not more than five successive assessments for the financial years next following the previous year in which such buildings are erected and such machinery and plant installed and falling within the period commencing on the 1st day of April, 1949, and ending on the 31st day of March, 1959" shall be substituted, and in the proviso to that clause, for the words and figures
45 "on the 31st day of March, 1953" the words "on the 31st day of March immediately preceding the last financial year in which the
50

further sum referred to in this clause is admissible" and for the words "in the assessment for the year commencing next after that date", the words "in the assessment for such last financial year" shall respectively be substituted;

(iii) in clause (xv), for the words and brackets "(not being in the nature of capital expenditure or personal expenses of the assessee)" the words and brackets "(not being an allowance of the nature described in any of the clauses (i) to (xiv) inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee)" shall be substituted;

(i) in sub-section (5),—

(i) after clause (b), the following clause shall be inserted, namely:—

"(c) in the case of assets acquired by the assessee by way of gift or inheritance, the 'written-down-value' as in the case of the previous owner or the market value thereof whichever is the less:" and

(ii) at the end, the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the purposes of this sub-section, the expression "actual cost" means the actual cost of the assets to the assessee reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by Government or by any public or local authority, and any allowance in respect of any depreciation carried forward under clause (b) of the proviso to clause (vi) of sub-section (2) shall be deemed to be depreciation 'actually allowed';".

9. Amendment of section 14, Act XI of 1922.—In section 14 of the principal Act, in clause (c) of sub-section (2), for the words and letter "Part B State" the words "the State of Jammu and Kashmir" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1950.

10. Amendment of section 15C, Act XI of 1922.—In section 15C of the principal Act,—

(a) in sub-section (2),—

(i) in clause (ii), for the word "three" the word "six" shall be substituted;

(ii) for clauses (iii) and (iv) beginning with the word "employs" and ending with the words "by human agency", the following shall be substituted, namely:—

"(iii) employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power."

(b) for sub-section (6), the following sub-section shall be substituted, namely:—

"(6) The provisions of this section shall apply to the assessment for the financial year next following the previous year in

which the assessee begins to manufacture or produce articles and for the four assessments immediately succeeding."

5 11. Amendment of section 17, Act XI of 1922.—In sub-section (1) of section 17, after the first proviso, the following further proviso shall be inserted, namely :—

10 "Provided further that where any such person satisfies the Income-tax Officer that he was prevented by sufficient cause from making such declaration on the first occasion on which he became assessable and his failure to make such declaration has not resulted in reducing his liability to tax for any year, the Income-tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, allow such person to make the declaration at any time after the expiry of the period specified, and such declaration shall have effect in relation to the assessment for the year in which the declaration is made (if such assessment had not been completed before such declaration) and all assessments thereafter."

12. Amendment of section 18, Act XI of 1922.—In section 18 of the principal Act,—

20 (a) in sub-section (2B), for the words "at the rate or rates applicable to the estimated income of the assessee under this head", the following shall be substituted, namely :—

"on the estimated income of the assessee under this head in accordance with the provisions of clause (b) of sub-section (1) of section 17 :

25 Provided that where—

30 (i) the person not so resident has obtained a certificate in writing from the Income-tax Officer (which certificate the Income-tax Officer shall be bound to give in every proper case on the application of the assessee) stating that income-tax and super-tax may be deducted at the rates specified therein, or

35 (ii) the Income-tax Officer has, by an order in writing, required the person responsible for making payment to deduct income-tax and super-tax at the rates specified in that order, the person responsible for making payment shall, until such certificate or order is cancelled by the Income-tax Officer, deduct income-tax and super-tax at the rates specified in such certificate or order, as the case may be."

40 (b) for sub-sections (3A), (3B), (3C), (3D) and (3E), the following sub-sections shall be substituted, namely :—

45 "(3A) The person responsible for paying any income chargeable under the head "Interest on securities" to a person whom he has no reason to believe to be resident in the taxable territories, shall, at the time of payment, deduct super-tax on the amount of such interest—

(i) if such person is a company, at the rate applicable to a company,

(ii) if such person is not a company, in accordance with the provisions of clause (b) of sub-section (1) of section 17:

Provided that where such person is not a company, the proviso to sub-section (2B) shall apply to the deduction of super-tax under this sub-section as it applies to the deduction of super-tax under sub-section (2B). 5

(3B) Any person responsible for paying to a person not resident in the territories any interest not being "Interest on securities" or any other sum chargeable under the provisions of this Act shall, at the time of payment, unless he is himself liable to pay any income-tax and super-tax thereon as an agent, deduct income-tax at the maximum rate and super-tax at the rate applicable to a company or in accordance with the provisions of sub-clause (b) of sub-section (1) of section 17, as the case may be: 10

Provided that where the person not resident is not a company, the proviso to sub-section (2B) shall apply to the deduction of income-tax and super-tax under this sub-section as it applies to the deduction of income-tax and super-tax under sub-section (2B): 15

Provided further that nothing in this section shall apply to any payment made in the course of transactions in respect of which a person responsible for the payment is deemed under the first proviso to section 43 not to be an agent of the payee. 20

(3C) Where the person responsible for paying any sum chargeable under this Act other than interest, to a person not resident in the taxable territories, considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Income-tax Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable and upon such determination tax shall be deducted therefrom by the person responsible for making such payment in accordance with the provisions of sub-section (3B). 25 30

(3D) The principal officer of an Indian company or a company which has made such effective arrangements as may be prescribed for the deduction of super-tax from dividends shall, at the time of paying any dividend to a shareholder whom the principal officer has no reason to believe to be resident in the taxable territories, deduct super-tax on the amount of such dividend as increased in accordance with the provisions of sub-section (2) of section 16— 35

(i) if the shareholder is a company, at the rate applicable to a company, 40

(ii) if the shareholder is a person other than a company, in accordance with the provisions of clause (b) of sub-section (1) of section 17:

Provided that in the case of a shareholder other than a company, the proviso to sub-section (2B) shall apply to the deduction of super-tax under this sub-section as it applies to the deduction of super-tax under sub-section (2B). ; 45

(c) in sub-section (5), after the words "Any deduction made" the words "and paid to the account of the Central Government" shall be inserted; after the words "given to him therefor" the words "on the 50

production of the certificate furnished under sub-section (9) or section 20, as the case may be." shall be inserted, and after the second proviso, the following further proviso shall be inserted, namely:—

5 "Provided further that where any security or share in a company is owned jointly by two or more persons not constituting a partnership, credit in respect of the tax deducted or in respect of any sum by which the dividend has been increased under sub-section (2) of section 16, may be given to each such person in the same proportion in which the interest on such security or dividend
10 on such share has been included in his total income.";

 (d) in sub-section (7), for the words, brackets, figures and letters "sub-sections (3D) and (3E)" the word, brackets, figure and letter and word "(3A" and "or (3C)" shall be omitted.

15 (e) in sub-section (9), for the brackets, figures, letters and word "(3C), (3D) or (3E)", the word, brackets, figure and letter "or (3D)" shall be substituted;

 (f) after sub-section (9), the following *Explanation* shall be inserted, namely:—

20 "*Explanation.*—For the purposes of this section and section 20A, the expression 'person responsible for paying' means—

25 (i) in the case of payments of income chargeable under the head 'Salaries' other than payments by the Central Government or the Government of a State, the employer himself or if the employer is a company, the company itself including the principal officer thereof;

30 (ii) in the case of payments of income chargeable under the head 'Interest on securities', other than payments made by or on behalf of the Central Government or the Government of a State, the local authority or company including the principal officer thereof;

 (iii) in the case of payment of interest not being 'Interest on securities', the payer himself or if the payer is a company, the company itself including the principal officer thereof."

35 **13. Amendment of section 18A, Act XI of 1922.**—In section 18A of the Principal Act,—

 (a) in sub-section (1) (a), for the words "if that total income exceeded six thousand rupees", the words "if that total income exceeded the maximum amount not chargeable to tax in his case by two thousand five hundred rupees" shall be substituted;

40 (b) in sub-section (3), for the words "is likely to exceed six thousand rupees," the words "is likely to exceed the maximum amount not chargeable to tax in his case by two thousand five hundred rupees." shall be substituted;

45 (c) to sub-section (5), the following further proviso shall be added, namely:—

 "Provided further that for any period beginning with the 1st day of April, 1952, interest shall be payable only on the amount by which the aggregate sum of any instalments paid

during any financial year in which they are payable under this section exceeds the amount of the tax determined on regular assessment calculated as hereunder—

(i) in respect of such instalments paid in any financial year before the said date, from the said date to the date of the regular assessment; 5

(ii) in respect of such instalments paid after the said date, from the beginning of the financial year next following to the date of the regular assessment."

(d) in sub-section (6),— 10

(i) in the first proviso after the word "Provided", the word "further" shall be inserted and before that proviso, the following proviso shall be inserted, namely:—

"Provided that for any period after the 31st day of March, 1952, interest shall be payable at the rate of four per cent. per annum:"; 15

(ii) after the last proviso, the following further proviso shall be inserted, namely:—

"Provided further that in such cases and under such circumstances as may be prescribed, the Income-tax Officer may, reduce or waive the interest payable by the assessee." 20

14. Amendment of section 22, Act XI of 1922.—In section 22 of the principal Act,—

(a) after sub-section (2), the following sub-section shall be inserted, namely:— 25

"(2A) If any person, who has not been served with a notice under sub-section (2) has sustained a loss of profits or gains in any year under the head 'Profits and gains of business, profession or vocation', and such loss or any part thereof would ordinarily have been carried forward under sub-section (2) of section 24, he shall, if he is to be entitled to the benefit of the carry forward of loss in any subsequent assessment, furnish within the time specified in the general notice given under sub-section (1) or within such further time as the Income-tax Officer in any case may allow, all the particulars required under the prescribed form of return of total income and total world income in the same manner as he would have furnished a return under sub-section (1) had his income exceeded the maximum amount not liable to income-tax in his case, and all the provisions of this Act shall apply as if it were a return under sub-section (1)." 30 35

(b) in sub-section (4), after the words "such accounts or documents as the Income-tax Officer may require" the following shall be inserted, namely:— 40

"* * * or to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including with the previous approval of the Commissioner, a statement of all assets and liabilities not included in the accounts) as the Income-tax Officer may require for the purposes of this section:" 45

15. Amendment of section 24, Act XI of 1922.—In section 24 of the principal Act,—

(a) in sub-section (1), for the first proviso, the following proviso shall be substituted, namely:—

“Provided that in computing the income, profits and gains chargeable under any head or the loss of profits and gains falling under any head, so much of any loss of profits and gains as would but for the loss have accrued or arisen within the State of Jammu and Kashmir, shall not be taken into account except to the extent of the amount of income, profits and gains, if any, which would be exempt under the provisions of clause (c) of sub-section (2) of section 14.”;

(b) in sub-section (2),—

(i) for the words “under the head ‘Profits and gains of business, profession or vocation’,” the words “in any business, profession or vocation” shall be substituted;

(ii) for clause (a) of the proviso, the following clause shall be substituted, namely:—

“(a) where the loss sustained is in any business, profession or vocation, so much of such loss as is referred to in the first proviso to sub-section (1) shall not be set off except against the profits and gains accruing or arising in the State of Jammu and Kashmir from the same business, profession or vocation and exempt from tax under the provisions of clause (c) of sub-section (2) of section 14.”

16. Amendment of section 30, Act XI of 1922.—In section 30 of the principal Act, * * * in sub-section (1A), the brackets, figures, letters “sub-section (3D)” shall be substituted;

* * * * *

17. Amendment of section 33A, Act XI of 1922.—In section 33A of the principal Act,—

(i) in sub-section (2), after the words “made within one year from the date of the order” the words and brackets “(or within such further period, as the Commissioner may think fit to allow on being satisfied that, the assessee was prevented by sufficient cause from making the application within that period)” shall be inserted; and

(ii) after sub-section (2), the following *Explanation* shall be inserted, namely:—

“*Explanation.*—For the purposes of sub-sections (1) and (2), the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner.”

18. Amendment of section 34, Act XI of 1922.—In section 34 of the principal Act,—

(a) in the proviso to sub-section (2), the words “of the High Court or of the Privy Council” shall be omitted;

(b) in the second proviso to sub-section (3) for the word ‘sub-section’, the word ‘section’ shall be substituted, and for the words “in pursuance of”, the words “to an assessment or re-assessment

made on the assessee or any person in consequence of or to give effect to any finding or direction contained in" shall be substituted.

19. Amendment of section 35, Act XI of 1922.—In section 35 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely:—

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“(5) Where in respect of any completed assessment of a partner in a firm it is found on the assessment or re-assessment of the firm or on any reduction or enhancement made in the income of the firm under section 31, section 33, section 33A, section 33B, section 66 or section 66A that the share of the partner in the profit or loss of the firm has not been included in the assessment of the partner or, if included, is not correct, the inclusion of the share in the assessment or the correction thereof, as the case may be, shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply thereto accordingly, the period of four years referred to in that sub-section being computed from the date of the final order passed in the case of the firm.

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(6) Where the excess profits tax or the business profits tax payable by an assessee has been modified in appeal, revision or any other proceeding, or where any excess profits tax or business profits tax has been assessed after the completion of the corresponding assessment for income-tax [whether before or after the commencement of the Indian Income-tax (Amendment) Act, 1952], and in consequence thereof it is necessary to re-compute the total income of the assessee chargeable to income-tax, such recomputation shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply accordingly, the period of four years referred to in that sub-section being computed from the date of the order making or modifying the assessment of such excess profits tax or business profits tax.

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Explanation.—For the purposes of sub-section (6), where the assessee is a firm, the provisions of sub-section (5) shall also apply as they apply to the rectification of the assessment of the partners of the firm.

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(7) Where the assessment of a company in whose case an order under section 23A has been made is modified in appeal, revision or any other proceeding or the order under section 23A is cancelled, or varied, and in consequence thereof it is necessary to re-compute the total income of the shareholders, such recomputation shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (1) shall apply thereto accordingly, the period of four years referred to in that sub-section being computed from the date of the final order passed in the case of the company.

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20. Amendment of section 37, Act XI of 1922.—Section 37 of the principal Act shall be numbered as sub-section (1) of that section, and

after sub-section (1) as so numbered, the following sub-section shall be inserted, namely :—

“(2) Subject to any rules made in this behalf, any authority referred to in sub-section (1) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

Provided that an Income-tax Officer shall not—

(a) impound any books of account or other documents without recording his reasons for so doing ; or

(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefor.”

21. Amendment of section 46, Act XI of 1922.—In sub-section (7) of section 46 of the principal Act, for the proviso, the following provisos and *Explanation* shall be substituted, namely :—

“Provided that the period of one year herein referred to shall—

(i) where an assessee has been treated as not being in default under section 45 as long as his appeal is undisposed of, be reckoned from the date on which the appeal is disposed of;

(ii) where recovery proceedings in any case have been stayed by any order of a court, be reckoned from the date from which the order is withdrawn;

(iii) where the date of payment of tax has been extended by an income-tax authority, be reckoned from the date up to which the time for payment had been extended;

(iv) where the sum payable is allowed to be paid by instalments, from the date on which the last of such instalments was due:

Provided further that nothing in the foregoing proviso shall have the effect of reducing the period within which proceedings for recovery can be commenced, namely, after the expiration of one year from the last day of the financial year in which the demand is made.

Explanation.—A proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore referred to, and for the removal of doubts it is hereby declared that the several modes of recovery specified in this section are neither mutually exclusive, nor affect in any way any other law for the time being in force relating to the recovery of debts due to Government, and it shall be lawful for the Income-tax Officer, if for any special reasons to be recorded he so thinks fit, to have recourse to any such mode of recovery notwithstanding that the tax due is being recovered from an assessee by any other mode.”

22. Insertion of new section 46A in Act XI of 1922.—After section 46 of the principal Act, the following section shall be inserted, namely:—

‘46A. Persons leaving India to obtain tax clearance certificates.—

(1) Subject to such exceptions as may be made by the Central Government, no person who is not domiciled in India, or who, even if domiciled in India at the time of his departure, has, in the opinion of an Income-tax authority, no intention of returning to India, shall leave the territory of India by land, sea or air unless he first obtains from such authority as may be appointed by the Central Government in this behalf (hereinafter in this section referred to as the “competent authority”) a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940 (XV of 1940), or the Business Profits Tax Act, 1947 (XXI of 1947), or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person:

Provided that if the competent authority is satisfied that such person intends to return to India, he may issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within such period as may be specified in the certificate.

(2) If the owner or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside the territory allows any person to whom sub-section (1) applies, to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be personally liable to pay the whole or any part of the amount of tax, if any, payable by such person as the Income-tax Officer may, having regard to the circumstances of the case, determine * * * * *

Explanation.—For the purposes of this sub-section the expressions “owner” and “character” include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

(3) In respect of any sum payable by the owner or charterer of any ship or aircraft under sub-section (2), the owner or charterer, as the case may be, shall be deemed to be an assessee in default within the meaning of sub-section (1) of section 46.

(4) The Central Government may make rules for regulating any matter necessary for, or incidental to, the purpose of carrying out the provisions of this section.

23. Amendment of section 49B, Act XI of 1922.—Section 49B of the principal Act shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) For the purposes of sub-section (1), income-tax shall be deemed to include agricultural income-tax assessed on a company by any State Government other than the Government of Jammu and Kashmir, and where any shareholder proves that the company has been so assessed to agricultural income-tax, he shall be entitled to

the reduction from the tax payable by him under this Act of a sum equal to—

(a) the appropriate agricultural income-tax (reduced by the amount of refund, if any, allowed to him by the State Government), or

(b) the appropriate Indian income-tax on the amount of the dividend which has not been increased under sub-section (2) of section 16,

whichever is the less.

Explanation.—In this sub-section,—

(a) ‘appropriate agricultural income-tax’ means such proportion of the agricultural income-tax as the amount of dividend which has not been increased under sub-section (2) of section 16 bears to the total profits of the company assessed to agricultural income-tax; and

(b) ‘appropriate Indian income-tax’ means such proportion of the income-tax payable by the shareholder under this Act as the amount of dividend which has not been increased under sub-section (2) of section 16 bears to the total income of the shareholder.”

24. Amendment of section 49D, Act XI of 1922.—For section 49D of the principal Act, the following section shall be substituted, namely:—

“49D. *Relief in respect of incomes accruing or arising outside the taxable territories.*—(1) If any person who is resident in the taxable territories in any year proves that, in respect of his income which accrues or arises during that year without the taxable territories (and which is not deemed to accrue or arise in the taxable territories), he has paid in any country, with which there is no reciprocal arrangement for relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower.

(2) The Central Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall also apply in relation to any such income accruing or arising in the United Kingdom and chargeable under this Act for the year ending on the 31st day of March, 1950, or for the year ending on the 31st day of March, 1951 or for the year ending on the 31st day of March, 1952.

Explanation.—In this section,—

(i) the expression “Indian income-tax” means income-tax and super-tax charged in accordance with the provisions of this Act;

(ii) the expression “Indian rate of tax” means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the other provisions of this Act but before deduction of any relief due under this section, by the total income;

(iii) the expression “rate of tax of the said country” means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws of the said country after

deduction of all reliefs due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income assessed in the said country ;

(iv) the expression 'income-tax in relation to any country' includes any excess profits tax or business profits tax charged on the profits by the Government of that country and not by the Government of any part of that country or a local authority in that country."

25. Amendment of section 49E, Act XI of 1922.—In section 49E of the principal Act, for the words "against the tax" the words "against the tax, interest or penalty" shall be substituted.

26. Amendment of section 54, Act XI of 1922.—In sub-section (3) of section 54 of the principal Act,—

(i) for clause * * (b), the following clause shall be substituted, namely :—

* * * * *

"(b) of any such particulars to any person acting in the execution of this Act or of the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947), where it is necessary or desirable to disclose the same to him for the purposes of either this Act or the Taxation on Income (Investigation Commission) Act, 1947,"; or

(ii) in clause (d), after the word "Government" the words "or any Income-tax authority" shall be inserted and after the words "under this Act" the words "or under any other law for the time being in force authorising any Income-tax authority to exercise any powers thereunder" shall be inserted;

(iii) in clause (gg), for the words "registered accountant" the words "chartered accountant" shall be substituted.

27. Amendment of section 58C, Act XI of 1922.—In sub-section (1) of section 58C of the principal Act,—

(i) to clause (d), the following proviso shall be added, namely :—

"Provided that the fund may consist also of the accumulated balance due to an employee who has ceased to be an employee, and of interest (simple and compound) in respect thereof where such balance is retained in the fund in accordance with the provisions of clause (g).";

(ii) in clause (g), after the words "maintaining the fund" the words "unless at the request of the employee made in writing, the trustees of the fund consent to retain the whole or any part of the accumulated balance due to the employee in the fund to be drawn by him at any time on demand" shall be inserted.

28. Amendment of section 59, Act XI of 1922.—In sub-section (2) of section 59 of the principal Act, for clauses (c) and (d), the following clause shall be substituted, namely :—

"(c) prescribe the procedure for giving effect to the terms of any agreement for the avoidance of double taxation on income which may be entered into by the Central Government under section 49AA;"

29. Amendment of section 66A, Act XI of 1922.—In sub-section (1) of section 66A of the principal Act, for the words, brackets and figures “and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908 (Act V of 1908) shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force”, the following shall be substituted, namely:—

“and shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges:

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.”

* * * * *

30. Amendment of the Schedule, Act XI of 1922.—(1) In the Schedule to the principal Act,—

(a) for the words “Superintendent of Insurance”, wherever they occur, the words “Controller of Insurance” shall be substituted;

(b) in rule 2,—

(i) in clause (b), for the words “actuarial valuation made for the last inter-valuation period” the words “actuarial valuation made in accordance with the Insurance Act, 1938 (IV of 1938), in respect of the last inter-valuation period” shall be substituted;

(ii) for clause (d) of the proviso, the following shall be substituted, namely:—

(d) in respect of all renewal premiums received during the preceding year an amount calculated at such percentage thereof as is permissible under sub-section (2) of section 40B of the Insurance Act, 1938 (IV of 1938), as reduced by any expenditure which is not admissible under section 10 of this Act”;

(c) in clause (a) of rule 3, for the words “one-half” the words “four-fifths” shall be substituted, and in the second proviso for the words “one-half of such amount” the words and brackets “that proportion of such amount (one-half or four-fifths, as the case may be)” shall be substituted;

(d) for rule 8, the following rule shall be substituted, namely:—

“8. The profits and gains of the branches in the taxable territories of a person not resident in the taxable territories and carrying on any business of insurance, may, in the absence of more reliable data be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from the taxable territories bears to his total premium income.

For the purposes of this rule, the world income in relation to life insurance business of a person not resident in the taxable territories shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in the taxable territories.”

(2) The amendments made by sub-section (1) shall be deemed to be operative in relation to any assessment subsequent to the assessment for the year ending on the 31st day of March, 1951, whether such assessment has or has not been made before the commencement of this Act and where any such assessment has been made before such commencement it shall be lawful for the Income-tax Officer to revise it, wherever necessary, to give effect to such amendments.

* * * * *

31. Validity of certain notices and assessments.—For the removal of doubts it is hereby declared that the provisions of sub-sections (1), (2) and (3) of section 34 of the principal Act shall apply and shall be deemed always to have applied to any assessment or re-assessment for any year ending before the 1st day of April, 1948, in any case where proceedings in respect of such assessment or re-assessment were commenced under the said sub-sections after the 8th day of September, 1948, and any notice issued in accordance with sub-section (1) or any assessment completed in pursuance of such notice within the time specified in sub-section (3), whether before or after the commencement of the Indian Income-tax (Amendment) Act, 1952, shall, notwithstanding any judgment or order of any court, Appellate Tribunal or Income-tax authority to the contrary, be deemed to have been validly issued or completed, as the case may be, and no such notice, assessment or re-assessment shall be called in question on the ground merely that the provisions of section 34 did not apply or purport to apply in respect of an assessment or re-assessment for any year prior to the 1st day of April, 1948.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill further to amend the Indian Income-tax Act, 1922.

(As amended by the Select Committee)

HOUSE OF THE PEOPLE

THE CONSTITUTION (SECOND AMENDMENT) BILL, 1952

(Report of the Select Committee)

*date of reference
... presentation*

*11. 11. 52
18. 11. 52*



सत्यमेव जयते

PARLIAMENT SECRETARIAT
NEW DELHI

November, 1952

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THE CONSTITUTION (SECOND AMENDMENT) BILL, 1952.

MEMBERS OF SELECT COMMITTEE

Shri M. Ananthasayanam Ayyangar (*Chairman*).

Shri Bhawanji A. Khimji.

Shri Syamnandan Sahaya.

Shri Gajendra Prasad Sinha.

Shri K. L. More.

Pandit Lingaraj Misra.

Shri Rohini Kumar Chaudhuri.

Pandit Lakshmi Kanta Maitra.

Shri Mohanlal Saksena.

Shri N. M. Lingam.

Shri Udai Shankar Dube.

Choudhary Raghubir Singh.

Shri Nemi Chandra Kasliwal.

Shri Ranbir Singh Chaudhuri.

Shri Govind Hari Deshpande.

Sardar Amar Singh Saigal.

Shri Kotha Raghuramaiah.

Shri Krishnacharya Joshi.

Shri Liladhar Joshi.

Shri A. M. Thomas.

Shri C. R. Basapa.

Shri C. Madhao Reddi.

Shri Choithram Partabrai Gidwani.

Shrimati Renu Chakravartty.

Shri P. T. Punnoose.

Shri Girraj Saran Singh.

Dr. Manik Chand Jatav-vir.

H. M. Maharaja Rajendra Narayan Singh Deo.

Shri N. R. M. Swamy.

Shri Radha Charan Sharma.

Shri Ranjit Singh.

Shri P. N. Rajabhoj.

Shri Awadheshwar Prasad Sinha.

Shri Shankar Shantaram More.

Shri B. S. Murthy.

Shri N. C. Chatterjee.

Dr. Syama Prasad Mookerjee.

Shri C. C. Biswas.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill further to amend the Constitution of India was referred have considered the Bill, and I now submit this their Report with the Bill as amended by the Committee annexed hereto.

2. The Committee have explored the possibility of readjusting the representation of the territorial constituencies within the present limits laid down in sub-clause (b) of clause (1) of article 81 of the Constitution so that any amendment of the Constitution could be avoided. Although theoretically it may be possible to readjust the representation of the constituencies within these limits, the Committee consider that practical administrative difficulties will stand in the way of such readjustment. The Committee further feel that although the amendment proposed in the Bill will be sufficient to solve the immediate difficulty, it is desirable to avoid the necessity of amending this article periodically after every census. The Committee have accordingly decided that the upper limit of representation laid down in sub-clause (b) should be removed altogether thereby bringing article 81(1) (b) into line with article 170(2) relating to representation in the State Assemblies. At the same time the Committee wish to record that the upper limit of one member for every 750,000 of population should not, as far as practicable, be exceeded.

The Committee have accordingly substituted a new clause for clause 2 of the Bill.

3. The Bill was published in Part II, section 2 of the Gazette of India, dated the 21st June, 1952.

4. The Committee think that the Bill has not been so altered as to require re-circulation under Rule 94(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR,

Chairman of the Select Committee.

NEW DELHI;

The 18th November, 1952.

MINUTE OF DISSENT

The discussion in the Select Committee revealed that the constituencies may still be delimited for the next election keeping to the maximum limit set by the Constitution. Since I am firmly of the opinion that there must be no further extension of the number of voters to a constituency which already is unwieldy, I give my minutes of dissent to the amendment proposed. The amendment of not specifying the upper limit of the number of voters to a constituency gives the blank-cheque to government to increase the constituencies and as such I am opposed to it. Parliamentary democracy can only be a "democracy" when the members of Parliament can keep living links with the people they represent—going amongst them constantly, ascertaining their demands and desires, and reporting back to them what has been done in Parliament. The Present 7½ lakh limit itself is difficult enough to cover. Any further extension will further make this intimate connection between the people and its representatives impossible.

Further, I am of the opinion, since there is no pressing need for this amendment we should have left this to the future Parliaments to do, as and when need arose. As I do not subscribe to the opinion that any extension of the 500 limit to the House of the People will impair its efficiency, I assert we have no right to legislate ahead for those who will come 10 years hence or to presuppose their needs and conditions. I therefore strongly disagree with this amendment.

RENU CHAKRAVARTY.

NEW DELHI;

The 18th November, 1952.

THE CONSTITUTION (SECOND AMENDMENT) BILL, 1952

(AS AMENDED BY THE SELECT COMMITTEE)

(Words underlined indicate the amendments suggested by the Committee)

A

BILL

further to amend the Constitution of India.

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Constitution (Second Amendment) Act, 1952.

2. Amendment of article 81.—In sub-clause (b) of clause (1) of article 81 of the Constitution, the words and figures “not less than one member for every 750,000 of the population and” shall be omitted.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill further to amend the Constitution of India.

(As amended by the Select Committee)

HOUSE OF THE PEOPLE

CORRIGENDA

to

The Report of the Select Committee on the
Delimitation Commission Bill, 1952 together
with the Bill as amended.

- (i) In page (i) in line 24, for "Shri Krishna-
macharya Joshi" read "Shri Krishnacharya
Joshi".
- (ii) In page (iv) in line 17, for "N.C.
CHETTERJEE" read "N.C. CHATTERJEE".
- (iii) In page 4 in line 8, for "pacticable" read
"practicable".

New Delhi,

M.N. KAUL,

The 10th December, 1952.

S E C R E T A R Y.

HOUSE OF THE PEOPLE

THE DELIMITATION COMMISSION BILL, 1952

(Report of the Select Committee)

*date of reference
presentation*

12.11.52

5.12.52



PARLIAMENT SECRETARIAT

NEW DELHI

December, 1952

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THE DELIMITATION COMMISSION BILL, 1952

MEMBERS OF SELECT COMMITTEE

Shri M. Ananthasayanam Ayyangar (*Chairman*).
Shri Shankar Shantaram More.
Shri B. S. Murthy.
Shri N. C. Chatterjee.
Dr. Syama Prasad Mookerjee.
Shri Bhawanji A. Khimji.
Shri Syamnandan Sahaya.
Shri Gajendra Prasad Sinha.
Shri K. L. More.
Pandit Lingaraj Misra.
Shri Rohini Kumar Chaudhuri.
Pandit Lakshmi Kanta Maitra.
Shri Mohanlal Saksena.
Shri N. M. Lingam.
Shri Udai Shankar Dube.
Chaudhary Raghubir Singh.
Shri Nemi Chandra Kasliwal.
Shri Ranbir Singh Chaudhuri.
Shri Govind Hari Deshpande.
Sardar Amar Singh Saigal.
Shri Kotha Raghuramaiah.
Shri Krishnamacharya Joshi.
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Shrimati Renu Chakravartty.
Shri P. T. Punnoose.
Shri Giriraj Saran Singh.
Dr. Manik Chand Jatav-vir.
H. H. Maharaja Rajendra Narayan Singh Deo.
Shri N. R. M. Swamy.
Shri Radha Charan Sharma.
Shri Ranjit Singh.
Shri P. N. Rajabhoj.
Shri Awadheshwar Prasad Sinha.
Shri C. C. Biswas.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to provide for the readjustment of the representation of territorial constituencies in the House of the People and in the State Legislative Assemblies and for matters connected therewith was referred, have considered the Bill and I now submit this their report, with the Bill as amended by the Committee annexed hereto.

1. Upon the changes proposed in the Bill which are not formal or consequential, the Select Committee note as follows :—

Clause 4.—Although the power to “readjust representation” probably includes the power to delimit, in the sense of fixing the boundaries of, constituencies, and this is also expressly provided for in clause 8 of the Bill, the Committee consider it desirable to remove any doubts in the matter by stating in clause 4 itself that it shall be the duty of the Commission to delimit the various territorial constituencies.

Clause 5.—The Committee feel that as different States have varying representation in the House of the People as well as in the Legislative Assemblies and as some Part C States have no Legislative Assembly at all, the number of associate members from the States should be different according as the States are Part A States, Part B States, Part C States having Legislative Assemblies or Part C States having no such Assembly. The Committee also feel that those of the associate members who are members of the House of the People should be nominated by the Speaker of the House and those who are members of the Legislative Assembly should be nominated by the Speaker of that Assembly and that in making such nomination the Speaker should have due regard to the political composition of the House or the Assembly. In order to secure this, and at the same time avoid delay in the beginning of the commission’s work, the committee consider that the Speakers of the several Legislative Assemblies should make their nominations within one month of the coming into force of the Act, and the Speaker of the House of the People should make his nominations thereafter but within two months of the commencement of the Act. To give effect to these decisions the Committee have substituted a new clause for this clause.

Clause 6 (new).—The Committee have inserted a new clause providing for the filling up of casual vacancies among the members of the Commission and among associate members.

Clause 7 (old clause 6).—The Committee have inserted two new sub-clauses in this clause providing that in case of difference of opinion among the members of the Commission the opinion of the majority shall prevail and that the Acts and proceedings of the Commission shall not be called in question on the ground merely of the temporary absence of a member or associate member or of the existence of a vacancy in the Commission or in any group of associate members.

Clause 8 (old clause 7).—The Committee feel that the work of the Commission should be divided into two stages. The first stage should relate to the determination on the basis of the latest census figures, of the number of seats to be allotted to each of the States in the House of the

People, the number of seats to be assigned to the Legislative Assembly of each Part A State and each Part B State and the number of seats to be reserved for the Scheduled Castes and the Scheduled Tribes. The second stage should relate to the distribution of these seats to the various territorial constituencies and the delimitation of those constituencies. Before finalising its proposals in respect of each stage, the Commission should publish them in draft, invite objections and suggestions by a specified date, and for the purpose of considering the objections and suggestions so received hold one or more public sittings at such place or places as it thinks fit.

As regards the formation and delimitation of constituencies the Committee are of the view that as far as possible constituencies should be single-member constituencies except in cases where reservation has to be made for Scheduled Castes or Scheduled Tribes and for that purpose two-member constituencies may be formed. In every two-member constituency one seat should be reserved for the Scheduled Castes or for the Scheduled Tribes, and the other seat should not be reserved. Constituencies in which a seat is reserved either for the Scheduled Castes or for the Scheduled Tribes should be located in areas in which the population of those castes or those tribes is most concentrated, but in regard to Scheduled Castes care should be taken to distribute the reserved seats in different areas of the State. As far as practicable, constituencies should be formed of geographically compact areas, and in delimiting them, regard should be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience.

To give effect to these decisions the Committee have proposed a revised clause.

Clause 9 (old clause 8).—The Committee have inserted a new sub-clause providing that the final orders of the Commission should be laid before the House of the People. They have also made it clear that these orders cannot be called in question in any court.

Clause 10 (old clause 9).—With regard to the correction of clerical or arithmetical mistakes in the final orders of the Commission or of errors arising therein from any accidental slip or omission, the Committee have decided that the Chief Election Commissioner may at any time within six months of the publication of the order may make the necessary corrections with the approval of the other members of the Commission or such of them as might be then available. The clause has been redrafted accordingly.

2. The Bill was published in Part II, section 2 of the Gazette of India, dated the 21st June, 1952.

3. The Committee think that the Bill has not been so altered as to require circulation under Rule 94(4) of the Rules of Procedure and Conduct of Business in the House of the People and they recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR,

NEW DELHI;

Chairman of the Select Committee.

The 5th December, 1952.

IV

MINUTE OF DISSENT

The Bill proposes that the Delimitation Commission will be bound by the number of seats as allotted to the Legislative Assemblies for the Part C States in the Schedule to the Part C States Act of 1951. The Commission is however being given powers to delimit the constituencies and redistribute the seats in Part C States and the Part C States Act of 1951 is being abrogated in this respect. It will be remembered large weightage was given to the Part C States Assemblies. This was obviously intended as a temporary arrangement. We see no reason why the Delimitation Commission should be debarred from even examining the size of the Part C States Assemblies. It is time the whole question of Part C States is reviewed and the Delimitation Commission is obviously the body which should undertake this task, so that changes, if any, can be brought into effect before the next general elections fall due.

SYAMA PRASAD MOOKERJEE.

S. S. MORE.

N. C. CHETTERJEE.

CHOITHRAM P. GIDWANI.

RAJENDRA NARAYAN SINGH DEO.

RENU CHAKRAVARTTY.

P. T. PUNNOOSE.

B. S. MURTHY.

N. R. M. SWAMY.

P. N. RAJABHOJ.

NEW DELHI;

The 5th December, 1952.

THE DELIMITATION COMMISSION BILL, 1952

[AS AMENDED BY THE SELECT COMMITTEE]

(Words underlined or side-lined indicate the amendments suggested by the Committee.)

A

BILL

to provide for the readjustment of the representation of territorial constituencies in the House of the People and in the State Legislative Assemblies and the delimitation of those constituencies and for matters connected therewith.

BE it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the Delimitation Commission Act, 1952.

2. **Definitions.**—In this Act, unless the context otherwise requires,—

(a) “article” means an article of the Constitution;

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(b) “Commission” means the Delimitation Commission constituted under section 3;

(c) “latest census figures” mean the census figures as ascertained at the census held in 1951;

(d) “member” means a member of the Commission and includes the Chairman. 10

3. **Constitution of Delimitation Commission.**—(1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Commission to be called the Delimitation Commission which shall consist of three members as follows:— 15

(a) two members, each of whom shall be a person who is or has been a Judge of the Supreme Court or of a High Court, to be appointed by the Central Government, and

(b) the Chief Election Commissioner, *ex-officio*.

(2) The Central Government shall nominate one of the members appointed under clause (a) of sub-section (1) to be the Chairman of the Commission. 20

4. **Duties of the Commission.**—It shall be the duty of the Commission to readjust the representation of the several territorial constituencies in the House of the People and of the several territorial constituencies in the Legislative Assembly of each State other than Jammu and Kashmir, on the basis of the latest census figures and to delimit the said constituencies. 25

5. Associate members.—(1) For the purpose of assisting the Commission in the readjustment of the representation and in the delimitation of the territorial constituencies, both for the House of the People and the Legislative Assembly, if any, in each State other than the State of Jammu and Kashmir and the State of Bilaspur, the Commission shall associate with itself from that State—

(a) if it is a Part A State, seven persons, three of whom shall be members of the House of the People representing that State and four shall be members of the Legislative Assembly of that State;

(b) if it is a Part B State, five persons, two of whom shall be members of the House of the People representing that State and three shall be members of the Legislative Assembly of that State;

(c) if it is a Part C State having a Legislative Assembly, three persons one of whom shall be a member of the House of the People representing that State and two shall be members of the Legislative Assembly of that State; and

(d) if it is a Part C State having no Legislative Assembly, two persons who shall be the members of the House of the People representing that State.

(2) The persons to be so associated from each State (hereinafter referred to as "associate members") shall be nominated, in the case of members of the House of the People, by the Speaker of that House, and in the case of members of a Legislative Assembly, by the Speaker of that Assembly, having due regard to the composition of the House, or as the case may be, of the Assembly.

(3) The first nominations to be made under sub-section (2)—

(a) shall be made by the Speakers of the several Legislative Assemblies within one month, and by the Speaker of the House of the People within two months, of the commencement of this Act, and

(b) shall be communicated to the Chief Election Commissioner, and where the nominations are made by the Speaker of a Legislative Assembly, also to the Speaker of the House of the People.

(4) None of the associate members shall have a right to vote or to sign any decision of the Commission.

6. Casual vacancies.—If owing to death or resignation the office of the Chairman or of a member or of an associate member falls vacant, it shall be filled as soon as may be practicable by the Central Government or the Speaker concerned under and in accordance with the provisions of section 3 or, as the case may be, of section 5.

7. Procedure and Powers of the Commission.—(1) The Commission shall determine its procedure and shall in the performance of its functions have all the powers of a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the production of any document; and

(c) requisitioning any public record from any court or office.

(2) The Commission shall have power to require any person to furnish any information on such points or matters as in the opinion of the Commission may be useful for, or relevant to, any matter under the consideration of the Commission.

(3) The Commission may authorise any of its members to exercise any of the powers conferred on it by clauses (a) to (c) of sub-section (1) and sub-section (2), and any order made or act done in exercise of any of these powers by the member authorised by the Commission in that behalf shall be deemed to be the order or act, as the case may be, of the Commission.

(4) If there is a difference of opinion among the members, the opinion of the majority shall prevail, and acts and orders of the Commission shall be expressed in terms of the views of the majority.

(5) The Commission as well as any group of associate members shall have power to act notwithstanding the temporary absence of a member or associate member or the existence of a vacancy in the Commission or in that or any other group of associate members; and no act or proceeding of the Commission or of any group of associate members shall be invalid or called in question on the ground merely of such temporary absence or of the existence of such vacancy.

(6) The Commission shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

Explanation.—For the purposes of enforcing the attendance of witnesses the local limits of the jurisdiction of the Commission shall be the limits of the territory of India.

8. Manner of making readjustment and delimitation.—(1) The Commission shall, in the manner herein provided, first determine on the basis of the latest census figures—

(a) the number of seats to be allotted to each of the States in the House of the People and the number of seats, if any, to be reserved for the scheduled castes and for the scheduled tribes of the State, and in doing so, shall have regard to the provisions of article 81 and article 330; and

(b) the number of seats to be assigned to the Legislative Assembly of each Part A State and of each Part B State other than Jammu and Kashmir, and the number of seats, if any, to be reserved therein for the scheduled castes and the scheduled tribes of the State, and in doing so, shall have regard to the provisions of article 170 and article 332, and shall also ensure that the total number of seats assigned to the Legislative Assembly of a State forms an integral multiple of the total number of seats allotted to that State in the House of the People:

Provided that no reduction shall be made in the number of seats in the House of the People at present allotted to any Part C State which has no Legislative Assembly.

(2) The Commission shall, in the manner herein provided, then distribute the seats allotted to each of the States other than Jammu and Kashmir in the House of the People, the seats assigned to the Legislative Assembly of each Part A State and of each Part B State other than Jammu and Kashmir, and the seats allotted to the Legislative Assemblies of certain

Part C States under section 3 of the Government of Part C States Act, 1951 (XLIX of 1951), to territorial constituencies and delimit them in accordance with the provisions of the Constitution and of the said section 3 on the basis of the latest census figures, and in doing so, the Commission shall have regard to the following provisions, namely:—

(a) all constituencies shall be either single-member constituencies or two-member constituencies;

(b) wherever practicable, seats may be reserved for the scheduled castes or for the scheduled tribes in single-member constituencies;

(c) in every two-member constituency, one seat shall be reserved either for the scheduled castes or for the scheduled tribes, and the other seat shall not be so reserved;

(d) constituencies in which a seat is reserved either for the scheduled castes or for the scheduled tribes shall, as far as practicable, be located in areas in which the population of the scheduled castes or, as the case may be, of the scheduled tribes is most concentrated; and

(e) all constituencies shall, as far as practicable, consist of geographically compact areas, and in delimiting them, regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience.

(3) First in respect of the determination of numbers under sub-section (1), and then again in respect of the distribution of seats and delimitation of constituencies under sub-section (2), the Commission shall—

(a) publish its proposals, together with the dissenting proposals, if any, of an associate member who desires publication thereof, in the Gazette of India and Official Gazettes of all the States concerned and also in such other manner as it thinks fit;

(b) specify a date on or after which the proposals will be further considered by it;

(c) consider all objections and suggestions which may have been received by it before the date so specified, and for the purpose of such consideration, hold one or more public sittings at such place or places as it thinks fit; and

(d) thereafter, determine the matters referred to in sub-section (1) or, as the case may be, in sub-section (2) by one or more final orders.

9. Readjustment of representation and the date of operation of such readjustment.—(1) The Commission shall cause each of its final orders to be published in the Gazette of India; and upon such publication, the order shall have the full force of law and shall not be called in question in any court.

(2) As soon as may be after such publication, every such order shall be laid before the House of the People.

(3) Subject to the provisions of sub-section (4), the readjustment of the representation of the several territorial constituencies in the House of the People or in the Legislative Assembly of a State and the delimitation of those constituencies provided for in any such order shall apply in relation to every election to the House of the People or to the Legislative Assembly of such State, as the case may be, held after the publication in the Gazette of India of that order, and shall so apply in supersession of the provisions relating to such representation contained in the Representation of the

People Act, 1950 (XLIII of 1950), the Government of Part C States Act, 1951 (XLIX of 1951) and the orders made under either of the said Acts.

(4) Nothing in this section shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the House or the Assembly, as the case may be, existing on the date of publication in the Gazette of India of the order made by the Commission under sub-section (1) relating to the readjustment of such representation.

10. Amendment of orders of the Commission.—At any time within six months of the date of publication in the Gazette of India of any order of the Commission under sub-section (1) of section 9, any clerical or arithmetical mistake in the order and any error arising therein from an accidental slip or omission may be corrected by the Chief Election Commissioner by order made with the previous approval of the other members of the Commission or of such of them as may be then available and published in the Gazette of India.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill to provide for the readjustment of the representation of territorial constituencies in the House of the People and in the State Legislative Assemblies and the delimitation of those constituencies and for matters connected therewith.

(As amended by the Select Committee)

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