

3

E

THE SELECT COMMITTEE ON BILLS 1951-52

3

Digi

Evidence

(+ 6 - Indentures + 15 (to dig))

E



93

①	—	36
2	—	31
3	—	26

E 47  
~~E 48~~



## C O N T E N T S

### THE SELECT COMMITTEE ON BILLS

1. C.B. No. 1 - The Select Committee on the Delhi and Ajmer Rent Control Bill, 1951 Evidence (28th August, 1951).      C B U - I
2. C.B. No. 19 - The Select Committee on The Estate Duty Bill, 1952. Evidence (5th February, 1953).
3. C.B. No. 20 - The Select Committee on the Industries (Development and Regulation) Amendment Bill, 1953. Evidence (27th April, 1953).

ooo0ooo



**THE SELECT COMMITTEE**  
**ON**  
**THE DELHI AND AJMER RENT CONTROL**  
**BILL, 1951**

**EVIDENCE**

*( 28th August, 1951 )*



**PARLIAMENT SECRETARIAT**

**NEW DELHI**

**August, 1951**



**SELECT COMMITTEE ON THE DELHI AND AJMER RENT  
CONTROL BILL, 1951.**

**Record of Evidence taken before the Select Committee on the Delhi  
and Ajmer Rent Control Bill, 1951 at New Delhi.**

*Tuesday, the 28th August, 1951 at 3 P.M.*

Present:

Pandit Thakur Das Bhargava (*Chairman*).

The Honourable Shri N. V. Gadgil (*Minister-in-Charge*).

Shri B. Shiva Rao.

Shri S. N. Buragohain.

Pandit Mukut Bihari Lal Bhargava.

Shri Deshbandhu Gupta.

Shri Indra Vidyavachaspati.

Master Nand Lal.

Lala Achint Ram.

Shri Ram Sahai Tewari.

Shri Gokulbhai Daulatram Bhatt.

Shri R. K. Sidhva.

Shri S. Ranganathan, Joint Secretary, Ministry of Works, Production and Supply was present at the meeting.

Shri R. S. Sarkar, Additional Draftsman, Ministry of Law was also present.

**WITNESSES EXAMINED**

**The Karol Bagh House Owners' Association.**

Spokesmen:

(1) Shri Raj Kanwar.

(2) Shri A. N. Datta.

(3) Shri Nihal Chand.



**Mr. Chairman (Pandit Thakur Das Bhargava):** We would like to know if any of your associations have something more to say than what is put down in the memoranda.

**Shri Raj Kanwar:** Our first contention is that the Act should be in force for a definite period.

**Mr. Chairman:** For how many years?

**Shri Raj Kanwar:** Say, for three years.

A penalty should be provided in case the tenant does not make the necessary deposit in the first year. At present there is no penalty attached.

**Shri G. B. Bhatt:** What is their idea in putting a time-limit on the period of the Act?

**The Hon'ble Shri N. V. Gadgil:** The idea is that there should be freedom of contract between the landlord and the tenant.

**Shri Shiva Rao:** Is there any such time-limit in the Bombay or Calcutta Acts.

**Mr. Chairman:** Previously we also had time-limit. Since the conditions obtaining now appear to be more or less permanent, this measure has been brought forward in its present form. But we have made provision that at any time there is justification for the withdrawal of the measure it will be withdrawn.

**Shri Raj Kanwar: Clause 5:** Receipt of rent in advance exceeding one month should not be considered unlawful, as very often tenants and intending tenants want the landlord to make some additions to the premises, or to undertake some construction to suit their requirements and are prepared to advance necessary funds for the purpose.

There is no reason why receipt of such amounts should be considered unlawful.

**Shri Ranganathan:** Under the Bombay Act they permit such advances being taken by the landlord in order to complete a building.

**Mr. Chairman:** When the tenancy is not in existence, how can it be considered an advance?

### Clause 8(3)

**Shri Raj Kunwar:** When the tenant does not seek any remedy and is satisfied with the existing conditions, there is no reason why a court should go out of its way to interfere in the matter.



What we mean to say is that a court on its own should not determine the standard rent. A court should only determine standard rent on the application of the tenant and not on its own.

**Shri B. Shiva Rao:** Supposing, I am too poor to go to a court, but the fact nevertheless comes to the notice of the court?

**The Hon'ble Shri N. V. Gadgil:** He does not want the court to take notice of it.

**Shri Raj Kanwar:** The Explanation to sub-clause (4) of clause 8 says that "For the purpose of this sub-section, the 'cost of construction' in respect of any premises includes the value of the land comprised in such premises."

Our point is that for the word "value" the words "market value" should be substituted.

**Shri Nihal Chand:** Suppose I had purchased the land ten years back and its present market value is Rs. 200 a yard. There is no reason why a land which has been purchased by me about ten years back should not be valued at Rs. 200 a yard now—when the value of the rupee has gone down and all other costs have risen so much.

**The Hon'ble Shri N. V. Gadgil:** While determining the standard rent, the value of the land is also taken into consideration along with the cost of construction. Suppose you sell it to somebody tomorrow at a high price, is the tenant to be subject to all these transactions and pay at that rate?

**Shri A. N. Datta:** Suppose I had purchased the land at Rs. 2 a yard originally and today its market value is Rs. 200 a yard. Suppose I sell it at that rate and re-buy it. It will be at that rate.

**The Hon'ble Shri N. V. Gadgil:** As I understand, the value of the land at the time when the building was constructed will be normally taken into consideration.

**Shri Nihal Chand:** }  
**Shri A. N. Datta:** } That is our point.

**Shri Nihal Chand:** Sub-clause (7) of clause 8 says:

"In every case in which the court determines the standard rent of any premises under this section, it shall appoint a date from which the standard rent so determined shall be deemed to have effect."

The effect should be not from the date of occupation but from the date of the application.



**The Hon'ble Shri N. V. Gadgil:** It is left to the court to appoint a date. You may have collected excessive rents. Then it must have retrospective effect. Otherwise why should one go to the court at all? Suppose the man was paying the rent quietly. Then it occurs to him that it is very high and he goes to the court. The court determines the standard rent and says that from a particular date it will come into existence. It may be from the date of application or it may be before that, or it may be sometime after the date of filing the application. The discretion is with the court. When it comes to fixing the rent, the corollary equity will be taken into consideration by it.

**Shri Nihal Chand:** But the contract arrived at should be obeyed and respected. So far as the future is concerned it can control, not about the past.

**The Hon'ble Shri N. V. Gadgil:** The object of standard rent is not merely to control future rent but to correct past irregularities also.

**Shri Nihal Chand:** Let me submit one other reason also. Suppose I have recovered rent for three years from the tenant and the tenant has filed an application for fixing of the rent. My difficulty is that I have paid house-tax at the increased rate. Also Income-tax on that. Suppose the court says that the standard rent recoverable will be from the date of occupation, say, three years back. I have to refund all that. But what about the house-tax and the Income-tax which I have paid?

**The Hon'ble Shri N. V. Gadgil:** That is a risk which you take as a consequence of an act which is not fair.

**Shri Nihal Chand:** At least that should also be taken into account—that I have been subjected to the payment of house-tax and Income-tax on those sums, and the thing which the landlord will save will be nothing.

**The Hon'ble Shri N. V. Gadgil:** As regards what you have paid on that basis to the municipality, that generally will be taken into consideration by the court in ordering repayment.

**Shri Nihal Chand:** The court will not take it into consideration. It will determine the standard rent and say it will come into effect from such and such date.

**The Hon'ble Shri N. V. Gadgil:** I am sure no landlord will go unrepresented there. The lawyer of the landlord is bound to say that he has paid so much. For that a rebate is bound to be given.



**Shri Nihal Chand:** The court will not attach any importance to it. I have been doing these cases and I can say that the court does not attach any importance to it.

**Shri Shiva Rao:** Does it follow from the wording of this section that the court will necessarily give it retrospective effect? It merely says "it shall appoint a date". The court is bound to take into consideration all the points.

**Shri Nihal Chand:** The courts do not take them into consideration.

**Shri Shiva Rao:** I have greater confidence in the judgment of a court.

**The Hon'ble Shri N. V. Gadgil:** What is your next point?

**Shri Nihal Chand:** Clause 9 deals with the interim rent to be fixed by the court. It is just possible that after the determination of the rent, the agreed rent is the standard rent. Therefore to save the landlord it is better that the interim rent should be at the agreed rate. The tenant will not lose in any manner because if the court comes to the conclusion that the standard rent is much below the agreed rent, then the tenant will get back the sum which he has overpaid.

**The Hon'ble Shri N. V. Gadgil:** Suppose it is the other way—if the interim rent is less and the standard rent eventually is more. Then the difference will be ordered to be made good.

**Shri Nihal Chand:** The whole difficulty is that there are tenants who are defaulters and we won't be able to realise any money from them.

**The Hon'ble Shri N. V. Gadgil:** There is no question of default. If the point you are making is that the rent on which the tenant agreed to come in should be the interim rent, then there is no meaning. This provision is intended for this purpose: in case the proceedings go on for a considerable time, there should be some relief immediately both to the tenant and the landlord. Ordinarily such cases should not go beyond three to four months after certain things are standardised. But till those things are standardised some interim arrangement is necessary.

You may proceed to your next point.

**Shri Nihal Chand:** In clause 11 the limitation of six months is too much. In the last meeting it was suggested and it was, I think, agreed upon that a limitation of three months is enough.

**The Hon'ble Shri N. V. Gadgil:** It is too small. Many of the tenants do not know their rights. What is the harm? If you are a creditor and I want that the limitation for bringing in a suit should



be lessened from three years to two, you will say that it should be increased from three years to four. It won't give any relief if it is three months from the cause of action.

**Shri Nihal Chand:** Our second objection is that so far as sub-clause (c) is concerned it is redundant.

**The Hon'ble Shri N. V. Gadgil:** If anything is redundant we will remove it. On that matter we will be guided by our draftsman. You may give as your *prima facie* reactions.

**Shri Raj Kanwar:** The Proviso to this clause should be deleted.

**The Hon'ble Shri N. V. Gadgil:** There we follow the Limitation Act.

**Mr. Chairman:** Section 5 of the Limitation Act.

**Shri Nihal Chand:** That is so far as suits are concerned.

It does not apply here.

**Mr. Chairman:** In *ex-parte* decrees. This is only for the convenience of the parties. Otherwise all these things should have been made into a suit.

**The Hon'ble Shri N. V. Gadgil:** This helps the landlord and the tenant equally.

**Shri Raj Kanwar:** The landlord won't be helped.

**The Hon'ble Shri N. V. Gadgil:** The landlords are few and organised. The tenants are by their millions. Suppose for one reason or other they fail to make the application and suppose they satisfy the court as regards the sufficiency of the causes. I think you will agree that the provision should be there.

**Shri Raj Kanwar:** That will only increase litigation.

**The Hon'ble Shri N. V. Gadgil:** This is litigation. Where there is an attempt to enforce a right given by the statute, a certain limitation is provided. But for some reason he has not come before the court within the period of limitation. There must be some discretion to the court.

What is your next point?

**Shri Nihal Chand:** Please see clause 13(1)(b). It says that nothing in this sub-section shall apply to any decree or order for such recovery of possession if the court is satisfied "that the tenant without obtaining the consent of the landlord in writing has, after the commencement of this Act, sub-let, assigned or otherwise parted with



the possession of, the whole or any part of the premises". But what about the tenants who have done so before the coming into force of this Act?

**Shri Ranganathan:** Clause (c) provides for it.

**Shri Nihal Chand:** Clause (c) does not cover it.

**Shri Raj Kanwar:** It does not cover the case of sub-letting.

**Mr. Chairman:** You want that the wording in clause (b) of section 13 (1) should be "before or after the commencement of this Act"?

**Shri Nihal Chand:** Exactly.

**Mr. Chairman:** They want for subletting after 1947 also.

**The Hon'ble Shri Gadgil:** If subletting was provided in the previous Act, we cannot do away with it.

**Shri Nihal Chand:** There is no saving clause so far as the proceedings are concerned which are now being conducted under the old Act but there is a saving clause so far as the provisions relating to the Rent Controller is concerned in the previous Act. The present Bill does not say "proceedings which are now being conducted under the old Act". This ought to be here. It is for the benefit of the tenants as well as the landlords.

**Shri R. S. Sarkar:** There is no necessity to say this. The Rent Controller is an executive officer. There is no successor to him.

**Mr. Chairman:** So far as the tenancy proceedings are concerned, there is a provision in the Fourth Schedule but so far as the decrees are concerned, there is no provision now. The real dispute is that the Punjab High Court has just given a ruling that this section 13 is retrospective. The old decrees etc. have become infructuous unless they come within the purview of the law. Therefore, the question arises as to what is to happen to these decrees which were passed under the previous law. The High Court has held that the old section is *pro tanto* overruled by section 9. That is why they seem to be apprehensive.

**Shri Ranganathan:** The draftsman will certainly look into this.

**The Hon'ble Shri N. V. Gadgil:** We shall consider this in consultation with the Law Ministry.

**Shri Nihal Chand:** Then we come to clause 13 E. In this case, what I want is that the words "residential purposes" should be deleted.

**Shri Sidhva:** All commercial classes will come under this section.



**Mr. Chairman:** It is not only residential, but there may be business premises also. This should be made clear.

**The Hon'ble Shri N. V. Gadgil:** The whole idea is to provide for the *bona fide* landlord who wants a place of residence, but not for doing business because if he has let out the premises for business purposes to X, Y or Z and suppose he wants to start that business himself, he is not entitled to get that place. Residence is different.

**Mr. Chairman:** He wants that business may be included. We will consider that.

**The Hon'ble Shri N. V. Gadgil:** Government will not accept that. Whatever the premises which he has been given by the landlord the tenant in the course of 5 or 10 years has developed a business and has earned a certain amount of goodwill in that locality and the landlord takes all those advantages one day when he says: I want to start a business. I do not think that will be all right because he has not paid any compensation. If compensation is paid for the goodwill and other incidental advantages, I can understand the justice of it.

**Mr. Chairman:** They have not said: Do not compensate them for the good will.

**Shri Bhatt:** We are not accepting or rejecting anything now.

**Mr. Chairman:** Government feels that this claim is unjustified, but at the same time, we will consider this matter.

**The Hon'ble Shri N. V. Gadgil:** This is every vital thing.

**Shri Shiva Rao:** I take it that you want only the words "residential purposes" to be omitted.

**Shri Nihal Chand:** This clause refers to "residence" later on and that also should go out.

**Shri Shiva Rao:** You want to widen the scope of the clause so that the commercial people may also be ejected for the purposes of the landlord.

**Shri Nihal Chand:** There are cases which have cropped up on account of subletting. The tenant goes to the court and says he is a licensee. He does not pay any rent to me. He is here in possession of the property but he has to have my permission and I have the right to turn him out at any time, I like and he says in the court that he is a licensee and not a sub-tenant. In this case what I suggest is that the term "tenant" should also include the licensee.

**The Hon'ble Shri N. V. Gadgil:** Suppose a person has sublet a portion of his House to a friend of his, I say, he is a sub-tenant.



**Shri Sidhva:** What do you mean by a 'licencee'?

**Shri Nihal Chand:** Licencee means a person to whom permission to stay has been given.

**The Hon'ble Shri N. V. Gadgil:** He is allowed the use of the premises without payment. There is no great difference between landlord and tenant or tenant and sub-tenant. He is there by mere leave of licence.

**Shri Nihal Chand:** Permission is given to him to use it.

**The Hon'ble Shri N. V. Gadgil:** But then how does the landlord come in?

**Shri Nihal Chand:** He has let the property for the use of the tenant and for him only and not for others.

**The Hon'ble Shri N. V. Gadgil:** You have given certain accommodation to a tenant. You are concerned directly with the tenant. If the tenant gives a part of it by leave of licence to somebody and if you want the whole tenancy, you can go to court and drive out the tenant or licensee or anybody who is living there.

**Shri Nihal Chand:** I go to the court on the ground of subletting but invariably these cases have been dismissed on the very ground that he is not a sub-tenant but he is only a licensee.

**Mr. Chairman:** If you refer to clause 21 of the present Bill, you will find that it provides for this very contingency and that gives you more powers than what you are enjoying.

**Shri Nihal Chand:** That is applicable after the decree is passed.

**The Hon'ble Shri N. V. Gadgil:** There is the landlord's claim before the decree is passed.

**Shri Nihal Chand:** He says that he is not a sub-tenant. He receives rent from him but does not give any receipts and he says: He is only a licensee.

**Mr. Chairman:** How do you say that it applies to a case when the decree has been passed.

**Shri Nihal Chand:** That is a matter relating to the execution.

**Mr. Chairman:** You will have to fight under 20 which is protected by section 21. Certain persons can say that they have stepped into the shoes of the tenant but that you will have to fight. So far as a licensee is concerned, licensee does not become a tenant and tenancy is covered by section 21.



**Shri Ranganathan:** A licensee will not be accepted by the Court as a sub-tenant and if we take a licensee, we cannot go to court and say: I have sub-let and he ought to be ejected unless and until I receive rent from him. His point is that if I take a licensee, actually I take a sub-tenant but I do not give him any receipt for the rent that I receive. So he can get away from the court of law by saying that I have not sub-let the house. The other fellow will say: I have not taken a sub-lease. I am only a licensee.

**The Hon'ble Shri N. V. Gadgil:** It is always a question of fact.

**Shri Deshbandhu Gupta:** Unless the licensee is treated as a sub-tenant, you cannot go to court.

**Mr. Chairman:** The son-in-law comes and stays. He is a licensee. He can never be a tenant. Can you contemplate such cases?

**Shri R. S. Sarkar:** That is covered by clause 13 (3). If he lives there for more than a month, he will be treated as a sub-tenant.

**Shri Nihal Chand:** That is for residential purposes, not for commercial purposes.

**Shri Sidhva:** We will consider that point.

**Mr. Chairman:** Clause 13 (b) says:

"that the tenant without obtaining the consent of the landlord in writing, has, after the commencement of this Act, sub-let, assigned or otherwise parted with the possession..."

**Shri Nihal Chand:** So far as the law is concerned, possession does not go with the licensee. In law, the possession is with the landlord.

**Shri S. N. Buragohain:** There is the definition.

**Shri Nihal Chand:** The definition will go according to the law. So far as a licensee is concerned, possession of the property is not transferred in law.

**Mr. Chairman:** There are three words: sublet, assign or otherwise part with possession.

**The Hon'ble Shri N. V. Gadgil:** His contention is that the licensee does not get possession. He is there without possession.

**Shri Nihal Chand:** I have advanced this very argument and the Original court dismissed the case. The case is now pending with the High Court. I can produce a copy of the judgment if required. It has been interpreted that possession is legal possession and not physical possession.



**Shri Raj Kanwar:** If the word 'physical' is added before the word 'possession', it will be all right. There is no transfer of possession in the case of a licensee. If the word 'physical' is added, the licensee's case is covered.

**The Hon'ble Shri N. V. Gadgil:** We will note the point. Any other point?

**Shri Nihal Chand:** Sometimes, tenants take sub-tenants, but in the garb of partnership. What they do is this. The tenant will have one pice share and the sub-tenant will have 0-15-9 share in the business. The sub-tenant will control the entire business. After dissolution, the tenancy will revert to the sub-tenant. In that case, the tenant has accepted pugree and he is able to defeat the law and transfer the tenancy rights to the sub-tenant. There must be some safeguard against the fictitious and fraudulent partnerships. In this connection also, I can give you copies of judgments of the High Court where it is held that it is a case of partnership and not tenancy.

**Mr. Chairman:** Partnership in what?

**Shri Nihal Chand:** Partnership in tenancy and business.

**Mr. Chairman:** Partnership in tenancy can only be with the consent of the landlord. How can you prove that the partnership is collusive?

**Shri Nihal Chand:** I have myself conducted 15 cases and I can produce copies of judgments.

**The Hon'ble Shri N. V. Gadgil:** We have noted your point.

**Mr. Chairman:** What is your remedy for this?

**Shri Raj Kanwar:** If the word 'physical' is added, that would solve.

**Shri Nihal Chand:** First of all, the partnership should be registered. The tenant also should be held liable for the loss; he should not be entitled only to the profits.

**The Hon'ble Shri N. V. Gadgil:** Any other point?

**Shri Nihal Chand:** About first letting,—I refer to clause 8 (b)—in the old Act which is now in force, the date was 2nd June, 1944, and in those cases, the agreed rent was to be deemed to be the standard rent. By this Bill, it is proposed to change that. Discretion is being given to the court if it deems the rent unreasonable.

**Mr. Chairman:** Do you mean to suggest that in the present Act, the court is given more powers and cases which did not come under the previous Act are covered? You want that to be deleted?



**Shri Nihal Chand:** Under the previous Act, certain cases did not come within the purview of the jurisdiction of the courts. Now, the jurisdiction of the courts has been widened to a certain extent by this clause 8 (b).

Then, I come to clause 38. So far as new buildings are concerned, these properties should be exempted from the operation of the Bill. The standard rent should be the agreed rent.

**Shri Raj Kanwar:** The trials should be summary. Now, the courts take 2 or 3 years to decide a case.

**Mr. Chairman:** Under clause 36, they have made it summary except in the case of suits for eviction.

**Shri Raj Kanwar:** There also, a summary procedure should be followed.

**Mr. Chairman:** Suits for eviction are excluded because that is an important matter to the tenant. You should insist that the case should be decided in six months. If you make that also summary, there will be dissatisfaction among the tenants.

**Shri Raj Kanwar:** The procedure in the case of small cause suits may be accepted for those cases.

**Mr. Chairman:** That will be considered.

(Witnesses then withdrew.)

The Committee then took up the examination of the following representatives of House Owners' Association, Connaught Circus, New Delhi.

*Spokesmen:—*

(1) Shri Jagdish Prasad.

(2) Shri Amarnath Gupta.

(3) Shri R. L. Varma.

**Mr. Chairman:** You know that some points have already been covered by the other witnesses. Whatever ground has already been covered, need not be covered again. Of course, if you are not satisfied with what they have said and if you want to add anything, you may do that.

**Shri Jagdish Prasad:** I will be very brief.

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : कलाज नम्बर १ सब-कलाज ३ के मुतालिक मुझे कुछ अर्ज करना है । मैं इस के बारे में कुछ एक्सप्लेनेशन देना चाहता हूँ । आप न इस के अन्दर कोई लिमिट नहीं रखी है कि यह कानून दो साल या तीन साल तक लागू रहेगा । ऐसी लिमिट और सब जगह है ।



**The Hon'ble Shri N. V. Gadgil:** दी आनरेबल श्री ऐन०वी० गाडगिल : लेकिन दिल्ली में और दूसरी जगहों में फर्क है ।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : लेकिन मुझे इस में यह गुजारिश करना है कि इस से प्रापर्टी की वैल्यू फ्रीज हो जायेगी और रिव्यू करने का मौका आपको कोई नहीं मिलेगा । इसलिये बहतर है कि इस को रिव्यू करने का आप मौका रखें ।

अब मैं इस के बाद डैफिनीशन्स पर आता हूँ । क्लॉज २ जे० के मुताल्लिक मुझे यह अर्ज करना है कि सबटेनेंट्स इन्क्लूड्स में यह लिख दिया जाय :

"sub-tenants with the written permission of the landlord".

टिनेंट्स की तारीफ में सबटेनेंट्स इन्क्लूड करते हैं, लेकिन वही होने चाहिये जिनको कि लैंडलार्ड की इजाजत मिली हो और उसकी इजाजत से बसे हों । जो इजाजत के बगैर बसे हों वे काबिले इविकशन होने चाहिये ।

**Mr. Chairman:** Would you like the word "wrongful" to be added or "such sub-tenants as have been given permission by the landlord"?

**Shri Jagdish Prasad:** With permission.

**Mr. Chairman:** We will consider that. In the previous law we were holding it to be illegal. Whether the illegality should be perpetuated or not is the point.

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : अब मैं क्लॉज ३ पर आता हूँ । इस के अन्दर ए० और बी० (a) and (b) should be deleted. This is something anomalous. इस से यह होगा कि जिस जगह गवर्नमेंट मकान मालिक है वहां तो अप्लाई नहीं करेंगे लेकिन जिस जगह गवर्नमेंट किराएदार है वहां वह एडवांटेज ले लेंगे ।

**The Hon'ble Shri N. V. Gadgil:** One thing must be admitted by you, that if you want the Government to be run, you must make provisions for its officers. And when the buildings that we build are not enough to meet the needs, then we have to fall back on private buildings for this purpose.

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : हमारी तो गुजारिश यह है कि इस से आपको भी-पता लग जाय कि हमारी क्या तकलीफात हैं ।

**Mr. Chairman:** मिस्टर चेयरमैन : यह तो आप नहीं फरमा सकते कि गवर्नमेंट आप की तकलीफ को नहीं देखती, क्योंकि इस ऐक्ट में इस के लिये कोशिश की गई है । लेकिन यह ठीक नहीं है कि इस वजह से कि आप को तकलीफ है इस वास्ते आप यह इम्प्रेस करें कि गवर्नमेंट भी उस तकलीफ में रहे ।



**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : यह इसलिये कहता हूं कि गवर्नमेंट हमारी तकलीफ को महसूस कर ले। ३१ मार्च सन् १९४७ के बाद भी उस पर अप्लाई नहीं करेंगे तो मेरा यह ख्याल है कि जो रियायत दी है वह भी आप खींच लेंगे।

**The Hon'ble Shri N. V. Gadgil:** दी आनरेबल श्री ऐन० वी० गाडगिल : जो हमारे मकान में हैं वह तो हम अपने एम्प्लॉईज को देते हैं, किसी और को नहीं। उन से जो किराया लेते हैं वह किराया बहुत कम लेते हैं, क्योंकि उस में तो कन्वेंशन का एलीमेंट है।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : मैं कुछ और अर्ज कर रहा था। मेरी गुजारिश यह है कि जहां गवर्नमेंट मकान मालिक है वहां अप्लाई नहीं करता। लेकिन जो गवर्नमेंट मेरे मकान को लेकर रखती है तो उस के ऊपर तो लागू होना चाहिये।

**The Hon'ble Shri N. V. Gadgil:** दी आनरेबल श्री ऐन० वी० गाडगिल : आप को हम पूरा किराया देते हैं, जो कि कंट्रोलर ने सुकरर किया है।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : उन को तो दे देते हैं जिन्होंने यह बात मान ली, लेकिन जिन्होंने नहीं माना उन को नहीं देते हैं।

**The Hon'ble Shri N. V. Gadgil:** दी आनरेबल श्री ऐन० वी० गाडगिल : तो वह भी मान लें।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : तो इसका मतलब यह हुआ बाई फोर्स।

You want something to be admitted by force.

**The Hon'ble Shri N. V. Gadgil:** But this provision applies only to buildings requisitioned by the Government.

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : आप को तो ३ परसेंट पर करोड़ों रुपया मिल जाता है।

**Mr. Chairman:** We would like to finish the examination as soon as possible, without spending more time on points which have already been covered by other witnesses. Most of the points you now stress on have already been emphasised by others.

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : मुझे अब यह अर्ज करना है कि ऐसी प्रेमिसेज कि जिन का किराया ५० रुपये माहवार से ज्यादा न हो उन पर यह ऐक्ट लागू न किया जाय, इस से आप कई रांड, वेवायें, वगैरह को एग्जम्प्ट कर दें, जिनकी इस के सिवाय और कोई आमदनी न हो।

**Shri Sidhva:** श्री सिधवा : आप ५० रुपये चाहते हैं? मैं आपको बताऊं कि और म्यूनीसिपैलिटीज में यह ५ रुपये है।



**The Hon'ble Shri N. V. Gadgil:** Rent control, you will all admit, is really necessary for the poor tenants, clerks and others who can pay only Rs. 20 or Rs. 25 per month and as good citizens you should have sympathy for these poor people. The rich, they can afford to pay higher rents. If I accept your suggestion, then it will take away all the benefit which we have intended to give to these poor tenants.

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : जी उन के लिये कुछ लिबरल प्रावीजन कर दीजिये ।

**Mr. Chairman:** मिस्टर चेयरमैन : कैसे कर दें, आप कोई ऐक्ट बताइये, जिस में यह बात हो । विडो हो सकती है जिन की प्राइवेट आमदनी १० लाख रुपये हो । अब आप आगे चलिये ।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : अब मैं यह चाहता हूँ कि जो एक्सप्लेनेशन है वह डिलीट कर दिया जाय ।

**Mr. Chairman:** मिस्टर चेयरमैन : मैं आप से अब एक सवाल पूछता हूँ । यह एडवान्स जो कहते हैं वह तो अलग रहा । क्या आप एक महीने का किराया एडवान्स काफी समझते हैं । बम्बई में, जहां तक मैं समझता हूँ ३ महीने का है । क्या आप एक महीने के एडवान्स को ठीक समझते हैं ।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : जहां तक एडवान्स का ताल्लुक है, वह एक या दो या तीन, जैसा कि बम्बई में है, उस में कोई बात नहीं है । एक दफा दिया या कई दफा दिया ।

**Mr. Chairman:** मिस्टर चेयरमैन : ठीक है, अच्छा आगे चलिये ।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : अब इस के बाद क्लोज ८ बी में मेरी गुजारिश यह है कि सैकिंड डे आफ जून १९४४ के बजाय जून सन् १९४७ कर दिया जाय ।

फिर क्लोज ८ (४) (i) और (ii) में मेरी गुजारिश यह थी कि साढ़े सात और नौ परसेंट ग्रास रखा है । यह मिसलीडिंग है । इस में तो यह नहीं लिखा है लेकिन एक्सप्लेनेशन से यह मालूम होता है ।

**Mr. Chairman:** मिस्टर चेयरमैन : आप का क्या मतलब है ?

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : यह साढ़े सात परसेंट नैट होना चाहिये । डिप्रिसियेशन वगैरह सब के लिये रिडक्शन होना चाहिये ।



**Shri Sidhva:** श्री सिधवा : इस का हिसाब कौन रखेगा ।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : आप के जज बैठे हैं, उन के आगे हम साबित करेंगे ।

**Mr. Chairman:** मिस्टर चेयरमैन : मगर नैट के बजाय ग्रास रखा जाय तो आप ग्रास के लिये क्या रकम मुकर्रर करते हैं ।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : मेरा ख्याल है कि ५५ परसेंट तो खर्चा आता है, डिप्रिसियेशन, ब्याज, टूट फूट, मरम्मत, बैंड डैट्स वगैरह । उसको अगर आप रीजनेबल कर के ५० परसेंट भी रखते हैं तो साढ़े सात के बजाय १५ परसेंट होना चाहिये ।

**The Hon'ble Shri N. V. Gadgil:** Will you be prepared to accept 6 per cent that has been prescribed by Manu?

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : बैंक जहां ६ परसेंट देते हैं तो ९ परसेंट ज्यादा मालूम होता है । गवर्नमेंट इस वक्त पंजाब में क्या ले रही है ? वह ६ परसेंट ले रही है । अब डेढ़ परसेंट रिपेयर का रखिये, हाफ परसेंट मेनटीनेंस का, फिर उस के बाद हाउस टैक्स गवर्नमेंट को देना नहीं पड़ता । उस के बाद ग्राउंड रेंट गवर्नमेंट को नहीं देना पड़ता, हम को देना पड़ता है । इस के ऊपर लिटिगेशन लगाइये और बैंड डैट्स । फिर सब से बड़ी बात यह है कि गवर्नमेंट बीमा नहीं कराती, हम लोगों को कहीं आग न लग जाय, और हम बरबाद हो जायें, इस लिये हम को इन्श्योरेंस कराना पड़ता है ।

**Mr. Chairman:** मिस्टर चेयरमैन : ठीक है, आप कहते हैं ५५ परसेंट होता है, अब आगे चलिये ।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : इस के आगे मुझे क्लोज़ ११ में अर्ज करना है । मेरी गुजारिश यह है कि जब आप ने छः महीने का भी मीआद इस के अन्दर रख दी है । तो फिर आगे प्रोवाइजों में कोर्ट को फर्दर पावर देने से लिमिटेशन की स्पिरिट खत्म हो जाती है ।

**Mr. Chairman:** मिस्टर चेयरमैन : प्रोवाइजों आप नहीं चाहते ?

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : जी, हां । और बात यह है कि जब छः महीने तक किसी ने कदम नहीं उठाया तो फिर इसके लिये गुंजाइश आगे भी रहे ठीक नहीं है ।

**Mr. Chairman:** The logical conclusion is that if within six months a person has not made an application, then he would be debarred from bringing in any such application later. That seems to be the contention.



**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : मेरी गुजारिश यह है कि जब आपने छः महीने का टाइम दे दिया और उस में कोई केस नहीं चला तो अगर १०० रु० मकान के किराये के देना तय हुआ है तो वही किराया इन बिटवीन लैंडलार्ड और टिनेन्ट के हुआ ।

**The Hon'ble Shri N. V. Gadgil:** You should not forget that we are dealing here with humanity in the year 1951. You are practically putting the tenants into slavery.

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : उस के लिये आपने शिड्यूल २ में लिख दिया है ।

**Mr. Chairman:** मिस्टर चेयरमैन : अच्छा, अब आप आगे चलिये ।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : अब मुझे क्लोज १३ में जो प्रोवाइजो है उस में सब से पहले यह गुजारिश करनी है कि आज के दिन जो डिक्लीज हैं और अभी इफ़ैक्टिव नहीं हो रही हैं, तो उन पर इस का असर नहीं पड़ना चाहिये ।

**Mr. Chairman:** And so you want that all the previous decrees and orders should be saved?

**Shri Jagdish Prasad:** Yes. They should be in force and should not be affected by these present provisions that we are not bringing forward.

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : इस के बाद यह, अर्ज करना है कि बी० के अन्दर बिफोर एंड आफ्टर before and after होना चाहिये ।

१३ (ई)

फिर इस के बाद १३ ई 13 (e) के अन्दर अर्ज करना है । जितने और स्टेट्स इस वक्त हैं, आसाम, बिहार, बंगाल, पंजाब, बम्बई इन्क्लूडिंग, सब जगह मालिक अपनी जरूरत के लिये खाली करा सकता है । तो फिर यह सवाल दिल्ली के ही लिये क्यों उठाया जाय, बम्बई का भी तो बड़ा सूबा है ।

**Shri Deshbandhu Gupta:** Your contention is that in Bombay the business premises are also included?

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : जी, हाँ



**Shri R. K. Sidhva:** श्री सिधवा : यहां तो लैंड लार्ड इतने मकान नहीं बनाते, जैसे बम्बई में मकान वहां के लोग बनाते हैं ।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : अब आप इस पर भी गौर करिये कि वह जब आये तो अपने को मालिक समझ कर नहीं आये । वह अब इतने अरसे तक बैठ गये तो फिर अब आप इस को और क्यों बढ़ाते हैं ।

**Shri R. K. Sidhva:** Suppose you have a house which you have let out to some one else. Then it so happens that you have no house and you simply wander in the streets. In that case, if provision is made that when such a landlord wants his own house back, he should be entitled to it, will that satisfy you?

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : मेरा मतलब यह है कि यह शाप के लिये भी लागू होना चाहिये । जब बम्बई में यह इस तरह है तो यहां इसे क्यों इस तरह रख रहे हैं ।

**The Hon'ble Shri N. V. Gadgil:** श्री गाडगिल : बम्बई के लिये भी इस को लागू कर देंगे ।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : हां, ऐसा कर देंगे तो हम को शांति आ जायगी ।

**Mr. Chairman:** मिस्टर चेयरमैन : अच्छा, आगे चलिये ।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : अब १३ जी में यह अर्ज करनी है कि जैसे १३ बी में है इस में भी बिफोर एंड आफ्टर होना चाहिये, क्यों कि इस में भी बहुत से केसैज पैडिंग हैं ।

**Mr. Chairman:** मिस्टर चेयरमैन : आल राइट All right. ।

**Shri Jagdish Prasad:** श्री जगदीश प्रसाद : इस के बाद १३ (२) में यह अर्ज करना है कि इस के अन्दर जो यह है :

“within such further time as may be allowed by the court”.

यह फर्दर प्रिविलेज कोर्ट को देने से हार्डशिप होगी । जब उस ने किराया नहीं दिया, फिर नोटिस देने पर नहीं दिया, दावे के समय पर नहीं दिया, तब अब फर्दर पीरियड देने से क्या फायदा है । फर्स्ट डे आफ्टर हियरिंग बिल्कुल दुरुस्त है और इस तरह से यह फर्दर पीरियड देने से तो वह हैवीच्युअल आफ्रैंडर्स की तरह हो जावेंगे ।

**Shri R. L. Varma:** Government servants have not been covered sufficiently. There should be special provision so that by means of application they should be able to recover their premises. There are many government servants who have built their houses.



**The Hon'ble Shri N. V. Gadgil:** Where houses belonging to Government servants are under requisition when the man retires we shall derequisition them. If you say that it must be done within seven days then those in government service will have to get preferential treatment. We should balance equity with equity. Before the man retires he will inform the Secretary about the date of his retirement so that derequisition arrangements will be made.

**Shri Jagdish Prasad:**

क्लाज १३ (३) में मुझे यह कहना है कि जिस तरह से रेजीडेंस के ह्याल से आप ने सबटिनेंट की तारीफ़ की है उसी तरह बिज़नेस के लिये भी कर दी जाय ताकि जो लेक्यूना है वह निकल जाय ।

क्लाज १३ (४) में मुझे यह कहना है कि इसे बिल्कुल डिलीट कर दिया जाय ।

क्लाज १६ में प्रैमिसेज के अन्दर से रेजीडेंस काट दीजिये । क्यों कि इस में गोदाम वगैरह भी हो सकता है ।

क्लाज १९ में आखिरी लाइन में से अनड्यू हार्डशिप टू दी टिनेंट यह शब्द डिलीट कर दिये जायें ।

क्लाज २० इस में जो लिखा है ऐनी रीजन यह दफ़ा १३ का उल्लंघन करता है । सबलैटिंग की बिना पर भी खाली हो सकता है और अपनी ज़रूरत पर भी खाली हो सकता है ।

**Mr. Chairman:** आप यह क्यों समझते हैं कि यह दफ़ा १३ का उल्लंघन करता है ।

**Shri Jagdish Prasad:** जब मैं ने अपनी ज़रूरत के लिये मकान खाली करवाया है तो उस में शिकमी किरायदार नहीं रहना चाहिये ।

आखिर में इस में यह भी जोड़ दिया जाय, आफ्टर पेमेंट आफ़ दी सम्स ड्यू ।

**The Hon'ble Shri N. V. Gadgil:** The sub-tenant will pay according to the accommodation he is in possession of. Why should he pay the dues of the tenant retrospectively. The section says that the sub-tenancy becomes full-fledged tenancy only with respect to the area occupied.

**Shri Jagdish Prasad:** What about my dues. The sub-tenant says that he cannot be ousted.

**The Hon'ble Shri N. V. Gadgil:** The sub-tenant was in occupation of a particular part and for that part instead of being a sub-tenant he becomes a tenant. If the whole premises were in his possession he cannot be a sub-tenant; he is practically a tenant. You cannot put the burden of back dues on him. You should have been alert and filed a suit earlier.



**Shri R. L. Varma:** There were special reasons for the provision in the Bombay Act. Sub-tenancies were created without the permission of the landlord. That is why the word 'lawfully' is there. You have changed the wording of the Bombay Act according to the conditions in Delhi. It is not required at all.

**The Hon'ble Shri N. V. Gadgil:** When the tenancy is determined, the sub-tenant becomes the tenant. He will continue to pay whatever he was paying to the tenant. If he had not paid to the tenant in the past he will pay it to you. The claim of the landlord is on the tenant and not on the sub-tenant. He is only a tenant of the portion occupied by him.

**Shri R. L. Varma:** Section 20 covers it. This is not required at all.

**The Hon'ble Shri N. V. Gadgil:** The sub-letting has been lawfully done and the landlord files a suit for recovery of possession. If the sub-tenant was there lawfully his sub-tenancy becomes a tenancy and nothing more is contemplated.

**Mr. Chairman:** Lawfully means that the landlord has given his written consent. If there is consent in writing then sub-letting is lawful.

**Shri Deshbandhu Gupta:** Your contention is that it should be made lawful under the provisions of the Act?

**Shri R. L. Varma:** Yes, with the consent of the landlord.

**Shri Jagdish Prasad:**

क्लाज ३८ : अब मुझे इस क्लॉज के बारे में कुछ कहना है ।

**The Hon'ble Shri N. V. Gadgil:** क्या आप बतलायेंगे कि बम्बई के ऐक्ट में, प्रावीजन क्या है ।

**Shri Jagdish Prasad:** इस तरह पंजाब और यू० पी० में एग्जेंप्शन कर दिया गया है ।

**Shri R. K. Sidhva:** आप ने बम्बई का, प्रावीजन पढ़ा है । वह क्या है ?

**Shri R. L. Varma:** It is true there is no provision there, but that Act was passed in 1947 and has not been revised.

**Shri R. K. Sidhva:** They have enacted a new provision regarding new buildings.

**The Hon'ble Shri N. V. Gadgil:** The new provision is that whenever there is a new building the landlord and the tenant may fix the rent as they like but if the tenant is dissatisfied he goes to the Rent Controller who fixes the rent.



**Shri R. K. Sidhva:** बम्बई ऐक्ट में यह है कि अगर टिनेन्ट को गरज है और लैंड लार्ड ज्यादा मांगता है तो वह मंजूर कर लेता है और मकान आकुपाई कर के फ़ौरन ही कोर्ट में जाता है और कहता है कि स्टैंडर्ड रेंट फिग़्ज़ कर दिया जाय और गवर्नमेंट रेंट फिग़्ज़ कर देती है ।

**Shri Jagdish Prasad:** मैं ने बम्बई का हवाला नहीं दिया था । मैं ने तो ईस्ट बंगाल और यू० पी० का हवाला दिया था । मैं चाहता हूँ कि गवर्नमेंट की इन पार्वस को स्पेसीफ़ाई कर दिया जाय । जिन को आप रेंट कंट्रोल से हटाना चाहते हैं उन को आप हटा दें ।

**Shri G. D. Bhatt:** आप का सुझाव क्या है :

**Shri Jagdish Prasad:** इस को दस बरस कर दिया जाय ।

We want that new buildings be exempted for a period of ten years.

क्लाज़ ३८ (३): मैं इस में यह अर्ज करना चाहता हूँ कि मरम्मत की हद मुकर्रर कर दी जाय । यह नहीं कि दो साल का किराया मरम्मत में दे दिया जाय ।

**Mr. Chairman:** कितना मैक्सिमम आप चाहते हैं कि कोर्ट फिग़्ज़ करे ।

**Shri Jagdish Prasad:** तीन महीने का किराया ।

क्लाज़ ४० और ४१ : इन को हटा दिया जाय क्योंकि आप ने ऐलान कर ही दिया है कि आयन्दा रिक्विजीशन नहीं किया जायगा । दफ़ा ४१ में यह लिखा हुआ है कि ऐस्टेट आफ़िसर रिक्विजीशन कर सकता है ।

**Mr. Chairman:** My friend here informs me there is no power for requisition of houses in this connection.

**Shri Jagdish Prasad:** It is in cl. 40—40 and 41 are inter-dependant.

**The Hon'ble Shri N. V. Gadgil:** The position is that the landlord does not let it out to anybody even though it is vacant. For the purpose of making the best use of the housing accommodation we have decided that all these vacancies must be intimated to the Government.

**Mr. Chairman:** इसमें यह दिया हुआ है कि अगर सात दिन से ज्यादा खाली रहेगा तो स्टेट आफ़िसर रिक्विजीशन कर सकेगा ।

**Shri Jagdish Prasad:** मैं ने इस के यह मानी नहीं समझे हैं । इस को साफ़ कर दिया जाय ।



**Mr. Chairman:** In regard to the new ones it has been already announced that they will not be taken. In the case of old ones, if there is a vacancy they will be taken.

**Shri Jagdish Prasad:** That is all right.

क्लाज़ ४२ (३) के अन्दर लिखा है कि इफ़ दी टिनेंट सबलेट्स दी होल । मैं चाहता हूँ कि इस में यह कर दिया जाय कि होल और ऐनी पार्ट । क्योंकि हो सकता है कि एक बीस कमरे का मकान है । तो इस कानून के अनुसार वह १९ कमरे उठा सकता है और अपने लिये सिर्फ़ एक आधा कमरा रख सकता है ।

**The Hon'ble Shri N. V. Gadgil:** We will consider that.

**Shri Jagdish Prasad:** The second thing is you have provided a fine of Rs. 1,000.

**The Hon'ble Shri N. V. Gadgil:** I am inclined to reduce it to Rs. 500.

**Shri R. L. Verma:** He sublets the house and gets a pugree of Rs. 10,000 and pays a fine of Rs. 1,000 out of it. So imprisonment should also be provided.

**Shri Jagdish Prasad:**

क्लाज़ ४२ (४) में मैं यह कहना चाहता हूँ कि फाइन के साथ सज़ा भी होनी चाहिये । क्योंकि हो सकता है कि वह २० हजार पगड़ी ले ले । इस सूख में, अगर एक हजार जुर्माना कर भी दिया गया तो १९ हजार तो उस को बच जायगा ।

**The Hon'ble Shri N. V. Gadgil:** But all those can be evicted under cl. 21. This was one of the complaints which appealed to me and therefore I proposed the present clause.

**Shri Jagdish Prasad:** It is true but it is a civil remedy which is proposed; it takes long. It is in the equity of things that this suggestion should be considered.

**Mr. Chairman:** We will consider it.

**Shri Jagdish Prasad:**

क्लाज़ ४२ (५) : मैं चाहता हूँ कि इस सबक्लाज़ के बाद एक ५ ए० सब क्लॉज़ और जोड़ दिया जाय कि जिस आदमी के खिलाफ़ डिग्री हो जाय वह मकान मालिक को वेकेंट पजेशन दे कर जाय । अगर वह ऐसा न करे तो उस को पीनेलाइज़ किया जाय ।



Now I come to repeal. I would say that the previous section 15 of the Act may be repealed because many things are redundant there.

**Mr. Chairman:** Yes.

**Shri Jagdish Prasad:** Then in the Second Schedule the consequential change should be made in (b).

**Mr. Chairman:** Yes.

**A witness:** You have not defined 'sub-tenant'. You have penalised the tenant but not the sub-tenant. In my opinion, the sub-tenants abet the crime. Then you have given no encouragement to tenants to build houses of their own. If you say that a tenant who has lived for say five years continuously will not be affected by this Act, the tenant will have an incentive to build a house of his own.

**The Hon'ble Shri N. V. Gadgil:** If they had money, they would have built long ago.

The witnesses then withdrew.

tenants

---

**Representatives of tenants were next examined.**

**Representatives:** Shri S. Vaidyanatha Iyer.

Shri H. L. Anand.

**Shri Vaidyanatha Iyer:** My Association has asked me to make only one point. I am referring to Section 13(e). It is in place of the old Section 9(e). Under the old Section, the landlord could ask for the premises only when two conditions were satisfied. Firstly, he should prove that he could not get suitable accommodation. Secondly, he must satisfy the further condition that he had acquired interest in the premises on a date prior to the beginning of the tenancy or the 2nd June 1944 or if the inheritance had devolved upon him by inheritance or succession then his predecessors had acquired the interest on a date prior to the beginning of the tenancy or the 2nd June 1944, whichever was later. In the Section as now proposed, these conditions have been omitted. This was a protection which was afforded in order to see that *mala fide* transfers did not take place to the detriment of the tenant's interests. In our opinion, these safeguards were very salutary and there is no case for their being deleted.

**Shri Gokulbhai Bhatt:** In other words, in order to evict the tenant *mala fide* transfers do take place.



**Shri Vaidyanatha Iyer:** This is one of the clauses on which there was a great deal of litigation. If this provision is dropped, then it will increase the litigation. Everybody who purchases a property will ask for the possession of the property because he has no other property to live in.

**The Hon'ble Shri N. V. Gadgil:** Suppose we accept one part, namely, that the premises should have been purchased before a particular date, is accepted but the other condition that he is not able to find any other accommodation is deleted and we accept cases where the man is really in need of it for *bona fide* reasons.

**Shri Baidyanatha Iyer:** This should not be done when there is a very strong case for the introduction of the old provision. As you know, it is a period of tremendous housing shortage and if this protection is removed, it will adversely affect the tenants.

**The Hon'ble Shri N. V. Gadgil:** I shall give you an example. Supposing there is a man who has let out his premises ten years ago when his children were very small. Supposing his family has grown now and he wants a portion of it—not the whole of it—supposing there is a case like that. Of course, it is difficult to get it, but if you are going to throw the burden on him to show that it is impossible for him to find out some other accommodation, would it not be a hardship?

**Shri Vaidyanatha Iyer:** I am afraid the burden will have to be discharged by him for some time to come. After all, this is only a temporary measure. When new constructions go up, there would not be the need for some of these provisions, but for some time to come it will be dangerous to remove this provision.

**Shri Ranganathan:** The restriction about the date was withdrawn in order to help the refugees.

**The Hon'ble Shri N. V. Gadgil:** We have noted your view. We shall consider this matter.

**Lala Deshbandhu Gupta:** One question. Supposing there is a well-placed tenant and he has been able to build a house for himself, will it be, in your opinion, fair in such a case if the landlord asks him to vacate?

**Shri Vaidyanatha Iyer:** But you have put in a provision in Clause 13 to cover such cases. I am referring to (g). You have said, "if the tenant has after the commencement of this Act built, acquired vacant possession of or been allotted a suitable accommodation"—that provision is already there. So, this will be one of the conditions on which the landlord can always ask for the property to be vacated.



**Shri Sidhva:** Can you give some rough idea of tenants who are already building houses of their own?

**Shri Vaidyanatha Iyer:** Our Association at one stage requested the Government to allot some site so that on a cooperative basis we could put up a colony, but for various reasons it was not possible for the Government to accede to this request. If some such scheme could be sponsored, I am sure that many of the tenants would go in for properties and make these properties available to the landlords or other people.

Before I withdraw, I might also mention that our Association has asked me to request you to see that there is no other modification in the Bill as it stands. (Shri Vaidyanatha Iyer then withdrew).

**Shri H. L. Anand** (Delhi Kiraydars Association): I shall make a brief statement to begin with. It is our submission that though the Central Government has been given powers to extend this Bill later on to other areas, even at this stage this legislation should be extended to townships like Mehrauli, Nazafgarh and..... Narela. The conditions which necessitate the enactment of this Bill are actually present in the same intensity in those places. In other words, I want to enlarge the schedule. I want immediate extension.

Next I turn to section 8. Under this section, basic rents are those payable or which were payable in 1934. In this, there is a practical difficulty. When a tenant goes to the court with the application that the standard rent may be fixed, he has to prove to the satisfaction of the court that a specific rent was being paid by the tenants in 1934. In the case of Delhi (of course, this does not apply to Ajmer) in the year 1946 there was a huge fire in the Delhi Municipal Committee and all the records relating to house tax assessment were destroyed. There are at present no records which will show you what was the house tax assessment up to 1946. I think therefore that the tenants should be relieved of the onus of proving what was the basic rent in 1939.

**The Hon'ble Shri N. V. Gadgil:** Can we not find something from the account books of the landlords?

**Shri Anand:** They will not disclose.

**The Hon'ble Shri N. V. Gadgil:** What about their income-tax returns?

**Shri Anand:** Under the Income-Tax Act all returns are confidential.

**Shri Ranganathan:** What is your positive suggestion?



**Shri Anand:** I won't speak as an expert. As a laymen, I would suggest that you should evolve a system of valuation of property; the actual investment at a particular moment, as for example, under the old Act you gave a certain jurisdiction to the Rent Controller.

**Shri Sidhva:** Is there not periodical assessment by the municipality?

**The Hon'ble Shri N. V. Gadgil:** House tax was assessed in 1946 again after the burning of the records during the fire.

**Shri Anand:** True.

**The Hon'ble Shri N. V. Gadgil:** Will that not be some indication, unless the landlord goes out of his way and offers to pay more.

**Shri Anand:** There is a curious phenomenon here. Before an Act of this kind was enforced in 1946, landlords used to pay the minimum house tax, but the latest attitude is that they way to pay enhanced house tax because this has been made the criterion for fixing rent. So, if you insist on this, it will nullify the provision.

**The Hon'ble Shri N. V. Gadgil:** How many cases there are still in which standard rent in relation to 1939 has not yet been fixed?

**Shri Anand:** The law allows an alternative remedy, that is fix it in relation to the rent of neighbouring premises. The difficulty, however, is most of the tenants today are new tenants, particularly on account of the afflux of Muslims.

Moreover it is more or less an expert's job. Under the old Act the Rent Controller could evaluate the amount of investment and give a proper return to the landlord.

**Mr. Chairman:** The court is considered an expert because it goes into the whole matter and comes to a decision.

Can you suggest any formula of your own?

**Shri Anand:** There are two difficulties in regard to this provision. Evaluation of property is a specific criterion as distinct from the rest and the courts will not arrogate to themselves this function.

Secondly there should be uniformity in the scheme of the law.

**Mr. Chairman:** But what is your specific suggestion in addition to what we have put in here.

**Shri Anand:** It is not a question of retaining some part of the provision for some cases and applying another criterion for certain other cases. It has to be uniform. It should be return on property.



**The Hon'ble Shri N. V. Gadgil:** I make you an offer—if you could give us a formula within say four or five days we are quite prepared to consider it. After having given our best consideration to this matter we find that we cannot improve upon this, although your difficulties are real.

**Shri Anand:** I will try if I can evolve a formula, so that I may send it to you.

**Shri Anand:** My next point is with regard to sub-clause 1(b) of clause 8. I suggest we should refer to the position in the old Act—pre 1947 and post 1947. Standard rent of all cases which are pre-1947 should be the same.

**The Hon'ble Shri N. V. Gadgil:** This is much more helpful to the tenant. Why do you take that date to 1947.

**Shri Anand:** Most of the rents which were as a result of tenancies created between 1945 and 1947 was very high. The discretion we are giving to the courts in this case is unlimited.

**Mr. Chairman:** How can you give relief in such cases?

**Shri Anand:** The standard should be the 1939 rent of neighbouring houses.

**The Hon'ble Shri N. V. Gadgil:** That is bound to be.

**Shri Anand:** The question is in those cases you do not give any discretion to the courts. My only objection to it is that with regard to tenancies up to 1944 you do not give much discretion to the courts. But in the case of tenancies created between 1944 and 1947 you give more powers to the courts. I say that distinction should not be made.

**Shri Ranganathan:** That is probably because between 1939 to 1944 the rise in the price level was not very high and we fixed a percentage above that; but after 1944 the price level went up so high that it is very difficult to give any percentage over and above that. The price level has gone up by 400 times.

### Clause 11.

**Shri Anand:** This provides for certain limitation, especially in the case of applications for standard rent. This is very harsh. The period is very limited—six months. In six months it is hardly possible for a tenant to face his landlord in a court.

**The Hon'ble Shri N. V. Gadgil:** You want one year?



**Shri Anand:** I am in favour of no limitation, because it means perpetuation of excessive rent for all time.

**The Hon'ble Shri N. V. Gadgil:** The simple remedy is he should refuse to pay for one month.

**Shri Anand:** I am in need of a house. I go to a landlord. I tell him everything about my pedigree and request him to give me the house. For at least six months I would not like to stand before the landlord in a court of law.

**The Hon'ble Shri N. V. Gadgil:** At the same time to take away limitation altogether is keeping the landlord continually like 'Tri-sanku'. If you can suggest, instead of six months, any reasonable period, the members of the committee would be prepared to consider it.

**Shri Anand:** It may be made mandatory on the landlord to inform the court and the court shall fix the standard rent.

**Mr. Chairman:** So your idea is that whenever a new tenancy is created standard rent should be fixed by the court? There is a limitation fixed because human life is short; therefore in this Bill six months is fixed. Would you fix any other period?

**Shri Anand:** You must distinguish relief measures from the rest of the measures. This is a measure which is primarily intended to give relief to tenants.

**The Hon'ble Shri N. V. Gadgil:** For how much time would a man with normal courage be "very much afraid of facing the landlord"? Would one year be enough?

**Shri Anand:** It should be two years.

**Mr. Chairman:** The landlord will not know where he stands for two years. The sword of Damocles will be hanging over him and he may have to refund it. You have to look at it from both the points of view.

**Shri Anand:** A mandatory provision must be incorporated requiring the landlord to inform the court—just as you have done in the case of new buildings—that so and so has become my tenant, so much is the rent.

**The Hon'ble Shri N. V. Gadgil:** Whether the period should be six months, one year or five years...

**Shri Anand:** I first say that there should be no limitation. If you are not pleased to agree to that, in that case I say two years. It should be like this—two years from the starting of the tenancy or two years from the commencement of the Act.



**The Hon'ble Shri N. V. Gadgil:** That is so far as the period of limitation is concerned. Suppose the court fixes a standard rent do you want that fixation to have retrospective effect?

**Shri Anand:** Yes, it should have retrospective effect. This is based on a fallacy of law. The scheme of the Bill is that any contract for the payment of any rent which is more than the standard rent is rendered void—that moment the contract is rendered void *ab initio*.

**The Hon'ble Shri N. V. Gadgil:** The main object is to give a quietus to litigation.

**Shri Anand:** Tenants have been begging all these years. That is why you have trespassed on the ordinary law of contract. The law of contract has been murdered here.

#### Clause 12.

I will attack this limitation—the limitation of six months in line 11. This should also be enhanced to two years.

**The Hon'ble Shri N. V. Gadgil:** It becomes consequential if we accept the other suggestion.

#### Clause 13.

**Shri Anand:** In clause 13(1) (a) one of the conditions is that "the tenant has neither paid nor tendered the whole of the arrears of rent.....etc." This word "rent" has not been defined so that it may mean a whimsical rent claimed in the suit. It should be the standard rent. I am supposed to deposit certain money. The fixation of standard rent must precede that.

**Mr. Chairman:** You want that whenever a landlord brings a suit the court should first address itself to the question of what is the standard rent. No rent can be recovered without its coming to the conclusion as to what is the standard rent.

**Shri Anand:** The difficulty is this. A tenant goes on paying the rent. The landlord does not give receipts. The moment he wants to put in an application he files a suit for the action period, so that if the landlord instead of Rs. 30 files a suit for Rs. 100 the tenant is doomed—although the standard rent might be Rs. 20.

**The Hon'ble Shri N. V. Gadgil:** That we follow.

#### Sub-clause (b) of clause 13(1).

**Shri Anand:** I have no objection to the provision relating to parting possession of the whole premises, but subletting of part of the



premises should be encouraged. In the first place, when a tenant sub-lets, from the point of view of the landlord as also from the scheme of the Bill, the tenant is in the position of the landlord *vis-a-vis* the sub-tenant. Therefore all the bars are there. Sub-letting is a thing which, firstly, is necessary because of higher rents. The rent is Rs. 100. The rent is also reasonable. But I have no money. I take the house and ask a friend to join me in that house. Sometimes the landlord only wants this as an excuse.

**Shri Shiva Rao:** Do you also have a fixation of standard rent?

**Shri Anand:** Yes, he must pay according to the standard rent. I can also increase it to the particular extent as the landlord does.

**Mr. Chairman:** In this Bill there is no provision for fixing standard rent of a sub-tenant—that is as between a sub-tenant and tenant—though there is a percentage.

**Shri Anand:** The word “tenant” includes a sub-tenant, and the tenant is given a right. According to the scheme of the Act the tenant is a “landlord” so far as the sub-tenant is concerned, and *vice versa*.

**The Hon’ble Shri N. V. Gadgil:** Do you want to suggest that a tenant who has taken the premises from the landlord should make profit out of it?

**Shri Anand:** No, there is no question of profit at all. The moment the tenant becomes a “landlord” with reference to the sub-tenant under the scheme of the Bill, the question of standard rent is there and all those bars are there.

Sub-letting will help distribution of accommodation. I cannot pay and I would like to part with one room.

**The Hon’ble Shri N. V. Gadgil:** Let the sub-tenant go to the landlord direct. Why should you keep the tenant as an intermediary between the landlord and the sub-tenant?

**Shri Anand:** The tenants have no objection to that. I want to encourage *bona fide* distribution of accommodation.

**The Hon’ble Shri N. V. Gadgil:** If the tenant wants to sub-let does it not indicate that he is not in need of the entire premises?

**Shri Anand:** He might be in need, but his pocket does not permit.

**Shri Sidhva:** Are you against the recovery of higher rent?

**Shri Anand:** Yes, I am against it, but *bona fide* distribution of accommodation should be allowed, and encouraged. There is no question of profiteering at all here.



*Sub-clause (e) of clause 13(1).*

**Shri Anand:** One of the grounds for ejectment is that the landlord cannot get any other suitable accommodation and he requires it. But he must give suitable alternative accommodation to the tenant. Suitable accommodation may not be available for the landlord. But what is not 'suitable' for the landlord will be much more than what the tenant needs.

**Mr. Chairman:** Perhaps landlords are poorer than the tenants.

**Shri Anand:** That might be only exceptions. Might be a poor widow. That is not going to guide the principle of law. Ordinarily we leave to the courts what is left by the Legislature by oversight.

*Sub-clause (i) of clause 13(1).*

**Shri Anand:** The grounds given here are certain conducts of the tenant. These conducts are already indictable under the civil and criminal law. The landlord and the neighbours have already got the remedy. Why should the tenant be evicted? If he commits a nuisance, there is 107—criminal breach of trust.

**Shri Ranganathan:** That will not result in eviction.

**Shri Anand:** Why both the things? So long as the normal law of the land allows it why is it necessary? Because, this clause is exploited. Concocted evidence is brought that so and so was drunk etc.

**The Hon'ble Shri N. V. Gadgil:** For disorderly conduct he may be taken to the court and may just be fined five or ten rupees.

**Shri Anand:** A permanent injunction can be granted.

**The Hon'ble Shri N. V. Gadgil:** Suppose the whole peace of that neighbourhood is disturbed and the other tenants are disturbed.

**Mr. Chairman:** According to your own saying this is an extraordinary piece of legislation which gives certain kinds of rights to tenants. If the Legislature in its wisdom to enact a law which should be fair to a certain class, insists that the gentleman (the tenant) should behave in a certain manner, it is not too much.

**Shri Anand:** They are restricted by normal laws.

**Mr. Chairman:** If you speak of normal laws, then we can speak of normal conduct.

**Shri Anand:** Individual liberty is there. This is an additional burden. Already he is liable. One more point. The powers of civil



courts to grant permanent injunctions are there. The man can be sent to prison for three months if he disobeys the injunction.

**The Hon'ble Shri N. V. Gadgil:** The point is that there is no eviction.

**Shri. Anand:** There may be some incorrigible people ...

**Mr. Chairman:** This applies only to those incorrigible people.

**Shri Sidhva:** What is the number of members of your Association?

**Shri Anand:** Two thousand.

**Shri Sidhva:** Are you a tenant?

**Shri Anand:** I am living in a garage, as a tenant.

*Sub-clause (j) of clause 13(1).*

**Shri Anand:** Here there are certain things about the Improvement Trust where the premises have been used contrary to the conditions imposed. There you say that the tenant should be evicted. But in some cases the landlords themselves give the premises, to begin with, contrary to the Rules of the Trust. They should be stopped from taking the benefit. In all the cases similar alternative accommodation should be arranged for the tenant. It may not be suitable accommodation but still alternative accommodation must be there by the operation of law.

**The Hon'ble Shri N. V. Gadgil:** If an offence is committed, even the King's command cannot save him. The tenant cannot have the defence that the landlord encouraged or permitted him to do a thing which is contrary to law.

**Shri Anand:** Under the tenancy rules, although you are given some accommodation not suitable, yet owing to some technical defect in the records of the Improvement Trust, you are generally exploited by the landlord.

**The Hon'ble Shri N. V. Gadgil:** You have already submitted your memorandum on this matter and we have it already with us.

**Shri Anand:** That was before we had this Bill for consideration.

**The Hon'ble Shri N. V. Gadgil:** We may adjourn now.

**Shri Anand:** I won't take more than 5 minutes.

In section 13 (5) the word "rent" should mean standard rent in this case also and throughout it should mean that. Under section 15 certain concessions are given to the landlords to re-enter. That should be extended to those ejected under clause (k) Section 13 where the landlord requires the premises in order to carry out any building work at the instance of Government.



Then I come to section 16. This is a provision which will help the landlord to circumvent the law. He will say: "This permission is not being given to you for all time. I do not need it at the moment and therefore you take it." I suggest that this provision should be deleted.

**Mr. Chairman:** Suppose there is a long contract between the tenant and the landlord.

**Shri Anand:** As a matter of fact the landlord is always in a bargaining position. He says: "You write to me and I shall give the premises to you. You take it for 3 months etc."

**The Hon'ble Shri N. V. Gadgil:** That takes the case outside the provisions of law. Then it is fraud and mis-representation. Suppose a bungalow is vacant and I gave it for purposes of marriage and if you refuse to go out, then what happens?

**Shri Anand:** Then this law of licence is there. In any case there is no necessity for this specific provision. This will only help to circumvent the law. People will not be tenants, but they will be tenants at will.

Then I come to section 42 sub-section 5 which says that if any person contravenes the provisions of clause (a) of sub-section (2) of section 41, he is entitled to ejectment. The conduct that is made punishable also entitles to ejectment. He is already affected because of his conduct. Why should you impose an additional penalty on him?

**Mr. Chairman:** All right.

**Shri Anand:** Then I come to presumption. The first presumption is with regard to demand of rent. Landlords do not give receipts. The result is that the tenant goes on paying. He does not ask for receipts and when the land lord takes the standard rent, he says: I have never received any money all these two years from this man. The only thing now left to the tenant is the oral evidence that he has been paying but that is not considered sufficient by the court. Therefore, if the landlord does not serve a notice on the tenant for rent for a year or six months, it will be presumed that the tenant has paid the rent in accordance with the provisions of law. This is so, because there is penal provision for non-payment of rent. If the landlord does not give a receipt within 15 days after payment, the tenant can go to court and get relief.

**Mr. Chairman:** The suggestion is a very good one that a person should give a receipt for money received but the difficulty is that as soon as the landlord denies that he has received the rent, the tenant will also deny that he has received the receipt.



**Shri Anand:** When the tenant says that he has paid the rent, the onus is on the tenant to prove that he has paid it. Oral evidence leads him nowhere. In the absence of a receipt, it is the tenant who suffers. There should be a provision to presume in his favour. There must be a provision penal in nature that if the landlord does not give a receipt, the tenant should go to court for relief or there should be presumption.

**Shri Sidhva:** If the landlord does not give a receipt, is not the tenant entitled to go to court and get relief?

**Mr. Chairman:** The landlord may say that he had given a receipt.

**Shri Anand:** When a house is given to a tenant, he goes on paying and when the landlord goes to the standard rent, he says: I have not received the rent for all these months.

**Shri Deshbandhu Gupta:** Supposing the landlord does not give the receipt for the first month, then you pay the rent for the second month and if the landlord does not give the receipt even then, you can serve a registered notice on him and that will be sufficient evidence when you go to court just as the landlord is entitled to serve a notice on you for non-payment of rent.

**Shri Anand:** There should be some penal provision. Then I want to say something about the licencees. This is another way to circumvent the law. The recent judgment of the High Court is that the licensee is different from the tenant.

**The Hon'ble Shri N. V. Gadgil:** That point was taken up by one of the landlords.

**Shri Anand:** Rent of houses is another point which may be beyond the scope of the Bill. I shall explain this. When I become a tenant I am asked to execute a deed which says that I am a licensee in respect of such and such buildings, such and such room. I am told the corridor is common and all this means nothing. I do not come under the tenancy rules.

(Witness then withdraw.)

**The Hon'ble Shri N. V. Gadgil:** We may record that in view of the procedure followed here, the Minister concerned may ask for extension of time for submitting the report. As we are all expected to be busy with other matters up to the 1st, we will fix a meeting on the 2nd or 3rd of next month.

The Committee then adjourned.



HOUSE OF THE PEOPLE

THE SELECT COMMITTEE  
ON  
THE ESTATE DUTY BILL,  
1952.

EVIDENCE

[ 5th February, 1953 ]



सत्यमेव जयते

PARLIAMENT SECRETARIAT,  
NEW DELHI.  
*February, 1953.*



# THE SELECT COMMITTEE ON THE ESTATE DUTY BILL, 1953.

## Minutes of the Evidence taken before the Select Committee on the Estate Duty Bill, 1952, at New Delhi.

*Thursday, the 5th February, 1953 at 2-30 p.m.*

### PRESENT

Shri M. Ananthasayanam Ayyangar—*Chairman*.  
Shri Khandubhai Kasanji Desai.  
Shri Narahar Vishnu Gadgil.  
Shri Dev Kanta Borooah.  
Shri R. Venkataraman.  
Shri Basanta Kumar Das.  
Shri Balwantraai Mehta.  
Prof. Shriman Narayan Agarwal.  
Shrimati Anasuyabai Kale.  
Shri P. T. Chacko.  
Shri N. Keshavaiengar.  
Shri C. D. Pande.  
Shri Tek Chand.  
Shri Sadath Ali Khan.  
Shri Radheshyam Ramkumar Morarka.  
Shri K. A. Damodara Menon.  
Shri K. S. Raghavachari.  
Shri Tulsidas Kilachand.  
His Highness Maharaja Sri Karni Singhji Bahadur of Bikaner.  
Shri Kamal Kumar Basu.  
Dr. Lanka Sundaram.  
Shri B. R. Bhagat.  
Shri Mahavir Tyagi.

Shri M. C. Shah, Deputy Minister for Finance was also present at the meeting.

Shri G. R. Rajagopaul, Joint Secretary and Draftsman, Ministry of Law was also present.

Shri A. K. Roy, Senior Member, C.B.R., Shri Pyare Lal Uppal, Member, C.B.R., and Shri R. K. Das, Officer on Special Duty, C.B.R. were also present.



2

WITNESSES EXAMINED

**Name of the Association :—**The Institute of Chartered Accountants of India, New Delhi.

**Representatives :—**(1) Shri Basu  
(2) Shri S. Vaidyanath Ayyar.  
(3) Shri Shastri.  
(4) Shri Chocksi.  
(5) Shri Shah.

(Witnesses were called in and they took their seats).

**Mr. Chairman (Shri M. Ananthasayanam Ayyangar) :** You have given us a memorandum. May I ask if you have anything to supplement to that you have already said? You may place the main points before us which require explanation. After that the Members of the Committee will ask you questions, wherever they have got certain doubts. If you want any particular portion of your evidence to be treated as confidential you kindly tell us so.

**Shri Basu :** I do not think we have any further to add to what we have stated in the memorandum. One of our members, of course, desires to add one or two other items if you will permit him.

**Shri Chocksi :** Sometimes it happens under the Indian Income-tax Act that the Officers re-open assessment of the previous seven or eight years. These re-assessments may sometimes result into liabilities of lacs of rupees. Such proceedings often take place long after the death of the deceased. Estate duty has to be paid within a period of six months or so from the date of the death. At the time of the payment of the estate duty the income-tax liabilities may be unknown in respect of the re-assessment periods. The Estate duty paid in respect of properties from which such Income-tax liability is not decreased, may result into an over-payment, and for which there should be a provision for adjustment of tax against such over-payments.

I may illustrate the point further. Suppose Mr. X dies on the 1st May 1953. Then within 6 months from that date a statement of his total estate has to be furnished and the estate duty will have to be paid on that. Three or four years thereafter the officers may re-assess the previous year's assessments on account of the particular provisions of the Income-tax Act. There are sections such as section 34 under which we can under certain circumstances re-open assessments of the previous four years and under special circumstances of the previous eight years and some of these re-assessments may be made not on account of any undisclosed income but on account of the other provisions of the Act. The obligation of these provisions may ultimately result in a large amount of vicarious liability. There should be a provision in the Estate Duty Act to give a deduction on account of such liabilities which are ascertained at a later stage.

**Mr. Chairman :** That is also to be paid, is it not? Estate duty must be charged on the estate. The estate duty must be reduced to the extent of the income-tax that is subsequently liable to be paid.

**Shri Chocksi :** I am referring to proceedings taken to ascertain at a later stage, say after two years after the death of the deceased.



**Shri Tyagi :** If you read clause 42, you will find that debts of a certain description are allowed, and the income-tax demand will always be deemed to be a debt and will therefore be covered.

**Shri Chocksi :** But sometimes this sort of liability is ascertained long after the estate duty has been paid.

**Shri Tyagi :** But if any excess has been realised it can be refunded. Your point seems to be that once it is realised it is treated as realised ; that should not be so.

**Shri Chocksi :** My point is that there is no provision for repayment of that sort or adjustment on account of overpayment.

**Shri Tyagi :** What you want is that provision should be made for refund of excess payments made. It is a good point. We have made a note of it.

**Mr. Chairman :** You have expressed some difficulty in regard to clause 7 relating to interests ceasing on death. Will you explain it ?

**Shri Vaidyanatha Iyer :** What we suggest is that it is not only that the interests should be taken into account, but it should be made clear in the Section that what will be taxed will be the interests minus the liabilities, if any, which exist on the estate, treating the matter as if a partition of the family had taken place just on the death date.

**Mr. Chairman :** Under the Hindu Law, personal debts will not pass along with the estate but if he has created a charge on the property during his lifetime, that is valid. Those debts and maintenance and other charges have to be given credit to. So, the benefit after death accrues only minus the obligations. Don't you think that the present clause is sufficiently wide to cover that ?

**Shri Vaidyanatha Iyer :** If you are feeling satisfied that this point is covered, then we have nothing further to say.

**Shri Gadgil :** An ordinary Hindu who is a coparcener, he has no right to charge anything and everything to the estate. He can charge only certain things, in specified circumstances, and only if the debt is for the benefit of the joint family and not otherwise. If there are four brothers and if the next brother creates certain debts, they are not binding on the property at all.

**Mr. Chairman :** Mr. Gadgil has raised a pertinent point. Supposing with a view to escape the estate duty, the estate is encumbered up to the hilt, then that kind of encumbrance will be a fraudulent one. I do not think the Controller will accept that. Supposing there is a *binami* sale, the Controller will say that notwithstanding the fact that there is a registered document, in fact there is no sale and the encumbrance has been created to avoid estate duty. I think the definition is sufficiently wide here.

**Shri Vaidyanatha Iyer :** If you feel that it is covered, it is all right.

**Mr. Chairman :** Then, why do you want a definition of the term "agricultural land" ?

**Shri Vaidyanatha Iyer :** We feel that it would be a good idea if the same definition of "agricultural land" that is given in the Indian Income-tax Act is given here, for it will make it perfectly clear.



**Shri Tyagi :** The term "agricultural land" has been taken from the Constitution. The Constitution vests agricultural land in the State Governments. That very word has to be kept here. The income-tax is from agricultural income.

**Shri Vaidyanatha Iyer :** We consider that it will conduce to clarity if we have the words defined in the Bill.

**Mr. Chairman :** Regarding life insurance policies, why do you want a special exemption in their case ? Why should there be an exception here alone ? Just as in the Income-Tax Act, here too some general exemption will be given.

**Shri Vaidyanatha Iyer :** Our reasons for this suggestion are two-fold. In a country where *per capita* insurance is so poor, this will perhaps give an encouragement to life insurance.

**Shri Gadgil :** In your memorandum, you have asked for exemption if the investment is in savings certificates. Now, you ask that life insurance policies may be exempted. Then there are marriage expenses of daughters etc. What is left for Government in the end ?

**Shri Vaidyanatha Iyer :** You have touched a point where our position is untenable. We cannot ask for exemptions in respect of both. We can ask for either the one or the other.

Our second reason is that in most cases the policies are intended for the benefit of certain specified nominees and if there is only a general exemption limit, the benefit going to the nominees may not be achieved. We look at it from this point of view. The limit is so far as the estate is concerned. In the case of insurance, the property may be for the benefit of somebody else. If that is so, we want that that property should be available to the other person without having to pay estate duty on that. So, we are suggesting a limit up to Rs. 20,000.

**Mr. Chairman :** In regard to rapid succession relief, what is it that you want in addition to the provision here ?

**Shri Vaidyanatha Iyer :** That succession relief which you have suggested in clause 30 will be available only in the case of land or buildings. We do not see that point in excluding other classes of assets.

**Mr. Chairman :** Because the movable property will be converted.

**Shri Vaidyanatha Iyer :** Take buildings. Why are they excluded ?

**Mr. Chairman :** They will possibly come under land.

**Shri Vaidyanatha Iyer :** If you are going to give a definition of land and include buildings under land, our objection will be met ; otherwise, if there is no such definition, buildings will not be included. When you are giving the benefit to certain categories of property, why deny it to other categories ?

**Mr. Chairman :** It follows the U. K. Finance Act.

**Shri Vaidyanatha Iyer :** They may have this. We need not have it. The point is that the position may be different in the case of movable properties, but why exclude buildings ?



**Shri K. K. Basu :** Do you want to include all other kinds of property, such as shares, securities and other kinds of assets ?

**Shri Vaidyanath Iyer :** Our suggestion is that the relief should be available in the case of movable properties also.

**Mr. Chairman :** As regards the non-taxable limit, why do you want it to be Rs. 1 lakh. Supposing there is a joint Hindu family consisting of four members, and each one gets an exemption limit of Rs. 1 lakh, then the whole family will get an exemption of Rs. 4 lakhs. Do you want this to be the ordinary limit of an ordinary middle-class family ?

**Shri Vaidyanath Iyer :** In the case of the Hindu undivided family, a certain position is being sought to be taken up in the Bill. Actually there is no death in the case of the family ; it is there by the doctrine of survivorship, but we deem a property to pass to a certain extent, in case one member of the family dies. What we are suggesting is that in each case, there should be an exemption limit of Rs. 1 lakh.

**Shri Gadgil :** If we were to accept your suggestion, then if there is property worth Rs. 4 lakhs, and if there are four members in a joint Hindu family, then the whole of the property will escape from estate duty. Therefore this is much too large.

**Mr. Chairman :** As regards valuation of assets, do you mean to suggest that within one year, there may be such a fall in prices ?

**Shri Vaidyanath Iyer :** Sometimes it happens. We have noticed that in many of the cases that come up before the Investigation Commission for Income-Tax, that when suddenly a property is thrown on the market, there is a great deal of deterioration in the value, because of the fact that there are no buyers in any large number for these big properties.

**Mr. Chairman :** Supposing there is a rise in prices, then what do you suggest ?

**Shri Vaidyanath Iyer :** We are only asking for a concession. In the other case, we have suggested that the value should be as on the date of death.

**Shri Gadgil :** You mean to say, whichever is less ?

**Shri Vaidyanath Iyer :** Yes.

**Shri Venkataraman :** As regards clause 42 dealing with deductions, you have stated that there appears to be no provision in the Bill for deducting debts incurred in the course of guaranteeing a debt of a third party. Why do you want that guaranteed debts should be deducted from the estate, so long as the money is not paid ?

**Shri Vaidyanath Iyer :** A particular person may have guaranteed a certain debt, and the contingency for the enforcement of the debt may not arise until some time after the death of the person. In such a case, the liability did exist at the time of his death, though it was not ascertained, or had not become crystallised at the time of his death. When it can be shown that in pursuance of a guarantee given by the deceased before his death, some money has got to be paid from out of the estate, subsequently, then, to that extent, there must be reduction of the duty.



**Shri Venkataraman :** If the money is paid out of the estate, then it is all right. But if it is not paid, then what is the position ?

**Shri Vaidyanath Iyer :** But unfortunately at the time of his death, the guaranteed debt did exist, though it was not ascertained.

**Shri Venkataraman :** Supposing there is a person who has guaranteed a debt to a third party, and he dies without paying it, then the whole estate devolves on his heir, and that heir is called upon to pay the debt, because of the guarantee ; so there is no point in your saying that there should be a deduction.

**Shri Vaidyanath Iyer :** Perhaps there is something in what you say.

**Shri Venkataraman :** Regarding funeral expenses, you have suggested that Rs. 3000 should be the limit. Do you want that the minimum should be Rs. 3000 ?

**Shri Vaidyanath Iyer :** Rs. 3000 is only the upper limit.

**Shri Tulsidas Kilachand :** What is the principle on which you have suggested that the estate should include all assets of the deceased, so far as rapid succession relief is concerned ?

**Shri Vaidyanath Iyer :** The idea behind the rapid succession relief would appear to be that in the case of an estate which passes through several hands at very short intervals of time, it should not be subject to estate duty repetitively at the same rate. What we have stated is that if the relief is going to be given in the case of land or business, then why should other properties be excluded, when the whole idea behind it is that the estate must be saved from a lot of duty, in the event of its changing hands oftener.

**Shri Gadgil :** If it is a death, then it is a death sooner or later. Therefore the estate duty must be there. To the extent that land and business are given some concession, let us have that small mercy from the Government.

The scheme here is one that is followed in most of the continental countries in the matter of rapid succession relief.

**Shri Vaidyanath Iyer :** We have made a concrete suggestion that

“It should further be provided that if the second death occurs at any time within five years of the first death, no estate duty shall be payable to the extent of the assessed value of the estate at the time of the first death. Similarly, it should also be provided that if the third death occurs at any time within seven years from the date of the first death, a similar concession should be extended to such death also”.

**Dr. Lanka Sundaram :** In paragraph 13 of your memorandum you have given the list of exemptions required. Do you want any variations in the same ?

**Shri Vaidyanath Iyer :** We have suggested that investments in the Post Office Cash Certificates and/or Post Office National Savings Certificates and/or Ten-Year Treasury Deposit Certificates should be exempted, with an aggregate limit of Rs. 20,000. We have also suggested the exemption of insurance policies taken out to meet estate duty liability.



**Shri A. K. Roy :** Does it strike you as a good reason that while in the case of land, this concession would prevent fragmentation, in the case of other properties, the same consideration would not apply ?

**Shri Vaidyanath Iyer :** That perhaps was the reason, why it was restricted to land or business.

**Mr. Chairman :** Would the concession apply likewise to buildings also. ?

**Shri Vaidyanath Iyer :** After all we are introducing death duties for the first time in this country. And the aim is to reduce inequalities in wealth distribution. But it is to be done over a period of time.

**Mr. Chairman :** In that case, it will be postponed.

**Shri Vaidyanath Iyer :** By a few years.

**Shri M. C. Shah :** But we want to have it as early as possible.

**Shri Vaidyanath Iyer :** Government is going to get the duty in any event. It is only a question of postponing the recovery of duty.]

**Shri Tek Chand :** In paragraph 2, so far as the definition of 'agricultural land' is concerned, in England, land where there is standing timber, is not included in the estates duty, because the people cannot sell that standing timber, on account of the forest laws. Do you want that the same concession should be given here also ?

**Shri Vaidyanath Iyer :** I am afraid, to tell you frankly, that I cannot give much information on the point, because I am not very familiar with that.

**Shri Tek Chand :** In para 4 of the memorandum, you have stated that there should be a general exemption in respect of life insurance policies to the extent of Rs. 20,000 of the sum assured (exclusive of the Bonus which may accrue on such policies). Would you like this to be substituted by an amount equal to the death duty, or to Rs. 20,000 ?

**Shri Vaidyanath Iyer :** I would invite your attention to paragraph 13 (b) dealing with Insurance Policies taken out to meet Estate Duty Liability.

Not only was this one of the considerations, but we had other considerations also at the time we made these recommendations. We thought that in a country where there was likely to be the danger of fragmentation, a thing like this would help to preserve the integrity of the property as a whole.

**Shri Tek Chand :** From the point of view of the Government, don't you think that such a suggestion would enable the Government more readily to realise the death duty ?

**Shri Vaidyanath Iyer :** That is precisely the reason why we have made that recommendation. As a matter of fact, we seem to think that the policy should be taken for the specific purpose of discharging the obligations arising out of the payment of estate duty.

**Shri Tek Chand :** Do you think it will be in the interests of the Government as much as in the interests of the policyholders ?

**Shri Vaidyanath Iyer :** Quite so.



**Shri Tek Chand :** Coming to para 10 regarding appeals, do you prefer that the authority for entertaining the appeal should be the High Court, or an appellate tribunal ?

**Shri Vaidyanath Iyer :** There are two stages in this. As the provision stands at present, against the controller's assessment, an appeal lies to the Central Board of Revenue, on both questions of law as well as of fact, while against the decision of the C. B. R., an appeal lies to the High Court, on questions of law. What we are stating is that it might not inspire the same confidence if it is said that the appellate authority will be the C. B. R., when we know that it is itself going to be a party charged with the function of administering estate duty. That is the reason why we have suggested that at that stage, instead of the C. B. R., we may think in terms of having an independent tribunal. But there is one thing which I would like to mention now, and which we forgot to mention in our recommendations. Our own experience of the Excess Profits Tax Investigation during the period of the war showed that it might even be a very good plan for us to leave this matter to be settled in the initial stages by the C. B. R., because what we found was that the CBR was much more generous than an appellate authority or a tribunal or the High Court might have been. That is why we have suggested that the appellate functions should be given to the C. B. R., but we would suggest that if that suggestion is adopted, the C.B.R. might co-opt some of the Accountant Members to sit with them, at the time they hear the case.

**Shri Tek Chand :** My point was that apart from the tribunal, would you like the final power—not on the basis of the Section 66A of the Income-Tax Act, but wider powers in the matter of going into questions of law as well as of fact, when properties worth lakhs of rupees are involved—to vest in the High Court ?

**Shri Vaidyanatha Ayyar :** We would not agree that you should leave the matter in dispute for a considerably long time. We would not like that kind of thing to be introduced and it will be unworkable.

**Shri Tek Chand :** May I call your attention to paragraph 11 of your report—board of valuers. Since there might be a tendency on the part of valuers not to make a proper appraisal or there might be some temptation in their way would you like to suggest to the committee some check against arbitrary valuation ?

**Shri Vaidyanath Ayyar :** No, Sir. What is suggested in the Bill as it stands at present is that if there is any dispute in regard to any valuation of the property made by the Controller you have the right to have the matter referred to an arbitration of valuers. We agree to the provision as it stands at present. But what we are saying is that in the valuation boards Accountant members should be taken because they possess a better knowledge of all these things.

**Shri Tek Chand :** Whether it is a Government or an estate or the representatives of an estate, would you like to give them the right of appeal or review by a higher tribunal, such as the C. B. R.

**Shri Vaidyanath Ayyar :** That is not acceptable to us. There should be some authority which will take the place of the C. B. R.

**Shri Tek Chand :** You want some independent authority.

**Shri Vaidyanath Ayyar :** It should be on the lines of the Income-tax Appellate Tribunal assisted by professional people.



**Shri Gadgil :** If I understand you correctly, you suggest that the valuation must be done by men who know the job.

**Shri P. T. Chacko :** You have stated in your memorandum that the non-taxable limit should be Rs. 1 lakh. May I know whether there is any principle involved in or whether it is arbitrary or whether it has any bearing on the income of the person ?

**Shri Vaidyanath Ayyar :** You may remember that in 1922 super-tax was introduced. In the beginning we said that the rates were going to be very low and then after ten years we came to the high rates. Instead of frightening the public by suggesting a lower limit, you might slowly educate the public in the idea of getting used to the Estate Duty by having a higher limit in the beginning and later on certainly we can always change it. We also thought that Government had some such basis for fixing a lakh of rupees.

**Shri P. T. Chacko :** In fixing this amount, there should be some bearing on the income of the person in India.

**Shri Vaidyanath Ayyar :** That is why we would like that at the beginning there should be a higher limit and you must slowly educate the public to get used to this levy.

**Dr. Lanka Sundaram :** Any administrative difficulties ?

**Shri Vaidyanath Ayyar :** Also that.

**Shri Raghavachari :** You have suggested that the present tax must be paid in cash or in kind.

**Shri Vaidyanath Ayyar :** I had in mind the difficulty that we are experiencing. We have found a great deal of difficulty in the matter of the settlement of liability created in the Income-tax Investigation Commission. Suddenly you have got to pay 5 or 10 lakhs of rupees. Even though the man has got immovable properties he will not be able to pay the tax. So we thought that in such cases there must be an enabling provision for the Government to accept the property instead of the duty.

**Shri Chocksi :** It happens sometimes that if a person owns large properties and he dies, it is possible that he may find it impossible to sell his estates. For example a person may own 10 buildings worth Rs. 10 lakhs. For this one crore of rupees, it may be difficult to find a purchaser there, in these days. If large sums are to be paid, they should have the option to pay in kind.

**Shri Gadgil :** Normally the income-tax arrears are recovered by attachment of property and by sale.

**Shri Vaidyanath Ayyar :** It does not happen every day.

**Shri Chocksi :** I am afraid the comparison is not correct because income-tax is payable on income and it is payable in cash form while the estate duty is payable on the estate which is invested in movable and immovable property. There is therefore the need for making provision for surrendering the estate.

**Shri Raghavachari :** Is it to the Tax collector or to the payer of the tax ?



**Shri Vaidyanath Ayyar :** The payer of the tax.

In the U. K. tax on agricultural properties are charged at greatly reduced rates than those applicable to other properties. In the U. S. A. no estate duty is payable on immovable property and is payable either by eight yearly or 16 half-yearly instalments and the first instalment is payable at the expiration of one year from the date of death.

**Shri Raghavachari :** There is no need for surrender.

**Shri Vaidyanath Ayyar :** At this stage one cannot say anything because the properties may be in such a form when there is no alternative but to accept the property and discharge the liability.

**Shri Raghavachari :** Under the rapid succession relief you have suggested that within five years of the first death, no estate duty shall be payable to the extent of the assessed value of the estate at the time of the first death.

**Shri Vaidyanath Ayyar :** We have stated that if the second death occurs at any time within five years of the first death, no estate duty shall be payable to the extent of the assessed value of the estate at the time of the first death. Similarly, it should also be provided that if the third death occurs at any time within seven years from the date of the first death a similar concession should be extended to such death also.

**Shri Raghavachari :** You want exemption of the payable tax under this act or the income-tax Act.

**Shri Vaidyanath Ayyar :** It is not unlikely that at the time of the death of a person the income-tax liability might not have been ascertained.

**Shri Damodara Menon :** You say that in paragraph 18 that with regard to representation before the Estate Duty authorities only lawyers and chartered accountants should be allowed. Is it not better to allow the person who has to pay estate duty to choose his own representatives?

**Shri Viadyanath Ayyar :** What we are suggesting is that it will be the undoubted right of the payer of the tax to appoint his own attorney for this purpose. We only say that he must choose only a person from lawyers and accountants because they possess better knowledge and would be able to help the tax payer.

**An hon. Member :** We do not find any provision in this Bill for appointing attorneys.

**Mr. Chairman :** Normally one or two lawyers may be appointed by power of attorney but an accountant cannot be appointed by this process but by special power any other person can equally well be appointed.

**Shri Vaidyanatha Iyer :** What our committee suggests is that a provision may be inserted in the Bill itself to the effect that representation should be available only in the case of lawyers and accountants.

**Mr. Chairman :** Thank you for the trouble you have taken and for the very valuable evidence you have given us.

*(Witnesses then withdrew)*

**Mr. Chairman :** We may next take up the Punjab Chamber of Commerce.



**Shri Tyagi :** Before that, I may inform the Committee that the C. B. R. is already drafting an amendment regarding the refund of excess duty realised.

*(The Select Committee then examined the following witnesses)*

### Witnesses examined

**Name of the Associations :—**Punjab Chamber of Commerce, New Delhi.

**Representatives :—**Shri L. J. Wallach—*Vice-Chairman*.

Shri S. D. Dhir—*Secretary*.

*(Witnesses were called in and they took their seats.)*

**Mr. Chairman :** If in addition to what you have stated in your memorandum you wish to submit any additional points, or if you have any fresh points to bring out, you may tell us.

**Shri Wallach :** We have no other points. We understand that you are contemplating to change clause 7 on the representation of the Institute of Chartered Accountants.

**Mr. Chairman :** Have you considered this point ? Under the Deshmukh Act, unlike before 1937, the share of the deceased coparcener goes to the widow as if there had been a partition at the time of his death. So, the duty would have to be paid only from that share. Would you like that the estate duty should be recovered from the estate as a whole, or from the share only ?

**Shri Dhir :** That is exactly what is said here. In arriving at the value it should be taken as if the partition had taken place at the time of death, although no partition had taken place, and arrangements should also be made in assessing the property to be taxed to include the commitments of the family on account of married and unmarried daughters etc.

**Shri Wallach :** As we have said on page 3 of our memorandum, there should be a graduated scale of estate duty, depending upon the proximity of *inter vivos* gifts to the date of the death.

**Shri Dhir :** The Bill specifies two years. We suggest that it should be reduced to one year. Further, a gift made a long time before death should be charged at a lower rate than another made just before death.

**Shri Wallach :** Then we suggest in para. 4, page 3, that controlled company should be defined in the Act.

**Mr. Chairman :** Will it not be better if it is regulated by the rules, so that the definition may be changed from time to time according to exigencies ?

**Shri Wallach :** Yes, but we think that if the definition is given in the Act itself, it would be better.

**Mr. Chairman :** Have you any definition of your own ?

**Shri Wallach :** We do not have it here, but we can let you have one.

**Mr. Chairman :** Please let us have it later.



**Shri R. Venkataraman :** You represent the assessee. Would you prefer to have an appeal to the Board of Revenue, or would you prefer an appeal to an appellate tribunal, or are you satisfied with a statement of the case to the High Court ?

**Shri Wallach :** We think that the assessing authority, *viz.* the Board of Revenue, should be right outside the appeal. The appellate authority should be other than the assessing authority.

**Shri K. K. Basu :** What is the reason for your wanting a definition of "controlled company" in the Act itself ?

**Shri Wallach :** It would enable a better appreciation of the complete scheme on the part of the public.

**Shri K. K. Basu :** If as you suggest the definition of the 'controlled company' is embodied in the Act itself, then it will have to be amended from time to time as the exigencies of the situation would require, to meet cases of evasion, and the Government would be placed in a more disadvantageous position, in dealing with evasion cases.

**Shri Dhir :** The first answer would be that even the rules will have to be made public, and according to the provision in the Bill, they will have to be laid before the House, not less than 15 days before being issued. So, even if the definition is made by means of rules, then it cannot be kept secret.

**Shri K. K. Basu :** Is it your idea that if the definition is in the Act itself, and if any amendment is to be made to that definition, then there will be a chance for the Parliament to discuss it, with a view to rectifying bad drafting or anything of that sort ?

**Shri Dhir :** Our idea is only this, that the Act is being made for the first time, and so the public should be in a position to completely assess the various possibilities under this Act. We are only asking for an opportunity for better appreciation of the whole thing.

**Shri K. K. Basu :** In para. 6 of your memorandum, dealing with relief from double taxation, you have stated that where a part of the property subjected to charge in India has also paid duty in a foreign country, credit should be given from the Indian duty payable, of an amount of duty (at the Indian rate of duty or at the foreign rate of duty, whichever may be lower) attributable to that part of the property which is subjected to charge in a foreign country.

**Shri Dhir :** This is only for the purpose of relief from double taxation.

We have suggested that only until such agreements have been negotiated, this relief or concession should be given.

**Shri K. K. Basu :** In para. 8, you have stated that businessmen should be associated as valuers or referees when determining the value of the property of the deceased. What are the special reasons for the suggestion made ?

**Shri Dhir :** The reason is that in certain cases, the value of the property cannot be determined exclusively with reference to the return. Taking a concrete case, for instance, the Regal Buildings in Delhi, its real or effective value cannot be determined with reference only to the original cost or with reference only to its present cost, because there is no buyer for it. Therefore we say that only businessmen would be in the best position to advise on the real value of that property.



**Shri K. K. Basu :** Do you mean to say that it should be left to the option of either party to select the valuers or referees, and that it would be helpful for the Government or the assessee to select their own valuers from out of a panel of names? What class of valuers you would like to have, whether an accountant or a businessman?

**Shri Wallach :** The Government will presumably select the valuers but we have put in the word 'businessmen', for they will be able to offer useful views on values very often.

**Shri K. K. Basu :** In answer to a question earlier, you stated that you would prefer an appellate tribunal consisting of High Court Judges. Is it the suggestion that there shall be an appellate tribunal as provided in the Income-Tax Act, or that the case should go straight to the High Court, instead of the Appellate Tribunal?

**Shri Wallach :** That is a matter of detail, which can be worked out.

**Shri K. K. Basu :** In the case of the Income-Tax Act, we have an Appellate Tribunal, before the case can be taken to the High Court.....

**Shri Dhir :** In the case of appeals in connection with income-tax, such appeals lie to the High Courts, only on questions of law. But in this case, we want appeals on both questions of law as well as of facts.

**Shri Raghabachari :** In para. 5, you have asked for special provisions for the exemption of dwelling houses. Perhaps your reason is that the house should be left to the successors. Supposing the house is sold away a little later.

**Shri Dhir :** That is quite a different thing altogether. Even under the various Debt and Insolvency Acts, dwelling houses are exempted, and cannot be touched. The same is our argument here also.

**Shri Raghabachari :** Supposing a dwelling house is exempted, but is sold a little later, will it not be reasonable to expect the tax to be paid then?

**Shri Dhir :** That was why we have suggested that the dwelling house should be exempted altogether.

**Shri Raghabachari :** In clause 52, a provision is made for penalty for default. Do you want any appeal against that?

**Shri Dhir :** We want appeals on both questions of law as well as of fact, to the High Court.

**Chairman :** Thank you for the trouble you have taken and for your valuable suggestions.

*(Witnesses then withdrew)*

*(The Select Committee next examined by the following witnesses)*

#### **Witnesses Examined**

*Name of the Association :—*Federation of Indian Chamber of Commerce & Industry, New Delhi.

*Representatives :—*(1) Shri S. P. Jain—President.

(2) Shri N. Dandekar.

(3) Shri P. C. Rao.

(4) Shri Krishnamurthy.



*(The witnesses were called in and they took their seats)*

**Mr. Chairman :** You have given us a very elaborate memorandum. If you want to give some more points or if you want to elaborate further any particular points which you have already referred to in your memorandum, you may do so. You may take them in the order of importance and lay stress on each.

**Shri Jain :** We propose first to add a few more points and I will request Mr. Dandekar to place these viewpoints.

**Shri Dandekar :** There are three things which we have not referred to in the memorandum but which we think sufficiently important and I would like to state them straightway. First, we had suggested in the memorandum that the problem of payment of duty was going to present considerable difficulty, particularly in those cases in which the estate did not have sufficient resources of a liquid character to pay the duty required and we had in our memorandum merely posed the problem as a problem which the legislature would have to tackle—as to in what way, if it was at all possible, would it be feasible to make possible payments in kind ? Now in the memorandum we have only made one suggestion in that connection which I will briefly mention here, and that is, that to the extent that the estate of a deceased has got Government securities the payment of duty may also be accepted in securities either at the market value on the date of death or at the average market value of the year preceding the date of death whichever may be higher. But the main problem of finding a solution to the difficulty we left open. After careful consideration of the issues involved, the suggestion that we would like to make is this : where the estate of a deceased has by way of cash and by way of securities—and by ‘securities’ I mean what is regarded as securities for income-tax purposes—inadequate funds for payment of estate duty then when the valuation of the estate is completed and the adjustment has been made, the person accountable should have the right to offer to pay in kind at his option any particular item of property that he may wish to offer from out of the property that was left, and at the value assessed by the taxation authorities. I hope I am clear on that.

**Mr. Chairman :** If he has a house, then Government must take the house ?

**Shri Dandekar :** Where the liquid assets are inadequate for payment of estate duty, we submit that the only way to avoid hardship is that the Government should take whatever he offers in kind at the valuation Government themselves have placed on it.

**Shri Tyagi :** How do you distinguish between taking over in this manner and auctioning or selling it ?

**Shri Jain :** The distinction is this : if you take it over in this manner you take it at a valuation which Government have made and which valuation is not a forced valuation, whereas if we suggest that the property should be auctioned, then it would be a forced valuation which might be extremely low as compared with the proper market value which has been assessed for the estate duty itself. Therefore where the funds are inadequate.....

**Mr. Chairman :** For his own purposes ?



**Shri Dandekar :** His own purposes do not come all of a sudden as a result of death, as would in this case by way of a large sum payable by way of estate duty. His own purposes may be for education, marriage, etc. which can be anticipated and provided for. They do not come with such sudden impact or in such large amount, whereas the estate duty comes as a sudden impact and may come in a very large amount and may completely disrupt the property or whatever he has.

**Mr. Chairman :** You will pay all your servants also in kind ?

**Shri Dandekar :** Those are current expenses. I am drawing a distinction.

**Mr. Chairman :** Are you in favour of Government taking over anything he has in hand. If a man has got cattle, then it must be taken over. It is peculiar !

**Shri Dandekar :** It may sound peculiar for this very reason.....

**Mr. Chairman :** Has it be done in any other country ?

**Shri Dandekar :** No, except to some extent.

**Mr. Chairman :** Where ?

**Shri Dandekar :** Securities are accepted in the U. K.

**Mr. Chairman :** Your 'kind' means restricted to securities ?

**Shri Dandekar :** No, no. By 'kind' I mean anything that is there in the estate as such.

**Mr. Chairman :** Is it to show to the Government that valuation is wrong ?

**Shri Dandekar :** No, Sir. The purpose is, where there are no funds.....

**Mr. Chairman :** If it is a lump sum and cannot be paid except by way of sale of property which will fetch unduly low prices in the market, give him sometime and take it in instalments. That seems to be more reasonable than taking away whatever he has got.

**Shri Tyagi :** Would you be satisfied with facilities for payment in instalments ?

**Shri Jain :** The position is that the estate duty is not an ordinary payment. It will be a substantial payment. This proposal that has been made is only in cases where sufficient money or securities are not available. If the estate has sufficient cash or government securities to discharge its obligations towards the State, our proposal is that he should make payment through cash and government securities, but where such money is not available, a certain provision must be made so that the estate may liquidate its obligations and liabilities towards the State. How that should be done is a matter of very great importance, both for the State and for the individual. While we are very anxious that the State must have guarantee and security that they receive their just dues, it is also desirable that methods should be evolved so that in the process of realisation of this duty the whole of the estate may not be made to liquidate itself entirely. In such cases of hardship, the proposal is that only at the assessment value made by the Government, the individual may have the option to part with such part of the estate.

**Shri Gadgil :** By instalments ?



**Shri Jain :** It should be left to the option of the assessee. He may make the payment by instalments and if those instalments also are not possible—sometimes you can find that it will not be possible to pay the money through instalments . . . . .

**Mr. Chairman :** Your point is this : Convert it in terms of money—the value put on it by the Controller. If there is a deficit, let the Government bear it.

**Shri Jain :** No, Sir.

**Shri Dandekar :** That is only a consequence. That is not our point. Our submission is that if there is enough money to pay, it must be paid in money. Where there is not enough money, our submission is that the only way to prevent an assessee from being completely wiped out by a forced sale is that the Government should themselves take the property and at the valuation they themselves have placed upon it.

**Mr. Chairman :** What are they to do ? Going on acquiring houses and other things in the whole country ?

**Shri Dandekar :** That is an administrative problem.

**Mr. Chairman :** They have to put it to sale.

**Shri Dandekar :** I suppose so.

**Mr. Chairman :** Then they incur a loss on that very day. They put it to auction. A property worth Rs. 1,000 may fetch Rs. 500. Otherwise they must manage the property and have chunks of land from place to place.

**Shri Dandekar :** Quite so.

**Mr. Chairman :** Have you got any concrete suggestion ?

**Shri Tyagi :** If you read clause 64, it says :

“Where the Controller is satisfied that the estate duty leviable in respect of property cannot, without excessive sacrifice, be raised at once, he may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent or any higher interest yielded by the property, and on such other terms as he may think fit”.

**Shri Dandekar :** I think it is an admirable clause, but do not think it is enough, because of the situation that can arise.

**Mr. Chairman :** Your suggestion is that Government must take away any property which the assessee offers, in case he has got no liquid assets. You are not interested in easy instalments ? You stick to only one course.

**Shri Dandekar :** No. It is at the option of the assessee and he may well prefer instalments.

**Shri Gadgil :** How do you react to the suggestion that if there is a managing agency of the deceased, it should be put to sale in realisation of the estate duty due ? Would you consider it as disturbing the entire business ?

**Shri Dandekar :** Is that point arising in the present connection, Sir ?

**Shri Gadgil :** It is in this connection. The suggestion is, if there are no liquid assets, then the property should be valued and Government should take any property which is equal to the amount of duty leviable . . . . .

**Shri Dandekar :** which the assessee offers.



**Shri Gadgil :** In this connection, there is a managing agency belonging to the deceased and if that is to be valued, are you agreeable that the Government should take it up ?

**Shri Dandekar :** If the assessee offers it as the property in kind with which he wishes to pay the duty, certainly Government may take it.

**Shri Gadgil :** I do not think if the Govt. takes it over, it will disturb the business.

**Shri Dandekar :** It is at the option of the assessee of the person accountable. If he chooses to offer the managing agency, there is no objection to it.

**Shri Tyagi :** In the selection of the property also you think the assessee must be given the choice as to which property should go to Government.

**Shri Dandekar :** Quite so.

**Shri Tyagi :** So he may offer a property which has no market value. One property may be sold readily, another may not.

**Shri Dandekar :** Valuation would take care of that problem. If a property is worthless, the value will be less.

The second point is this. We submit that appeals should not be to the Central Board of Revenue but to an Appellate Tribunal somewhat of the kind that is constituted for income-tax purposes. The reason is that it is only natural and inevitable that the view that the Central Board of Revenue would take in appeals in revenue matters would necessarily be a revenue point of view. In a matter of this kind which is a capital level on each death, I think the appeals should go to a body of the type of the Appellate Tribunal that functions under the Income-tax Act.

**Mr. Chairman :** Are you not aware that under the Income-tax Act there is an Appellate Asstt. Commissioner ? There is a Controller here with power to appoint a number of subordinate officers also. It ought not to be as if every case will be disposed of by the Controller here. Some cases may be disposed of by subordinate officers, as in the nature of income-tax officers by estate duty officers, in which case the appeal goes only to the Appellate Income-tax Commission. Even in that case the Board of Revenue will not look into it.

**Shri Dandekar :** In the bill as it stands all appeals go to the C. B. R. and what we are suggesting is that all appeals should go to the Appellate Tribunal and not to the C. B. R.

**Shri Gadgil :** Do you suggest the income-tax machinery should be adopted or would you suggest some changes ?

**Shri Dandekar :** The same principles as exist in the income-tax machinery should be followed.

The appellate machinery that we suggest is also similar to that existing under the Income-tax.

Then on the death of a person all his assets inclusive of gold, silver etc. have got to be included in his estate. But it is common knowledge that assets of that kind can easily be concealed from the revenue authorities. Admittedly by the concealment by the descendants of the deceased, there would be a



great deal of loss of revenue, and there would be a considerable incentive in that direction. In order to benefit the country's economy, our suggestion is that people should invest in new ventures. It would be for the Government to define what is new and they must be ventures of an approved character. Our submission is that investments in new ventures of an approved character should be excluded from the aggregate value of the estate. In the income-tax Act there are provisions in respect of new enterprises. There we have allowances by way of depreciation. There is also further provision for total exemption from tax on income for 4 or 5 years. That is more or less the principle that we are suggesting for adoption in this particular case.

**Shri Tyagi :** It comes after every death. You cannot have for 4 or 5 years.

**Shri Dandekar :** There is a great deal of incentive for people as they reach retirement in life not to have their wealth kept in forms which would easily help them to avoid death duties.

**Shri K. Desai :** Gold must be circulated somewhere. Somebody must have got that gold.

**Chairman :** After all somebody who is left must purchase this gold.

**Shri Tyagi :** There is a danger of the particular ventures becoming so crowded that you have not got any margin of profit in these ventures.

**Shri Dandekar :** It will be a very good thing. New ventures may be defined.

**Shri Tyagi :** Very few will die within that period.

**Shri Dandekar :** New business would be regarded as new for about 5 or 10 years from its commencement. If this is not done there will be a denial of incentive for people to go ahead and invest in new ventures.

**Shri Gadgil :** This suggestion works in a discriminatory manner.

**Shri Dandekar :** When we are considering the effect of this on the overall economy of the country we have got to see whether the structure of our economy would be an incentive for hoarding of wealth. If the methods we suggest are accepted there will be no incentive to hoard wealth.

**Shri Gadgil :** We may give a differential rate instead of giving them complete exemption. If at any time subsequently the Government finds that in order to attract more capital in order to encourage new ventures it can say that if anything is invested between now and another point of time, that will not be subject to the same rate of duty as other property. I think that to give a straight exemption would be discriminatory.

**Shri Dandekar :** There is much in that modification. I think it would be a very good way of achieving generally the same purpose.

**Shri Tyagi :** Do you think Government would earn some more money in shipping, insurance etc. ?

**Shri Dandekar :** I think it would but I would be reluctant to make an estimate but I do feel that there would not be that incentive to hoard wealth in forms which are unproductive. There would be freedom to invest in forms which would be productive.

**Shri Tyagi :** I was inclined to get more hidden money if possible.



**Shri Dandekar :** In clause 5 we have suggested that in respect of agricultural property in the non-scheduled States which would be exempted under the Act, it will be equitable while continuing the exemption that they should be included in the total aggregate of the estate for determining the rate of duty applicable to the tax of the State. The purpose of that suggestion is fairly clear. As a result of discussions that I had with important people I understand that it might be regarded as a constitutional difficulty ; it is felt that even the inclusion of non-taxable agricultural property in the total estate for rate purposes might be regarded as unconstitutional in view of the central power as against the State Government power. If there is no such objection I would not like to waste the Committee's time on that.

**Shri Tyagi :** As regards the rates on landed properties and agricultural lands in the States where the Act will not apply, that property may be reckoned for assessment. We can as a matter of fact raise the rate and realize the land here.

**Shri Dandekar :** If you agree to that, I have nothing more.

**Shri Gadgil :** You can take the whole of the property for the purpose of the rate but the value of the property will escape.

**An hon. Member :** If you raise the rates you receive more which results in over-taxation.

**Mr. Chairman :** You raise a constitutional issue. As for the agricultural land, the Centre has no right to legislate and that is why a schedule has been given. The schedule can be augmented by an act of the legislature. Till then it is open to the State Government to say that agricultural property shall not be liable to this duty. Even if agricultural property is included as liable to estate duty, the debt may be recovered from non-agricultural property only. Therefore, it is not obligatory that the Government should distribute this over the various items. Any property can be proceeded against.

**Shri Dandekar :** My submission is that no duty whatever should be recovered in respect of agricultural property which is in a State and is not included in the Schedule. If there is property A which is taxable, and property B being in a non-scheduled State is not taxable, you aggregate the two not for the purpose of determining the amount of duty but for the purpose of determining the rate at which the duty must be levied. You should determine the aggregate amount of wealth in this way, as is done in income-tax.

**Mr. Chairman :** Take income-tax. Agricultural property is not liable to central income-tax, though the provinces may impose income-tax. On the same lines, would you say that the value or income from agricultural property also should be taken into account for fixing the rate here ?

**Shri Dandekar :** As a theoretical proposition, it is a necessary consequence.

**Mr. Chairman :** But do you think it is legal ?

**Shri Dandekar :** I would say it is not desirable.

**Mr. Chairman :** But is it legal ?

**Shri Dandekar :** It would be legal.

**Mr. Chairman :** Is it being practised now ?

**Shri Dandekar :** It is not.



**Mr. Chairman :** It is not allowed under the law as it stands. The Federation has no landed property. They are all industries. So, is the bias there in favour of industries ?

**Shri Dandekar :** The bias is in favour of equal incidence of taxation where there is an equal aggregate of property. I would like to invite the Committee's attention to clause 7. We would suggest that maintenance interests should be regarded as limited interests.

**Mr. Chairman :** Don't you think that the existing clause as it stands is quite clear that the benefit which accrues will be minus all the obligations ?

**Shri Dandekar :** We desire that it may be specifically stated, but if you think that that is the intention, then our objective is served.

In regard to clauses 8 and 9, the first thing that I would like to say is this. In respect of gifts *inter vivos*, the time limit should not be two years, but one year. The second thing is that in regard to insurance policies, provident fund moneys, family pension funds etc., if the assignment had been made within the valid period of the gift, namely one year, the gifts should be treated as valid gifts *inter vivos* for purposes of non-inclusion in the aggregate value of the estate.

In connection with gifts *mortis causa*, we suggest that certain gifts should have no time limit at all and we have explained what those gifts are. Then, as respects, gifts which should have no time limit or gifts to dependents like servants who have rendered long service or relatives, the gifts to these persons up to a certain limit in each case and an overriding limit in the aggregate should be exempted notwithstanding the fact that they may be gifts *mortis causa*. The other point is that where death supervenes upon a very serious accident or an air crash or railway collision, and the man just before he passes away says "Give 20,000 to so and so ; give the house to my daughter" or things of that description, there is a clear case for exempting them and not as *mortis causa* gifts which should be added to the estate.

Clause 14 deals with insurance policies. I have already referred to our suggestion that ordinary assigned insurance policies, or provident funds or family pension funds should be treated as gifts *inter vivos*, where the instalments are recoverable from the assignees. I am now suggesting that in the case of insurance, irrespective of whether the donor goes on paying or not, the assigned policy should be treated in exactly the same way as gifts *inter vivos*. Most of the senior employees have their property either in insurance policies or provident fund. Most of them will be leaving substantial sums—sums necessary for their families to maintain the standard of living to which they are accustomed.

**Mr. Chairman :** Could not this be achieved if you give a decent exemption ?

**Shri Dandekar :** I think there is a special case for provident funds and insurance policies notwithstanding the fact that the contribution goes on being made by the deceased right up to the date of his death. In this, I include nominees also.

**Shri Tyagi :** Supposing somebody assigns a policy to his daughter or son and that person dies before the assignor and the policy reverts back to the assignor ? Will that not be assessable for estate duty ?



**Shri Dandekar :** Once the money is realised, naturally, it becomes taxable. As regards the exemptions I am suggesting, I want to point out that everybody cannot take out new policies for escaping estate duty. If we were discussing the policy of estate duty some thirty years before and people knew of it, such a thing may have happened. At present, that is not possible.

**Shri Tyagi :** If the assignee dies and the policy is considered as immun : from duty, and the policy reverts back to the assignor, it means, that policy will pay no duty.

**Shri Tyagi :** An insurance policy must be legally pinned down to one person, so that it is the property of either the assignee or the assignor. If the person to whom the policy has been signed before the death of the policyholder dies, then it reverts back to the assignor.

**Shri Dandekar :** That is so.

Coming to Clause 30, dealing with quick succession relief, we have two submissions to make. The Clause as drafted confines the relief to property consisting of land or business passing on the death of any person. Our point is that if there is any case at all for quick succession relief, then it is exactly the same case for all property that passes on successive deaths. Either there is a case for all property, or there is none.

**Mr. Chairman :** The principle behind this is only this. If there is land, then the estate duty should not lead to fragmentation and if there is business, then it should not be divided and destroyed, by payment of the death duty.

Supposing the man who dies sells away all his property before his death, then nothing can be done. If he leaves anything to the successor, then the point is that let the Government and the successor share the same. That is all the principle involved.

**Shri Dandekar :** The principle is a little wider. A given estate ought not repetitively be subject to a tax of the character of an estate duty, which is a capital levy, imposed in relation to a certain accident in the lifetime of a person. The whole principle of repetitive succession relief is that a given corpus ought not to be subjected by the State to a capital levy except at certain time intervals. Our first submission is that all property that becomes otherwise liable to repetitive taxation due to repetitive succession should be given the benefit of this rapid succession relief.

The second submission is that the relief contemplated in the Act for successive duties is the most inadequate, both in relation to the conditions in this country as well as in relation to the fact that the estate duty coming here for the first time, we ought not to limit the relief to what is the least that is now being given in any country, but that we ought to start with what is the most that was given or is being given in any country.

**Mr. Chairman :** Are you aware of any provision in any country by which lands, buildings and movable properties have been exempted from quick succession duty ?

**Shri Dandekar :** There is a differential rate of taxation, but not as far as I am aware, a total exemption.

The point that I am concerned with here is this. Firstly, there is a case for relief on repeated deaths, and secondly that case and the relief given should be related not to the legislation in a country that gives the least relief, but to



legislation in countries now or in the past where the relief at the beginning of such taxation was considerable, because as time goes on, the people could adjust their affairs to the requirements of the taxation structure of the country, and it would be in order to tighten up this repeated death relief later. Therefore, we have made certain suggestions here for liberalising this particular relief.

As regards exemptions referred to in clause 32, we would like to specifically add the dwelling house, the place ordinarily used by the family for the purpose of dwelling, and the personal effects of the deceased, if necessary, upto a certain limit of value.

Under clause 34, which is a very important provision, we would like to make two suggestions, the one procedural, and the other substantive.

The substantive suggestion is that the exemption limit should be of the order of Rs. 2 lakhs. It sounds very large, but it is not large, when you put it in the context of what this same property was worth some 10 years ago or during the pre-war days of 1919. So we are only making a just suggestion for exemption.

The second substantive suggestion is that the rates of duty in the first years of this very important levy should be very very moderate.

There are two procedural suggestions we would like to make in this connection.

1. This exemption limit as well as the rates of taxation should be embodied in this particular Act, and not be the subject matter of annual Finance Act Changes.

After all, when we are really dealing with a capital levy, it ought not to be related to the annual financial requirements of Government.

**Mr. Chairman :** You mean that both the exemption limit and the rate of duty should be fixed once and for all by this Act, to be amended only by amendments to this Act, and not by amendments to the Finance Act every year. In other words, you mean that this Act is more permanent than the Finance Act, and so the rate of duty ought not to be the subject of review almost every year in the annual Finance Act. Would you say the same thing with respect to income-tax also ?

**Shri Dandekar :** I would not.

The second suggestion that I would like to make is that fairly sound conventions ought to be established, and announced at the time of the introduction of this Act.

**Mr. Chairman :** One man does not die in conspiracy with another man. Each man's property passes to his own heirs. Therefore what difference does it make to the man who paid one tax at one time, if for the man who is going to pay the tax at another time, the rates are changed ?

**Shri Dandekar :** The point is only this. It would enable every person to arrange his affairs, from the point of view of what the State is going to levy as duty, of how many dependents one has, etc., and other considerations of similar character, and of a long-term nature. It would enable them to effect savings sufficiently to meet such long-term responsibilities, such as marriages, births, education, protection of unmarried daughters, widows etc. If the rate of duty were constantly fluctuating, then there would be an enormous uncertain factor in one's planning of one's family affairs. That



is why we would suggest that the rate of duty should be fixed in the Act itself. If the person is a prudent man, then he can take up an insurance policy sufficiently well in time, for payment of such estate duty as might be payable later on.

Apart from this being embodied in the Act, we would earnestly request that at the very commencement of this Act, the Government might make proper announcements about a convention to be established that this Act will not be amended in respect of rate of duty, and consequently there will be a certain permanence about them, as far as possible, for a period of five years or so, and that when rates are changed, they will not be violently done and made effective with immediate effect, because nobody is going to deliberately die or think of dying for the purpose of avoidance of taxation. Any announced changes in the rates of duty should become effective some time little later.

We have stated in the memorandum

“It would also be conducive to a healthy working of the Act if the rates of duty, once enacted, remained unaltered for at least five years and if alterations in such rates did not become effective for at least two years from the date of their enactment.”

**Mr. Chairman :** But do you think that any Act of Parliament is binding upon any other Act of the Parliament ?

**Shri Dandekar :** At least conventions and declarations of policy. So far as the penalty provisions are concerned, we think they are unduly drastic, and it is rather peculiar, that though the controller has been given the power to reduce the penalty in any particular case, it may seldom be exercised by the Controllers, as the experience with the Income Tax Officers amply testified. He has been given the power to reduce the penalty, but in fixing the penalty, he is apparently left no discretion at all. We are not very clear why he is not given the initial power at all.

As regards cases of hardship, we would like to urge upon the Committee the desirability of having something similar to clause 63, to deal with cases of undue hardship to individuals, small family units and small businesses.

The only point I would here stress is that all taxation measures, of which the incidence has been heavy, generally contain provisions for straightening out inequities. Under the EPT Act there is section 26, and there are several other special relief provisions under which the assessing authorities or other superior authorities were given ample discretion to remove inequities which would otherwise be met by the assessee in the matter of payment of taxation. Our submission is this is a matter in which we have no experience—no experience of how the thing is going to work—the administrative machinery has no experience of how it is going to work. All these factories were present when the EPT Act came and in those circumstances it was thought necessary for EPT purposes to have special relief provisions. Similar provisions here would not be out of place.

**Shri Tulsidas :** The definition of ‘controlled company’ is not put in the Act. Can you suggest a definition ? That is a point we would like to know from the Federation, because under the present Act the definition is not included, but the powers of rules are in the hands of Government.



**Shri Dandekar :** We have not specifically thought out at the present moment a definition for 'controlled company'. We were rather proposing to await the definition which was proposed to be given and we would then be in a position to offer helpful advice as to what the definition might conceivably be.

**Shri Tulsidas :** Could you send it later on ?

**Shri Dandekar :** Yes, we will be glad to have the opportunity of sending it.

**Shri Tulsidas Kilachand :** The Committee should have it as soon as possible in order that we can know how the definition can be framed.

Now, with regard to life insurance policies. The Chairman put a question and Tyagiji also made a mention of it : when a policy is assigned and the assignee dies, then what happens ? To my mind, when the assignee dies, the assignor becomes the holder of the policy. Therefore, if the assignee dies, the amount of money would come back to the assignor. I do not, therefore, think there is any chance of keeping their property out of estate duty. Is that the correct position ?

**Shri Dandekar :** No, Sir. I think the correct position is really in between. Mr. Tyagi was quite correct in what he said—that to the extent of the exemption we have suggested, it would be exempted from the estate of the assignor. Equally, if the assignee predeceases the assignor, then the property reverts to the assignor and therefore is not includable in the assignee's property. To that extent, Mr. Tyagi is correct. But the exemption would be only to the extent we have indicated.

**Shri Tyagi :** To the extent of ?

**Shri Dandekar :** The policies which have been in fact assigned. Otherwise it goes under the general exemption that we are suggesting in respect of duty payable.

**Shri Tulsidas Kilachand :** When an assignment is made and if the policy is exempted, if the assignee dies the assignment is gone and naturally the policy becomes again available to the assignor.

**Shri Tyagi :** What I was emphasising was that at every moment, every property, whether it is assigned or originally belongs to somebody, it must be pinned to somebody, somebody must be the owner, either the assignor or the assignee, and whosoever is the owner, he must pay.

**Shri Dandekar :** I would like to add one thing to what I said—that if the assignee predeceases the assignor it becomes part of his estate so that the assignor will then pay duty subject to the exemption under clause [14, so that it does not altogether go out of the purview of duty.

**Shri Tyagi :** I am not clear about it.

**Shri Dandekar :** I will explain it further : Under the proposal we have made, if the assignee survives the assignor, then of course there is an exemption. If, however, the assignee predeceases the assignor, then the assignment is gone so that it would form part of his estate and would pay duty save to the extent that if the recommendation we made regarding clause is accepted, it is exempted to the extent of duty payable.

**Shri Tyagi :** In that case that property carries only 50 per cent risk. Other properties carry full risk. In this case, both the owners must die,



then only it will be duty. If one dies it comes to the other and then the properties will wait for the other to die.

**Shri Dandekar :** Let us suppose that the assignor dies before the assignee. If the policy has been assigned, it is exempted but when the assignee gets the money and if he dies the policy does pay duty because there is no other policy; it is money.

**Shri Tyagi :** It is not clear. Suppose I am the assignor. I assign it to A. Now both of us are living. The policy must belong either to me or to the assignee. Whoever dies, well he must pay the duty. While both of us are living, we must know as to which of us is to pay the duty. If the assignor dies, the assignee gets the policy immediately. He is my survivor. He must pay, and if he dies, well, then the property comes to me.

**Shri Dandekar :** We are getting away from the first point. The point was this that under the proposal.....

**Shri Tyagi :** If a gift is conditional and it has to revert back to me, well that gift may not be considered to be free of duty. Because it is conditional, I still continue to have my interest in it. So it is not a perfect possession. I have not parted with it. If it reverts back on account of a mishap, then that may not be taken to be a gift.

**Shri Dandekar :** That is precisely what happens. If the assignee dies before the assignor, the policy reverts to the assignor and it forms part of his estate.

**Shri Tyagi :** Because it is conditional, it is not a complete gift. If the assignor dies and the assignee gets the money, well he must be deemed to be the successor and therefore he must pay the duty.

**Mr. Chairman :** There is no limit to the amount a man may insure for. Do you mean to say all that must be exempted ?

**Shri Dandekar :** If it has been assigned—yes.

**Mr. Chairman :** I can understand poor families insuring for a small amount. But in the case of those who are rich, they may insure for five or six lakhs. Is that not one of the methods of evading estate duty ? Would you say that provided it is assigned to a third person, the children have no interest in that.....

**Shri Dandekar :** In that case I would not claim the exemption.

**Mr. Chairman :** If it is assigned to sons and heirs, dependents, you want to claim exemption ?

**Shri Dandekar :** I will then claim exemption as an ordinary assignment. If it is an assignment to dependents, then our submission is that even revocable assignments ought to be regarded as.....

**Mr. Chairman :** It is an out and out assignment in favour of wife and children, would you say.....

**Shri Dandekar :** In the case of completely irrevocable assignments, the matter is already covered by the laws relating to gift.

**Mr. Chairman :** In insurance also he tags on the obligation. If as soon as an insurance policy is assigned the assignee goes on paying further premia, he becomes the heir. But if the assured is to pay further premia ?



**Shri Dandekar :** To meet that point, I think the suggestion we are making should be limited to dependents, if it is assigned.

**Mr. Chairman :** It should be treated as a gift and whatever may be the value has been assigned to some other person.

**Shri Dandekar :** In that case the exemption we have suggested should not apply.

**Mr. Chairman :** If it is in favour of a third person, there ought to be no exemption. If it is to wife and children, there ought to be exemption.

**Shri Tulsidas Kilachand :** When a life insurance policy is assigned, the interest of the donor is still there because he still goes on paying premia. Therefore, naturally it is not a gift. How do you reconcile between your suggestion and the point that has been made out by the Chairman ?

**Mr. Chairman :** I have already asked him.

**Shri Tek Chand :** May I invite your kind attention to page 14 of your memorandum wherein you deal with payment in kind. I assume you are aware of section 56 of the English Finance Act of 1910 wherein payment in kind is visualised in England. What I want to know from you is whether you suggest payment in kind for purposes of payment of duty only or you also suggest as a check against over-valuation.

**Shri Dandekar :** I am grateful that you have asked that question. It is not intended as a check on valuation at all. It is only intended for the purpose of facilitating payment of duty and then only in those cases in which liquid resources inclusive of securities are inadequate for the purpose.

**Shri Tek Chand :** May I call your attention to page 10 of your memorandum wherein you have informed us that in Chile there is no levy on a second succession within a period of 10 years. In England you yourself know that the method of relief in cases of quick succession is by way of progressive reduction in death duty. Having regard to the conditions of development of our country would you recommend to this committee the Chile practice or the rule where there is a gap between deaths.

**Shri Dandekar :** Our suggestion is somewhere half way. We would certainly not recommend to the Committee the rule about repeated succession reliefs that prevails in the U. K. It is in our judgment totally inadequate for the conditions here. On the other hand what we have suggested is not total exemption if second death occurs within 10 years but we have suggested total exemption where the second death occurs within 5 years from the first. We have gone a little further. We have said that where a third death occurs within 5 years of the second death, the second death itself having occurred within five years of the first, then the third death should also be entitled to similar relief.

**Shri Tek Chand :** Regarding the Board of Valuers I want to have the benefit of your opinion on this. The valuers may try to swindle Government in the matter of valuation, or on the other hand owing to patronage of Government over-value the properties. In view of the dangers of both over and under-valuation what would you suggest.

**Shri Dandekar :** I think this is a very important question. I myself have not applied my mind directly to the point, of protecting the revenue authorities from under-valuation. I think the procedure I have suggested will cover both, namely under-valuation against which the revenue authority



ought to have protection and over-valuation against which the society ought to have protection. A procedure such as the machinery we have under the income-tax administration will probably cover both. The point raised now adds very considerably to the statement which I made namely, the urgent need for keeping the final appellate authority entirely out of the parview of the authority of the C. B. R.

**Shri Tek Chand :** Are you of the opinion that it will be a good check against over-valuation or under-valuation if the aggrieved party could question the decision of the valuer in a high court ?

**Shri Dandekar :** There I have some difficulty. My own feeling is that there must be a point at which findings of fact ought to be final. If between an appellate tribunal which we have suggested and the assessing officer there is an intervening appellate authority such as prevails in the income-tax side, then my view would be that the appellate tribunal's findings of facts ought to be final. On the other hand if the appellate tribunal is going to be the first appellate authority then normally whether it is a high court or some other similar body there ought to be a second appellate authority both as to facts and law.

**Shri Tek Chand :** Would you suggest that the appellate authority or the appellate tribunal should be an independent body like the High Court and whether a direct appeal should lie at a certain stated figure say Rs. two lakhs.

**Shri Dandekar :** That would be a good way of drawing a distinction between really difficult and complicated cases and comparatively smaller and easier cases. This being in the nature of capital levy an appellate authority in the nature of a high court would be a very good thing.

**Shri Tek Chand :** Are you of the opinion that in matters of appraisal and also in the case of taxation and other complicated matters the appellate tribunal should be manned by an ex-high court judge exclusively.

**Shri Dandekar :** There I do not think I could suggest much of an improvement over the existing types of income-tax appellate tribunal where the bench consists of at least 2 members of whom the senior member is always regarded as a judicial member and the other is an accountant member. I think questions like these will be definitely mixed questions of law and fact. The Accountant is there who is a competent person and he can come to a decision. As to facts in law, the lawyer or the judicial member would be competent to go into legal issues and I find it difficult to suggest much of an improvement on that. Since the judicial member of the Income-tax appellate tribunal is by statute required to be a person qualified to be or has been a judge for 10 years or qualified to be a high court judge, I think that adequately covers the requirements of the case.

**Shri Tek Chand :** You are aware of the various acquisition acts passed by the centre and also by the State and in case of a difference as to the value, an appeal lies directly to the High Court. Do you think a provision similar to that is admissible in this case.

**Shri Dandekar :** It all depends on the intervening appellate machinery that you have.

**Mr. Chairman :** So far as these matters are concerned, the federation has prepared an elaborate memorandum. The memorandum has already been explained at great length. We can discuss all these matters.



**Shri Chacko :** In your observation on clause 5, you have made certain suggestions. In certain states there exists agricultural income tax, whereas in other states it does not exist. I want to know whether in making this suggestion you include the amount of agricultural income tax paid by persons who own agricultural land.

**Shri Dandekar :** We are fully aware that in certain states there is agricultural income tax and in others there is not. The problem here is not a question of income-tax but one of equitable assessment of income-tax. The problem here was of a capital levy by which the incidence should as far as possible be made equal between two persons who are placed in the same position. Therefore this has no bearing on the particular problem that we are considering.

**Shri Chacko :** You have said that incidence of taxation on a person will have to be taken into consideration.

**Shri Dandekar :** Taxation does not come as a capital levy. We cannot couple the two problems together. In one case you have periodic regular assessments of taxation and in the other it is a capital levy.

**Shri K. K. Basu :** When you said that payments may be allowed to be made in kind, do you want to restrict it to buildings and lands only, or you want to extend it to business ?

**Shri Dandekar :** Any asset which in the limiting circumstances I have stated the person accountable for duty offers for payment of duty should be accepted. If anybody offers the proprietary interest of business as payment, that also may be taken.

**Shri K. K. Basu :** You want exemptions for dwelling houses. Do you propose a limit to the value of the dwelling house ?

**Shri Dandekar :** No. The limit is as to the character of a dwelling house, *i.e.*, the place where the deceased and his family normally resided irrespective of the value of the property.

**Shri K. K. Basu :** Supposing A has several houses and in most of the places, one member or other of his family lives. Is it your suggestion that he has to select which of these places he wants to declare as dwelling house ?

**Shri Dandekar :** Supposing somebody dies and before death he has to exercise his option, he has to choose a dwelling house which will be a dwelling house to the satisfaction of the assessing authority.

**Shri Gadgil :** Is it purely sentiment or value ?

**Shri Dandekar :** It is really a mixed question of sentiment and causing the least dislocation. The man may not be willing to sell the ancestral house and on the other hand, he may not find money, so he may bequeath a house.

**Shri K. K. Basu :** Supposing he is living in the ancestral house and there is another house built by his own money, which should he bequeath ?

**Shri Dandekar :** It is a question of fact which the person accountable would have to produce evidence upon as to where the deceased generally resided.



**Shri Raghavachari :** You have suggested different rates for agricultural property and non-agricultural property. Would it not be better if there were separate schedules ?

**Shri Dandekar :** If you had two schedules of slab rates and if it is made clear that the two properties are not to be aggregated but should be separate, there would be no difficulty.

**Shri Damodara Menon :** Regarding insurance, there are two kinds of assignments—conditional and unconditional assignments. Do you want exemption for both ?

**Shri Dandekar :** I have not applied my mind to this aspect, but wherever assignments are in favour of dependents, they should be exempted notwithstanding the fact that they may be revocable provided the assignment was made beyond the gift *inter vivos* period. That is, we want exemption even in conditional assignments, provided it is beyond one year we have suggested.

**An hon. Member :** What is the basis for the exemption limit of Rs. 2 lakhs you have suggested ?

**Shri Dandekar :** In 1938 if a person had left a gift of Rs. 50 thousand, it would not have been anything to shout about. Now, the price level has gone up four times, and basing our calculation on the 1938 level, we have suggested Rs. 2 lakhs. Our limit should not be compared with what is provided in U. K.

**Shri A. K. Roy :** Take Ceylon. It is only Rs. 25 thousand there.

**Shri Dandekar :** But education upto the University stage is free there. Health is free. Unless all these services are provided by our Government, it becomes the duty of the head of the family to make adequate provision.

**Shri M. C. Shah :** In an undivided joint Hindu family with one father and three sons, it will come to Rs. 8 lakhs on the basis of Rs. 2 lakhs exemption.

**Shri Dandekar :** It is different if all four die together. What is exempted is only Rs. 2 lakhs if one dies.

**Shri Gadgil :** Does the Federation accept or reject the principle of removal of inequalities ? On page 7 of your memorandum, you have expressed certain ideas which seem to accept that principle. If that is so, there should be fewer exemptions and higher rates of duty.

**Shri S. P. Jain :** Regarding that, we must consider the cost of living in the big towns. A large house will cost something like Rs. 50 to 70 thousand. Similarly, an ordinary shop which will give a return of Rs. 500 per month will require a capital of Rs. 25 to 30 thousand. So, this limit of Rs. 2 lakhs is not very high. After all, in India we have this joint family system, where people have been living together. When the estate is owned by four or five, it may look big, but that is not really so. When you compare this with the U. K. or other westernised countries where there is no joint family system.....

**Shri M. C. Shah :** In U. K. the exemption is only £ 2,000 though the income is nearly twenty five times more.



**Shri S. P. Jain :** Here, if you divide the property between the members, it will be very small. For our consideration, it is as good as if the partition had taken place before death. It may be that in the interests of the business they may be living together.

**Shri M. C. Shah :** But when these inequalities end ?

**Shri Jain :** If the inequalities are to be ended, we think that there could be other methods of doing it. We consider therefore that this Act should be considered an Act only for the purpose of getting some additional revenue for the purpose of development of this country. That is why we have proposed that this tax should also take into consideration, certain features which will keep up development in the private sector of the economy of this country.

**Shri M. C. Shah :** The main objective of the Bill is to remove the inequalities, and also to get money for the development plans.

**Shri Jain :** If the intention of the Government is to remove inequalities, I suppose there should be other better methods of achieving that objective.

**Shri Venkataraman :** Once the Bill has been referred to the Select Committee, the principle of the Bill has been accepted, and it is not open to us at this stage to go into the principles of the Bill.

**Shri Jain :** All that I would like to submit on behalf of the Federation is that we consider this piece of legislation as a very important one, and this being a new experiment in our country, and we treading a new path, we must act with care and caution.

**Chairman :** Thank you gentlemen for the trouble you have taken and for the very valuable evidence you have given us.

*(Witnesses then withdrew)*

*(The Committee then adjourned)*

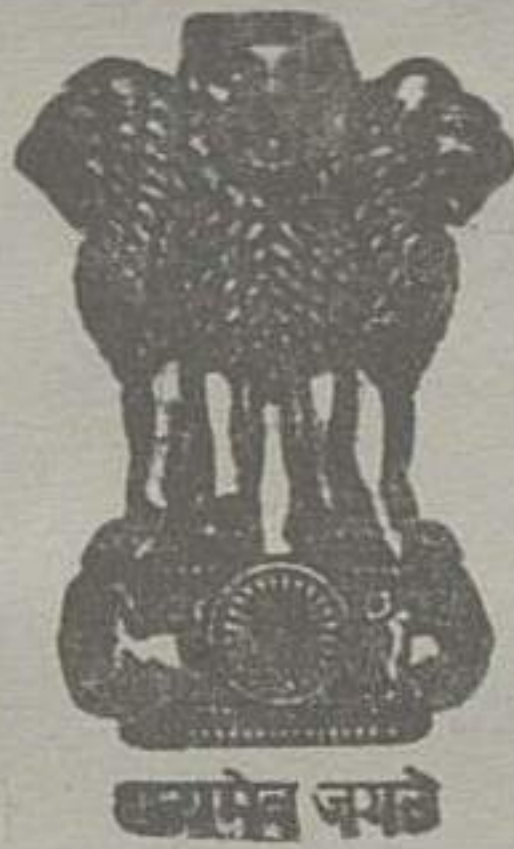


**HOUSE OF THE PEOPLE**  
**THE SELECT COMMITTEE**  
**ON**

**THE INDUSTRIES (DEVELOPMENT AND REGULA-  
TION) AMENDMENT BILL, 1953.**

**EVIDENCE**

**(27th April, 1953)**



**PARLIAMENT SECRETARIAT**  
**NEW DELHI**  
*April, 1953*



## **SELECT COMMITTEE ON THE INDUSTRIES (DEVELOPMENT AND REGULATION) AMENDMENT BILL, 1953**

**Record of Evidence taken before the Select Committee on the Industries (Development and Regulation) Amendment Bill, 1953 at New Delhi**

*Monday, the 27th April, 1953 at 4-30 p.m.*

Present :

Shri N. V. Gadgil (*Chairman*).

Prof. Diwan Chand Sharma.

Shri Balwant Sinha Mehta.

Shri Fulsinhji B. Dabhi.

Shri Upendranath Barman.

Dr. Jayantilal Narbheram Parekh.

Shri Abdus Sattar.

Shri S. C. Deb.

Shri Bhupendra Nath Misra.

Shri Bhagwat Jha 'Azad'.

Shri Gajendra Prasad Sinha.

Shri Shri Chand Singhal.

Shri Baij Nath Kureel.

Shri Mangalagiri Nanadas.

Shri Kamal Kumar Basu.

Shri G. D. Somani.

Shri Choithram P. Gidwani.

Shri Tridib Kumar Chaudhuri.

Shrimati Anasuyabai Kale.

Shri Paidi Lakshmayya.

Shri T. T. Krishnamachari.

Shri D. P. Karmarkar, Minister for Commerce, was present at the meeting.

Shri S. K. Hiranandani, Deputy Draftsman, Ministry of Law was also present at the meeting.

### **WITNESSES EXAMINED**

Spokesmen :

- (1) Shri R. G. Saraiya
- (2) Shri Shri Ram
- (3) Shri Naval Tata
- (4) Shri Morarji Vaidya
- (5) Shri L. N. Birla

} on behalf of—  
(1) The Federation of Indian Chambers of Commerce and Industry.  
(2) The All-India Manufacturers Organisation.  
(3) The Bombay Millowners Association.



(Witnesses were called in and they took their seats.)

**Chairman :** Thank you, gentlemen, for responding to our invitation.

The procedure that is proposed to be followed is this. The Committee will hear all of you jointly and severally if you so wish. After that, if the Members want to ask any question of any one of you, that would be done. After that, I shall ask questions, if I have any. Then, you will be discharged. Kindly start.

**Shri Saraiya :** Mr. Chairman and friends, in the first place, I must thank you on behalf of the Federation for giving us the opportunity to be here even at short notice. We all felt, at our end, that this question was very important and you very kindly responded to our request to be heard on this Bill.

I would like, at this stage, to thank Mr. T. T. Krishnamachari, the Minister in charge, for the assurance which he has given on the floor of the House that this Bill is not in any form the thin end of the wedge for nationalisation, and if Government want to nationalise, they will do it in a different way. But, we are very glad that this is not an attempt at nationalisation.

I would like to refer to some of the provisions of the Bill which are most important and which affect us. But, before doing so, I would like to know why after this short interval after the passing of the Industries (Development and Regulation) Act, it is sought to increase the powers of the Government and tighten the strings, so to say. We have been noticing that there is a very much improved atmosphere so far as industrial enterprises are concerned and there is increased production all round. While one need not deny that there may be cases of malpractices, by and large, industry is behaving better, and there is a better atmosphere and a better understanding between the Government and industry. In fact, for the first time in our history, the Prime Minister had a very kind word to say to industry. At this time, I would be unfair if I did not record that this Bill has unset and unnerved some of the industrialists ; some of the best of them. For example, Government's power to assume management and control under Section 18A, even denying the right to the share holders under section 18E to appoint any Director or do anything in the management of the concern, has disturbed the atmosphere. It is not a question of one bad industrialist feeling like this. But, quite a large number of us, in Bombay, in Calcutta, in different parts of the country have been feeling so and that is one of the reasons why, at such short notice, so many friends were able to come. It is not as if big industrialists are concerned ; smaller industrialists are more concerned and in proof of that we have Mr. Vaidya here, who is the President of the All India Manufacturers Association and who was also the President of the Industries Association. I would like very much to urge upon you not to hasten this tightening process till we have had some experience of the working of the Act.

In the past, the Act was passed after a good deal of negotiations between the Government, labour, etc. There were two Select Committees. What has been done in the original Bill was the result of a good deal of negotiations and give and take. Why disturb that stable equilibrium which was reached, so suddenly without any apparent reason ? These are the general remarks that I would like to make.

I would like to refer to 2 or 3 clauses which we consider detrimental. The most important is the clause relating to the Government's power to assu me



management and control. It is stated here : In case an industry 'is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest'. Who is to judge this ? An industrialist is exposed at any time of his career to having his industry being taken over by the unilateral decision of a department of Government. Today, our relations with the department are excellent. We have no complaint regarding the working of the Industrial Bill so far. The present personnel may not continue, but the law will continue. We are afraid that if such powers are given in the hands of the Executive, they may open the doors very wide for a good deal of apprehension on the part of industries of possibly some malpractices on the part of the Government or the Government department concerned.

Side by side with this, section 18E denies to the shareholders the right even to appoint managers or do anything. Once Government have assumed the powers, it shall not be lawful for the shareholders of such undertaking or any other person to nominate or appoint any person to be a director of the concern. There is no half-way house. Government straightaway take over the management and give it—I do not know to whom—perhaps may be a Corporation as suggested in Parliament, or it may be run by a department of the Government. There is no right of appeal. The industrialist is not aware whether he is going to be heard. There is no reference here to the Central Advisory Council. This is the most drastic provision which has created an atmosphere of apprehension. My friends around me, who are industrialists, will probably explain in greater detail how this section is going to affect them.

Then, I would like to take up the clause regarding "new article", section 3 (dd), where an industrialist who has got a licence is prevented from manufacturing an article in the same schedule without a licence. The result will be that he will have to run up to the department for licences all the year round. Having granted a licence for an article in a certain schedule, why should it be necessary for him to get a licence when his undertaking manufactures something which bears a mark as defined in the Trade Marks Act or which is the subject of a patent, if at the date of registration or issue of the licence or permission, the industrial undertaking was not manufacturing or producing this article. That, again, will be an unnecessary day to day interference with the working of the industry and will handicap the industry concerned. At least in the same schedule, industries should be allowed to manufacture one article instead of another.

There is the power of revocation which has been given. I think it has been rightly given. If an industrialist has obtained a licence under a false declaration, that licence should be removed.

We want that there should be some provision for an appeal or some reference to a body like the Central Advisory Council or any tribunal as you think proper. A man's industry should not be at the mercy of a just departmental decision. We propose that in clause 10A there may be some provision for this.

There is the usual question of vicarious punishment under clause 24. There are more offences and so also the liability of any manager or director, office bearer or secretary of an industrial concern being prosecuted for no fault of his, or which he may not be even aware of. This principle of vicarious liability is something which also acts as a deterrent to the starting of new industries and working of new concerns.



I can tell you from my own experience and knowledge that people are deterred by this vicarious punishment idea, and people should not be punished for technical offences. If the offence is real or is in the nature of moral turpitude, certainly you are welcome to punish them. In this connection, I would like to read clause 28 :

“Where any person is prosecuted for contravening any order made under section 18G which prohibits him from doing an act or being in possession of a thing without lawful authority or without a permit, licence, or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him”.

Sir, putting the accused to the burden of proving his innocence is something novel in criminal law.

**Chairman :** This clause only says that if a person has in his possession a stolen article, the burden of proving that he has such authority etc. is on him. That is a small matter. It is not entirely unknown but in this section, whether it is good or bad, it is there.

**Shri Saraiya :** I submit in this context if there is something definite against a person, you may certainly take action.

These are the only points I wanted to speak on. I do not wish to cover the whole ground, but I would again repeat that it is a question of the atmosphere. Please do not disturb it at this stage.

**Shri Shri Ram :** I will deal only with clause 18 where you have taken away the safety clause of finding out some defect in a particular concern and giving them an opportunity to explain and issuing directions to put them right.

**Shri T. T. Krishnamachari :** It has not been taken away. Only an alternative method has been prescribed. If your understanding is that it has been taken away, it is wrong. We can have the powers under section 16 of principal Act, if necessary.

**Shri Shri Ram :** In fact it may occur.

**Shri T. T. Krishnamachari :** In any provision it is intended to occur.

**Chairman :** Lalaji is under the impression that by this new procedure there is no chance given to the concern to improve matters. According to your authoritative interpretation, it is not so.

**Shri T. T. Krishnamachari :** Section 16 of the principal Act is still there. Only section 17 is taken away.

**Shri Shri Ram :** All of us are under that misunderstanding.

**Chairman :** I will read section 16 : After making the investigation as laid down in section 15, the Central Government may issue directions to the undertaking for all or any of the following purposes :

“(a) regulating the production of any article or class of articles by the industrial undertaking or undertakings and fixing the standards of production ;



(b) requiring the industrial undertaking or undertakings to take such steps as the Central Government may consider necessary to stimulate the development of the industry to which the undertaking or undertakings relates or relate ;

(c) prohibiting the industrial undertaking or undertakings from resorting to any act or practice which might reduce its or their production, capacity or economic value ;

(d) controlling the prices, or regulating the distribution of any article or class of articles which have been the subject matter of investigation."

So, if we accept what Shri T. T. Krishnamachari says, that section 16 of the principal Act remains. Therefore the Government may not immediately take over an undertaking necessarily, but can exercise any of the powers enumerated in section 16.

**Shri T. T. Krishnamachari :** Under the proposed amended Act if an industrial undertaking to which directions have been issued under section 16 has failed to comply with such directions, then the alternative is that you bypass section 16.

**Shri Shri Ram :** Our objection is only to the bypassing of section 16. There is no industrial undertaking that can do more harm to the public than a bad Bank. Even the Reserve Bank when they find that a bank is not behaving properly, they go to the Government of India and the Government of India give directions to the Reserve Bank to make inquiries and then stop this Bank from receiving deposits. I would like to know what is the industry that you have in view. So far as industries are concerned, even if 10 mills are stopped or misbehave, the consumer is not likely to suffer. It will be a small engineering industry that will suffer. But a number of things may arise. There may be an industrialist perfectly honest. His machinery may be old and he cannot get the money to replace the machinery or it may be that he is not running it well. Then you take it over. Supposing you yourself, when you run it, suffer more losses who is responsible for it ? Why should not the shareholders suffer, and that is no security. I would suggest that you give definite directions and give an undertaking an opportunity to put things right ; let it represent its difficulties before you, so that any honest difficulty, if there be any, may be put right. Otherwise, as Mr. Saraiya said there will be a sort of nervousness. Now it has gradually disappeared. There may be a few bad cases, as Mr. Saraiya said, but I do not know. Unfortunately, we have some people who may be doing things wrongly, but is the disease so serious that you should take these very wide powers ?

**Chairman :** I will interrupt to this extent and say that originally the power was not to take over the management directly. There was an intermediate stage contemplated. The new procedure is that the intermediate stage is not deleted but in very hard cases, I think there is some justification to take over an undertaking immediately.

**Shri Shri Ram :** We do not agree with that.

**Chairman :** I am giving the interpretation. My views may be expressed elsewhere.



**Shri Shri Ram :** Every type of criminal has got to be given an opportunity to explain his action. If the Railway collieries have got too many men you can discharge 5,000 people but if we, private industrialists, want to discharge a few people, we cannot do that. The industry becomes inefficient; it loses money. There are so many kinds of difficulties such as finance. There may be various other difficulties. Last year there was not a single textile mill that did not lose very heavily in cotton purchases because the Textile Commissioner asked us to purchase at a particular time. Supposing two mills had stopped work with no bad intention and somebody comes along and says "we take over the machinery's production". Now I do not think that the industrialists alone are the black sheep. They can be found in the Government also.

**Chairman :** It has become so common and serious that it has ceased to be a monopoly now.

**Shri Shri Ram :** Supposing the Chief Minister of Delhi goes to Birla Mills and says that the mill is not doing well and sends a third rate Inspector to inspect the mill and he reports that the mills are not doing well. I am sure I or Shri Birla would not like it. I ask, is the disease so very serious that you want to take this very radical thing? I have no doubt that if any bad case comes to your notice, the country will be behind you, Parliament will be behind you and you can without this Act take the concern over and put it right.

**Chairman :** That is one point. What else?

**Shri Shri Ram :** I wanted to speak only on this.

**Chairman :** You want to go away?

**Shri Shri Ram :** Yes.

**Chairman :** Since Lalaji wants to go away, have you anything to ask him?

**Prof. D. C. Sharma :** I feel that their fears are more psychological than real.

**Shri K. K. Basu :** You tried to make out that in case an industry is taken over by the Government and Government manages it, the shareholder, under this law, will have no right, because the whole company is given the go by. If you accept the proposition that there may be occasions when the Government would have to take over an industry in the interests of the industry itself and in the public interest, have you got any specific solution to this, because even under the old law, the same situation was there? We are not altering the position of the shareholders by this Bill. If you have got anything specific to say in this connection, we would like to know.

**Shri Shri Ram :** My reply to that is very simple, and it is this. When it is my property, then certainly I look after it much better like a real mother than a step mother; and if I am given directions to put things right, and if I am helped to put things right.....

**Shri T. T. Krishnamachari :** May I interrupt you? What Shri Basu said is this: He says already there is Section 17 of the Act, and Section 18 of the Act is only an amplification of Section 17. He wants to know what



is new there. Your objection to Section 17 is conceded, but supposing this Bill is withdrawn tomorrow in deference to your wishes, Section 17 of the Act will still remain, and Section 17, in its operations, will certainly not take care of the shareholders' interests in the same way as you would do, or, at any rate, you think you would do. What is the position in which you have additional fear? That is what he wants to know.

**Shri Shri Ram :** My fear would be much less if I am given directions to put things in order, and also I am helped where necessary. For instance, in the case of machinery manufacture, Government advance Rs. 25 lakhs and if I cannot put it right, then certainly my grievance and my shareholders' grievance would be much less.

**Shri K. K. Basu :** You know very well from experience that in the present industrial set up when there is a Managing Agency system there is difficulty for the shareholders to express their point of view, especially after the recent amendment to the Companies Act by which even a change in the Managing Agency has to be sanctioned. Actually, the Managing Agents have a much greater right than the hypothetical right of the shareholders. From that point of view, when the shareholders cannot really express their point of view in the normal way under the existing industrial set up, how is that position going to be altered if any industrial undertaking is taken over under the Industries (Development and Regulation) Act ? :

**Shri Shri Ram :** So far as relations between the Managing Agents and the shareholders are concerned, I do not want to go into it, because that is being taken care of by the amendment to the Companies Act. But, so far as the Government and the Managing Agents or the Managing Directors are concerned, the shareholders have put their fate in the hands of those people, and if they are given an opportunity and directions to put things right and if they don't put things right after the directions have been issued, well, then the shareholders cannot have any grievance. They put their fate in the hands of those people whether they are good, bad or indifferent.

**Shri K. K. Basu :** What I tried to emphasize was that in the present industrial set up there are occasions and instances where, even when there is difference of opinion, the ordinary shareholders do not find an expression of their opinion.

**Shri Shri Ram :** I think I have given a reply. I am not here to take up the matter as between the Managing Agents and shareholders. That is our domestic affair.

**Chairman :** He seems to feel that if a chance is given as a matter of course, then if the Managing Agency puts matters right, the shareholders stand to gain. That is the long and short of it.

**Shri K. K. Basu :** The other point is this. You gave the example of a colliery and said that when there is retrenchment by Government, there is no row about it but when there is retrenchment by a private industrialist there may be some difficulty and reference to the Labour Court. Is it not true that there are occasions when the private industrialists have gone in for retrenchment which ultimately when referred to the Labour Court was found to be wrong? On those occasions, don't you think that Government, in the interests of the industry and in the interests of the nation, should take over such an industrial undertaking when they



find that those persons who are in actual control and management of the organization are not behaving in the ultimate interest of the industry concerned ?

**Shri Shri Ram :** My point was that if I run an industry, I can't discharge people as I can't in many industries which I am running today. I know that I have got surplus staff, but because I am a private industrialist, I can't do it. Immediately it goes to the Government, they can retrench, perhaps with some difficulty, but they can do it. This is what has happened in Vishakapatnam ; this is what has happened in the colliery. But I cannot do it and therefore am I inefficient or am I handicapped in a particular way ?

**Shri Gidwani :** How will shareholders look at the thing if an industry is taken over by the Government if they found that it is not working in the interests of the consumer or the country as a whole ?

**Shri Shri Ram :** Quite frankly, I think in most cases the shareholders will not like it.

**Several Members :** How do you say it ?

**Chairman :** That is his view.

**Shri G. P. Sinha :** It looks strange to us.

**Shri Shri Ram :** Are the shareholders of the Sholapur Mills happy ? That has been taken over and is being run by Government.

**Shri Gidwani :** That is what I want to know.

**Shri T. T. Krishnamachari :** Would the shareholders have existed at all if the Government had not taken over ?

**Shri Shri Ram :** That is what you say. The shareholders don't say so.

**Shri S. C. Singhal :** If there is some mill-owner who by his negligence, corrupt practices, incompetency and inefficiency lowers the efficiency, reduces the production, deteriorates the quality of the product of his mill and incurs losses to the mills and ultimately brings about the closure of the mill, which throws out of employment the employees, what if the control of such mills are taken over by the Government ?

**Shri Shri Ram :** I want only this much that such mill-owners should be given chance to explain their position and to make improvements.

**Shri S. C. Singhal :** Do you not think that they will use this time to unduly influence the concerned Government department ?

**Shri Shri Ram :** (The reply was not audible.)

**Shri S. C. Singhal :** You say that selfish mill-owners will try to unduly influence the Government to take possession of other mills under the provisions of this Bill. Will you be satisfied if the management is given to the Government officers instead of some other mill-owners ?



**Shri Shri Ram :** I want only this much that they should be given time to explain their conduct and make improvements. That will solve all the difficulty.

**Shri Barman :** You expressed two views, as I understood it. The first was that clause 18B (b) was a drastic one. According to you there can be no case where the Government might be compelled to take over any undertaking, without giving a chance to them under clause 18B (a). That may not be a single case,.....

**Shri Shri Ram :** I do not think laws are made simply because there is one bad person or one bad industrialist.

**Chairman :** They are made for normal situations.

**Shri Shri Ram :** If there are general complaints against a high percentage of industrialists, five per cent. or even ten per cent. then you make laws.

**Shri Barman :** Anyhow, your point was that this particular provision (b) was unnecessary

The second point was that Government should give a chance to the shareholders, to explain their case, before the industry is taken over by Government.

**Shri Shri Ram :** I said representatives of the shareholders, who are either the managing agents, managers or managing directors. You cannot give a chance to the shareholders as such.

**Shri Barman :** From your experience in the industrial field, may I ask you to say whether it is or is not a fact that ordinarily the shareholders in most of the concerns do not know how to run the business and they have no idea of the business, and it is only the managing agents or the managing directors who run the concern ? Is it not a fact that in some cases, even though the shareholders may not be satisfied with the working of the management, they cannot even change the management, because they do not have any alternative before them ? Neither can they run the business, nor do they have any alternative. So they are simply compelled to put up with matters, even though they are satisfied that the undertaking is not being managed properly by the managing agents who run the firm.

**Chairman :** That is between the management and the electorate.

**Shri Shri Ram :** First of all, the position is that the managing agents themselves have reputation. For instance, if a particular good managing firm floats a company, their shares will be subscribed. But if a bad firm floats a company, their shares will not be subscribed. As I said earlier, this is not a Bill as between the shareholders and the managing agents. The remedy for the shareholders is provided under the Companies Act. A certain percentage of them can go to the Registrar, and bring a charge or complaint against them, and immediate steps are taken either to remove managing agents, or to make inquiries etc.

**Shri Barman :** My pointed question was whether in certain cases the shareholders are not satisfied with the management, and still they are afraid of changing either the management or have an alternative for it, because they have no experience of running the concern.



**Shri Shri Ram :** Then they have not utilised the powers given to them under the Indian Companies Act, of going to the Court.

**Shri S. C. Deb :** If you say, that it is a domestic affair between the managing agents or the managing directors and the shareholders, then Government has nothing to do with it ?

**Shri Shri Ram :** Government can do under the Indian Companies Act but not under this Act. You cannot use every Act for every purpose.

**Shri S. C. Deb :** If there is anything which is not to the interest of the shareholders. ...

**Shri Shri Ram :** Then the Companies Act takes care of it.

**Shri S. C. Deb :** Supposing the concern is suffering a loss, who will be the losers, the managing agents or the shareholders ?

**Shri Shri Ram :** If there are losses in the Government, who will be responsible ? The same reply here also. Government is not there to make up the loss. Government is there to see to the interest of private persons as also that of the public as a whole. So far as the Bill under discussion is concerned, the Government has got to see to the interests of the public, and not the shareholders. I think that is why the original Bill was brought forward. If that is so, then I do not think that a few managing agents are going to bring the world to an end.

**Shri S. C. Deb :** But if something is going to be done, what is to be done in such a case ?

(**Shri G. P. Sinha**—Shri Shri Ram—Hindi)

**Shri G. P. Sinha :** The Government is introducing the Bill not as a punitive measure. Why do you always make reference to a criminal ? The Government take over control and divest control for managing agency just to save the industry. Now the loss does not go to the industrialist only when a firm collapses. The nation as a whole suffers. When the industry is on the verge of collapse, the Government rushes forward with financial help. Lots of financial help in different shapes the Government have been giving to the losing concerns. They have been giving even to the running concerns. The shareholders are to be protected etc.

**Shri Shri Ram :** Who will be responsible if the industry suffers financial loss under Government control ?

**Shri G. D. Somani :** Both Lalaji and Shri Saraiya have drawn attention to the fact that whatever Government's views may be—to gain some benefit even by dealing with one or two stray cases of mismanagement—the benefit to be gained therefrom will be far less than the damage that it may cause to the general economy of the country. But assuming for discussion's sake now, as it appears that the Government's intentions are to deal with however small a number of these cases and Government may be determined to take these powers, would you suggest, even if the powers suggested in



this Bill are necessary, some safeguards which will meet the requirements of the situation and mitigate the evil effect that this clause may have upon the industrial management in the country? I am not referring to the general powers that they are taking. But if after investigation some chance is given to the party to explain or in the management—Board of Directors—shareholders are associated or some such safeguards are made?

**Shri Shri Ram :** It is exactly what I have been saying all this time.

**Shri G. D. Somani :** If even in the present amending Bill some safeguards are incorporated, do you think it will meet the requirements of the situation?

**Shri Shri Ram :** Then you give a direction. That is what I have been saying.

**Chairman :** Apart from what you have suggested, Shri Somani wants to know, assuming that what has been accepted as the basic fact in this Bill remains, whether you can point out any way whereby the evil effects, if any, can be played down and the good effects appreciated?

**Shri Shri Ram :** Quite frankly, I have not thought over that matter; because I think this is bad, as it is. But you can always find some way to take the sting out.

**Shri T. T. Krishnamachari :** I think, Lalaji, you know that if anything has to be condemned, it must be condemned bell, book and candle.

**Shri Bhagwat Jha 'Azad' :** You have explained all the time that Government should not interfere. I would like you to enlighten us what Government should do when there is labour mismanagement. Do you mean to say that when private industrialists mismanage labour and do not guarantee proper working conditions, Government should not take over? Take the example of the textile mills or sugar factories. In some of these mills and factories, labour is paid Rs. 27 a month. When labour demands dearness allowance, you give nothing. You give only 27 rupees a month even when prices are rising. If it comes to that, you even declare a lock-out. Do you mean that Government should not step in and take over the management?

**Shri Shri Ram :** My reply to you Sir, is this. Quite a number of textile mills in this country must be scrapped. If Government take over these concerns, then they will be wasting the taxpayers' money on those concerns. They are so terribly old and out of date that they must go out of existence. They are a drain and drag on the country. During the war period and the control period they had to be kept up because production was so much needed. But this always happens. I do not know how many mills in Bombay and in other places have been scrapped. That is how the efficiency of the textile, on the whole, is bettered. We go on always throwing out bad machinery and putting better machinery, changing buildings etc.

**Shri Bhagwat Jha 'Azad' :** Then you must put them to an end.

**Chairman :** The Government cannot do it.

**Shri Lakshmayya :** Government is not very anxious to take over all the concerns, unless the management is so bad. Unless it is incorrigible



Government will not interfere. And Section 15 of the principal Act is there. There will be a thorough investigation and also a chance will be given.

**Shri Shri Ram :** When you give a chance, I have nothing to say. Still if it continues in the same way, naturally the Government should take over.

**Shri Balwant Sinha Mehta :** You have been saying that a further chance should be given to the management if there is deterioration in the industry. When they would not take proper steps themselves and manage it well, how do you expect it will be done if a further chance is given by Government ?

**Shri Shri Ram :** I have not said further chance. I have said a direction should be given for a period and within that period they must put it right. If they do not, then Government take over.

**Shri Balwant Sinha Mehta :** As an old Hindi proverb says, if you cannot do it when you were more independent to work, do you think that our direction—a direction from Government—will improve the situation ?

**Shri Shri Ram :** That is what exactly we are doing in the Reserve Bank.

**Shri G. P. Sinha :** Lalaji, thinking much more calmly, are you satisfied that the step taken by Government is not a drastic one ; as a matter of fact, it does not meet the demands of the country ?

**Shri Shri Ram :** I am afraid, I have not become a convert as yet.

**Shri Morarji Vaidya :** I associate myself with the remarks made by my friend, Shri Saraiya. I express my thanks to you and to the Select Committee for giving us a chance of being heard, even at short notice.

I would like to refer, to begin with, to a slight mistake that has occurred in the telegram that we sent you. There it is stated, 'under Sections 3 and IIA'. It should be, '2 and IIA', regarding the designation of the new article and of the definition under clause 2 (i), where you have added clause (bb) to the existing Section 3 of the principal Act.:

'in the case of an industrial undertaking pertaining to any of the industries specified in the First Schedule.....'

**Shri T. T. Krishnamachari :** We understand it perfectly.

**Shri Vaidya :** Our reference to Section 3 has been omitted from the telegram ; I would like to mention that also.

Now, clause 3 proposes to remove the saving Section 4 of the original Act under which small undertakings below a capital of a lakh of rupees were exempted from the operation of the Act. Sir, in the Statement of Objects and Reasons the hon. Minister has said that this was liable to be misinterpreted so that the application of clause 2 also might not be taken. For that, our suggestion, Sir, is that the relevant clause may be so worded as to make the intentions of the Legislature clear and this sort of blank inclusion



of all small undertakings within the purview of this Act should be avoided for this reason. I am quoting an instance. We took Shri G. L. Mehta, a member of the Planning Commission to Kolhapur where there are a number of small powerloom factories, small oil mills and engineering factories and all of them were carrying on more or less in the cottage industry way. They were all subject to the same regulations which are applicable to large textile mills or engineering works or large oil mills. Shri Mehta was convinced that they had a genuine difficulty and grievance. But, in spite of three years, no action has so far been taken. It is not possible to exempt them from the operation of the existing laws. There is a provision made in the proposed Section 29 that the Government will be pleased to grant exemptions. My submission is, Government machinery being what it is.....

**Chairman :** It is improving day by day.

**Shri Vaidya :** That is why we are here ; we have faith and confidence..

**Shri T. T. Krishnamachari :** Government cannot be as efficient as private enterprise.

**Shri Vaidya :** I do not like to go into that larger question.

My submission is that it takes a very long time for any exemptions being granted or for any facilities being given to any industry when it is brought to the notice of the Government. It is very natural ; it is inherent in the machinery and, even with the best of intentions, it takes a long time in the meantime, the industry has to shift for itself. If within 3 years you could not achieve anything, surely much cannot be done in a few months. Therefore the submission of my organisation and particularly that of that small manufacturers is that this saving clause section should be retained and the definition should be so put that the intention of the Legislature the Government wants to bring all industries under their control should be clearly brought out in the Act. I particularly attach the greatest importance to this particular clause and I hope the Select Committee would be kind enough to consider that.

There are other points to which I wish to draw attention. One is regarding the period during which the application for registration should be made. It has been stated in the Statement of Objects and Reasons that Government have found that six months is too small a time for all the necessary formalities to be completed for existing undertakings to be registered under the Act. What I would suggest, is that the Select Committee should make it clear that it is not the intention of Government to make rules which would give a shorter time than six months to the industrial concerns to get themselves registered, because, now, Sir, you are extending the purview of this Act to many more industries, which include a good number of small industries spread all over this country in different parts and the nooks and corners. My organisation presses this view on the Government that there should be uniform control and regulation because I look at it like this, that this Act is both for development and for regulation and not merely for regulation and control. Morally, at least, it devolves as a responsibility of Government to regulate and also help the development of industries when the time comes ; when these industries are in difficulties, they will approach



Government and Government will morally be bound to help them. Therefore, in our opinion the time given for registration should be more than this six months and not less.

The next point is with reference to the revocation of registration. The assumption of that power by Government is too wide and there should be some provision made for a reference being made to the Licencing Sub-Committee or the Industrial Advisory Board.

**Chairman :** Reference against the order ?

**Shri Vaidya :** The amending Bill provides for the revocation of registration, which was not provided formerly. If some mis-statements are made, I submit that an opportunity should be given to the party concerned to refer the matter in appeal, especially to the Industrial Advisory Council or the Licencing Sub-Committee of the Council.

**Shri T. T. Krishnamachari :** Supposing Government feels that the recommendation of the Sub-Committee or the main Council is not correct, then ? The Council is only Advisory.

**Shri Vaidya :** But, at least the industrialist concerned will have the satisfaction. Even in labour matters, the party aggrieved has a right of appeal.

**Chairman :** Under the present provisions, whatever the Advisory Council may say will be only recommendatory ; do you want to have that character maintained or do you want that whatever the Advisory Committee settles should be binding on the Government ?

**Shri Vaidya :** The constitution of the Advisory Council as it makes it recommendatory and not mandatory.

**Shri T. T. Krishnamachari :** Then you have got to make it an Industrial Mandatory Council.

**Chairman :** Do you mean to suggest that investigation is made by somebody in the Ministry and it may be possible that there might have been prejudices and predilections and therefore there must be some authority to go through it in more details ?

**Shri Vaidya :** It may be that the Minister might not have gone into it at all or his attention might not have been brought to bear upon it. Probably the Minister's department would have done it. This will give at least some satisfaction to the party concerned.

Then the amendment of Section 10 of the principal Act regarding the time for registration. According to the amendment, the Government, in their rule-making power can fix the time during which the concerns must register themselves. In case an undertaking has failed to register, due to some oversight or omission or error, but not deliberately, then it should not be asked to close down, because that will affect the production of the concerns. The concerns will lose a lot of money. Therefore they should be allowed to continue. In case they again default, then registration may be revoked. But pending enquiry, appeal or review the revocation should not take place. That is our submission. When a licence is issued by Government



subject to certain conditions—because Government have the powers to impose certain conditions whenever they issue a licence to an industrial undertaking—here also, there is no provision for the aggrieved party to go to any authority to find out whether the conditions imposed are justified or not under the circumstances. Our submission is that some sort of machinery should be provided for in the relevant section.

**Shri T. T. Krishnamachari :** That is a suggestion for action. I think you better confine yourself to the amendments.

**Shri Vaidya :** I am suggesting that if provision is made in the law, it creates a feeling of confidence among the manufacturers or industrial concerns concerned, and if it is left to the sweet will of the Government.....

**Shri T. T. Krishnamachari :** The Select Committee cannot make all those changes. They can only make changes in the provisions of the Bill.

**Chairman :** What are your other points ?

**Shri Vaidya :** I would not repeat the points which have been made out by my friends Shri Saraiya and Lala Shri Ram regarding not giving a chance for the industrial concerns to carry out the directions, because that has been sufficiently discussed. But I would only mention this, that a lot of discussion took place here regarding the interests of shareholders *vis-a-vis* managing agents and managing directors. If managing agents or managing directors have got a majority of shares in their possession, that question rarely arises. You will find this if you look at it from the practical point of view. Because if the concern is managed in a bad way, and the majority of the shareholders suffer, the managing agents also suffer with them. Therefore, there is no question of conflict of the interests of the shareholders and the managing agents. In case where the shareholders have got a majority and the management is not in a majority, the shareholders have the right under the Indian Companies Act to take necessary steps and there is nothing to prevent them from doing so. But there is no reason why here the thing should be looked at from the point of the view of the shareholders in a different way, because what we find here is that Government are assuming the power of appointing directors who may not be the representatives of the shareholders. My suggestion is that provision should be made for at least one elected representative of the shareholders and one nominated by the Government from among the shareholders ; people of the choice of the Government should be put on the board, so that the voice of the shareholders will be heard when the Government takes over the concern. You cannot allow people who have put in their money.....

**Chairman :** May I interrupt for a minute ? Even otherwise, it is open to the Government to have anyone appointed. He may be taken from the shareholders, if the Government so desire. It is not compulsory.

**Shri Vaidya :** Under the law, it is not obligatory, and to that extent, people will naturally entertain fears.

Again, regarding these directions, even under the existing provision, namely, Section 16 of the principal Act, Government have the power to issue directions and see that those directions are complied with. They have the power to exercise control over production ; control over distribution ; control over prices etc. in respect of any concern which is under investigation. Therefore, the assumption of these further powers under the new



Chapter III-B Section 18 (G) is, in our view, rather drastic. The powers amount to powers being given to Government to permanently control the prices, distribution, stocks, production etc. These are in the nature of emergency powers which even under the existing law, namely, the Essential Supplies and Supply and Prices of Goods Act, Parliament has given to the Government. They are to be used in more or less an emergency when the country is passing through inflation or shortages. But to make these powers remain permanently in the hands of the executive is something extraordinary, and as it is, Section 16 provides these powers to Government during investigation time. It is, in our view, not desirable that these powers should be extended on a permanent basis.

**Shri T. T. Krishnamachari :** But really there is no relationship between Sections 15, 16 or 18 (A). New Chapter III-B stands on an entirely different footing.

**Shri Vaidya :** As I understand it, under Section 18 (G), Chapter III-B, Government do propose to have powers sanctioned to them by Parliament for controlling all these things.

**Shri T. T. Krishnamachari :** Yes, controlling the prices even in regard to industries which run well.

**Shri Vaidya :** Quite right. So, my submission is that Government have got the powers under Section 16.

**Shri T. T. Krishnamachari :** That is only in regard to industries which do not run well. We propose to use it even in regard to industries which run well.

**Shri Vaidya :** My objection is to the imposition of such restrictions.

**Shri T. T. Krishnamachari :** You should have made it at the time of the making of the Constitution. The Constitution should not have provided for powers to control prices and distribution of the products of concerns which are supposed to be important from the point of view of the national interest.

**Shri Vaidya :** For that, the Essential Supplies Act is there. Government has been given the power, for emergency use, and Parliament can always given the power under that Act for essential commodities. There is no warrant for this assumption of new powers.

**Shri T. T. Krishnamachari :** We have a Planning Commission and we are avowedly for a planned economy, and therefore a controlled economy is necessary. You have a Tariff Commission also.

**Chairman :** In other words, if there is planning, control must follow on that basis.

**Shri Vaidya :** But for a limited period. My submission is only this, that these powers should not be of a permanent nature. It may be that Government may not see their way to agree to my suggestion, but however this is how we feel.

Regarding clause 13 of the amending Bill, our submission is that the old Section 23 should be retained, along with the old Section 4, the saving sec-



tion. The powers under the new Section 23 should be appealable. Otherwise, it is more in the nature of an authoritarian regime than a democratic one.

Finally, I would like to say only one thing, and that is that the proposed amendments have not been even circulated to the members of the Industries Advisory Council. As a member of that Council, I wish to point this out.

**Shri T. T. Krishnamachari :** You ought to take it up with the Government and not raise it before the Select Committee. If there is any grievance in regard to any matter on the part of any member of the Advisory Council who thinks that Government has acted in an objectionable manner, that point should be taken up with the Government. I will do that. I may merely mention here that this Bill has not been circulated.

**Chairman :** I will not rule it out of order.

**Shri Vaidya :** I would only say this, that the amending Bill has not been in the hands of the industrial organisations of the country even in a place like Bombay up till now. It is with very great difficulty that I obtained a copy. We have not yet got the copy of the Gazette in Bombay. Even the Indian Merchants' Chamber has not been able to get a copy.

There is one last point that I would like to mention, and that is about the proof of innocence. If I may say so, it is not understandable why it should be taken that every time a mistake is made by any industrial concern or undertaking, it is being done deliberately. Mistakes are done by every section of the community even unknowingly, because the laws are so complicated these days. Therefore, is it right that the proof of innocence should be put on the accused ? It is for the authorities concerned to prove that a certain offence was committed deliberately, with *malafides*, rather than put the onus on the accused person. This is my submission regarding new Section 28.

This is about all that I have to submit.

**Shri Naval Tata :** Mr. Chairman, I think that most of the points have been covered by my colleagues, and I would only confine myself to certain general principles and sentiments. I remember having attended a meeting in connection with the Industries Control Act when it was originally mooted. I remember very well the mixed feeling that we had, but after the Government have assumed the powers, in many quarters it is felt that in many ways it is a very good legislation and it has benefits which are distinctly favoured by the community, and that the balance is in favour of the industries running better.

When we come to these amendments, I take it that some extreme situation has arisen in which you wish to be armed with extreme powers. But at the same time, I also take it that in having it in the form of a legislation like this, you are assuming that this kind of affairs which you are seeing now will always be there, and that it is not a phase. If that is the position, then I have to make one or two observations.

In the industrial history, you will find that when the Companies Act was slack and when there was no provision for control etc., managing agencies till worked. It all depended upon the type of shareholders and the managing agents. It so happens that at the moment you have cause for anxiety.



am not one bit suspecting that these powers are merely taken for hypothetical cases. But may I ask what would happen ? Suppose you are armed with these powers. Today we know you are there, you have a good grasp and understanding of the industry. But suppose your successor or somebody finds these powers are there. There is always a temptation to make use of them—and abuse them.

**Shri T. T. Krishnamachari :** My successor would be a better man !

**Shri Tata :** Let us look into the history of everything. Just as some managing agents have abused their powers, it may be that the executive may abuse these powers. Assuming that you want to take this power, I have only one suggestion to make. You want to make this Advisory Council recommendatory. For the sake of mutual trust why not let the industry feel that you are going to ask them ? You will also have a clear conscience and it will give you that sense of confidence. I appeal to you there is nothing so extreme in our demand or so unreasonable that you should feel hurt. If you do not like their advice, that is another matter, do not take it. But mere reference is not going to really curb your powers.

**Chairman :** Do you want it to be statutorily provided ?

**Shri Tata :** Yes. It is a matter of mutual trust. I am not questioning your right to bring in this Bill or bring in this power. I know there are occasions when you have to work very fast and have prompt action. But if there was a statutory provision and for a matter of form you refer to a body of advisory people, you may not agree with them but it gives the other party a sense of confidence. It is in the interests of industry as well as of Government to create that spirit of confidence. It will help. I will just refer to the Companies Act. As between the time that was and that is now, many pieces of legislation have come. Through the Companies Act you propose to tighten—very rightly—a lot of loopholes which have led to abuses by managing agents. As long as you can do that .....

**Shri T. T. Krishnamachari :** The amended Act is still not there.

**Shri Tata :** It is assumed you are going to make use of them and that you have got that machinery.

**Shri T. T. Krishnamachari :** Then you will say “you are hurrying legislation, circulate it for public opinion” !

**Shri Tata :** But you have a steam-roller majority in Parliament. I take it if you can pass this you will be able to pass that also.

**Shri T. T. Krishnamachari :** You will like it much less. Believe me.

**Shri Tata :** That is a matter of opinion.

It would be better to take this power in the name of shareholders than through this kind of provision. I say frankly perhaps after ten years you may not be there, you may be a higher authority. The law will remain there, it may be abused.



One more point I wish to make is that even as the law stands today the shareholder has a right to sue a company director for misdemeanour. A kind gentleman has referred to minority shareholders and their interests. I know in the bulk of cases, where this abuse takes place, normally, it is the managing agent who holds 60 per cent shares, and he exploits the other 40 per cent. But it does not prevent even one single shareholder from going to the court, and he can be brought to book for criminal misdemeanour on proper evidence.

**Chairman :** I do not know the Government's mind, but suppose they desire that after the management is taken over, one director from the shareholders should be associated with it. Is it possible for the few shareholders, apart from the shares held by the managing agents, to return the man they desire ? Assuming, as I say, that Government has a desire to associate one director, is it possible for any independent director to be elected when the situation, as you suggest, is that 60 per cent. of the shares are held by the managing directors and their sons-in-law and brothers-in-law ?

**Shri Tata :** I quite agree. My colleagues have already suggested a solution. There are going to be forms of nomination. One is your own nominee, from the shareholders. You look through the share register. If you want to select one with not more than five shares, that is from the small ones, you can do so. Let the majority shareholders put their own nominee. There is nothing wrong about it. I would give another example. In the public sector you thought it wise to put the representative of labour as director. I think it is a wise step. The reason behind that step was that you wanted to give representation to those who toil for that institution. If that labour working in your public sector has a right of representation on the administration, I do not see why you should deny that right to a shareholder. Because, obviously, you are taking up cudgels on behalf of the shareholders—apart from consumers' interests about which you might be directly or indirectly concerned. So I feel very strongly that two directors should be nominated, one from the minority shareholders to be nominated by you—I grant that if you leave it to election the majority shareholders will not let him in, so you nominate him—and let the majority shareholders nominate one of their own choice. By this you will create that air of confidence on which I am basing these arguments.

**Chairman :** You mean we will get the goodwill of the shareholders ?

**Shri Tata :** I think so. Take the Sholapur Mill case. Today, as your Constitution stands, you have got wide enough powers to handle emergencies. As it is, you are taking a very very big list of powers on a permanent footing. Suppose these rules do not cover any of the situations you have in mind. You can rightly fall back on the Constitution and take emergency powers.

Another point, and the last point, which the Bombay Millowners' Association particularly wanted me to make is this. This is with reference to the clause regarding 'substantial expansion' (clause 8). It is rather vague. We want to know what would be the interpretation on it.

**Shri T. T. Krishnamachari :** I can tell you that. The point really is it is intended to be used in extreme cases where we do not want a particular industry to develop. You can take it from me that normally it is no intention of the Government to stop development at all. But we want to be told what



the development is. There may be rare cases of undesirable interests, we would not like them to develop in a particular way. Government is now thinking of using all unexploited resources. It may be later on they may ask you to manufacture something that you do not like. But when you are planning a thing like this every substantial expansion has to be indicated. It is the intention of Government not to put any check on *bona fide* expansion.

**Shri Tata :** I am making this point because the doubt in the mind of the 'Millowners' Association is this.

**Shri T. T. Krishnamachari :** Here it is a matter on which I can assure you, and I have given a categorical assurance on the floor of the House, that we do not want to stop any *bona fide* expansion. I am not in a position to divulge the case I have in mind which it will be unwise on my part to indicate.

**Shri Tata :** I was mentioning this for one reason. Now, this is your interpretation.

**Chairman :** You can easily understand why this power is taken with regard to expanding production in a particular direction. It is something which you will come to know in due course. There is no use making it public.

**Shri T. T. Krishnamachari :** You can take it that Government will not hinder any normal expansion.

**Shri Tata :** Like an additional shift started by us ?

**Shri T. T. Krishnamachari :** Shift does not come here at all. Suppose you use three shifts. It does not come under expansion.

**Shri Tata :** Or instal a printing machine ?

**Shri T. T. Krishnamachari :** Even if you want to put additional machinery we are not against it. We have said that we ought to know about it.

**Shri Tata :** I am very thankful for that interpretation you put. But suppose that interpretation is not put by a future executive ?

**Shri T. T. Krishnamachari :** I can tell you the policy of the Government cannot be changed by any future person. It is not to stop expansion. Government want to know what it is so that if expansion is in a direction or by a set of people whom they don't want to allow—you know it yourself. I can read your thoughts but I am taking the power probably to help you.

**Shri Vaidya :** May we have the assurance that the same liberal interpretation will be put in the manufacture of new articles such as small types of switch gear, etc. ?

**Shri T. T. Krishnamachari :** Our idea is this. Supposing you want to manufacture a particular article for which you pay a royalty. Normally it will come before us for foreign exchange. Sometimes there are loopholes. I want to know what your commitments are. I have no intention of asking you not to manufacture particularly a new article.



**Shri Vaidya :** We are manufacturing transformers and motors.

**Shri T. T. Krishnamachari :** If you pay some foreign firm 12 1/2 per cent. royalty, I will say "NO". If it is reasonable, I will say "YES".

**Shri Vaidya :** We are manufacturing small types of .....

**Shri T. T. Krishnamachari :** No impediment at all to your progress. If your royalties to foreigners are reasonable, Government won't stop you.

**Chairman :** It should remain an Indian concern.

**Shri K. K. Basu :** I hope after the long discussion you will concede that this enactment is for the development of our industries. I hope you will realise that in a planned economy as it is today, though there is a private sector, it is absolutely necessary that Government should have some sort of check and control over the working of the private sector. The fear which you have expressed is whether the machinery which works this particular organisation will work to the interests of the industry. You fear that if their working is left to certain executive officers like Secretaries of Departments, they might act in a manner which may be prejudicial to the industry because they may not be well versed with the industrial aspects. You will see that in the Tariff Commission there are persons who are not either industrialists or economists but they are in a position to understand the implications of certain industrial policy. If persons with a certain knowledge of economics or persons connected with the industry are selected for this purpose, it will enable them to understand the industrial aspects. So I do not think there is any justification for your fear.

The other point is Government must have certain powers as far as planned economy is concerned because the major part of the industry is controlled by the private sector.

The other point is about the absolute right of the shareholders. Apart from the private shareholders involved, the community has an interest in the development and the working of a particular industry. In that way also you will concede that we have got to judge in what way the industry should be controlled and regulated in the broader interests of the community and the nation.

With regard to organisations taken over by Government, like the D. T. S., the Kanpur Electricity Board, etc., it has been stated that they are running inefficiently and that all the undertakings taken over by the Government are not working in a manner which could be called above board. Do you mean to say that Government should not take over any undertaking and run it in the interests of the country.

Then about the scrapping of mills, the Minister himself was trying to explain the point of view. Whatever it may be, it must also fit in with the overall industrial policy of the Government.

The other point is about the one lakh limit. There may be certain industrial undertakings whose actual paid-up capital may not be so high as one lakh of rupees. The workers engaged in these undertakings may be highly technical people and they may have to play an important part in the industrial



set up of this country. There may be certain undertakings which Government may want to be taken over by them. I think there is nothing to fear in the provisions of the proposed section 29-B.

Then about the proposed section 18-G, I think it must be realised at least for sometimes to come that some sort of control has to be maintained over the production and the prices. Therefore, I think you will accept the position that in the present set up, as it is today, section 18-G is necessary whether it is maintained in this form or in any other form. If the situation comes to such a stage when it becomes necessary to amend this section, if the same Government continues, they may agree to do it. I do not think that there is so much for you to fear.

Then the other point is about shareholders. I do not want to dilate upon it because the Chairman himself has tried to explain it. You concede that before the amendment of the Banking Companies' Act, many things had happened to the detriment of the shareholders' interest. Many Directors went scot free due to the absence of the provision about criminal prosecution. Similarly, also, there is power—this has also been referred to already—by means of which without giving an opportunity to improve, the Government want to take over. Here also we have the recent instances of liquidation of Banks and the Reserve Bank have taken more powers to immediately intervene or take some positive step so that we may be in a position to save the common people's money, instead of allowing the Banks to go into liquidation. These are, I think, the propositions which you may answer.

**Shri Saraiya :** In the first place, I would like to give a categorical assurance to this Committee that industry has accepted the report of the Planning Commission. The Federation has passed a resolution, and the All India Manufacturers have passed a resolution and the Millowners are also members of these bodies. The answer to the first point raised by Shri Basu is this. These emergency powers that Government are seeking to take are creating an atmosphere of extreme nervousness on the part of industry and therefore Industry feels that these powers should not be taken. I won't repeat all that I said at the beginning. That is the main reply to Shri Basu's question.

The second suggestion is that you should have a quasi judicial body. I will certainly accept this proposition. If a quasi judicial body on which the industrialists are represented is to be established, the exercise of these powers will be looked at with less misgiving by the industrial concerns and it will certainly infuse more faith in the people who are going to run the existing industries or who want to start new industries or expand the existing ones. Today, the effect of this Bill is so damping that I would certainly ask you to consider the suggestion of having a quasi judicial body, who could be consulted before this action is taken.

I am afraid, it seems that the Government in making this Chapter III-A, have not referred to section 5 in which there is a clause under which the Central Advisory Council shall be referred to by the Government in the following directions. There is a mandatory clause. Of course, Government are not bound to accept their advice ; I admit that Government is the final authority. After all, Government has to be the final authority. Otherwise, no country can be governed. But, sub-section (4) of section 5 says that the Central Government shall consult the Advisory Council in regard to making any rules other than the first rules—the exercise by the Central Government of any of the



powers conferred upon them by the section. The clause should be expanded to cover the further powers, particularly the drastic powers which are proposed to be taken in Chapters III-A and III-B. It will go at least some way to allay the fears of the industrial public. Otherwise, it seems as if this section has been contradicted.

Then, he referred to the question of prices. We accept the proposition that prices must be regulated. For the regulation of prices, there are other laws and Government rely upon those laws and do not have three sets of laws. There is already the Essential Supplies Act and also there is the Supply and Prices of Goods Act. This will be a third enactment. If these Acts lapse you can have some sort of powers mentioned here. To have all the three laws is rather not necessary.

**Shri Barman :** May I ask a question of Shri Tata ? You have represented the case of shareholders. Of course, I am also zealous in supporting them. You have suggested that two directors should be taken out of the shareholders : one from the majority of the shareholders, and another nominated by the Government, that is from the minor group. So far as the minor group is concerned, if the Government can do it, I shall be happy. But, don't you think that the Government really condemns the representative of the majority of the shareholders by taking over the undertaking ?

**Shri Tata :** It is true.

**Shri Barman :** Then, the same condemned man is taken as a collaborator with the Government in running the business. Will they work harmoniously or will there be clash ?

**Shri Tata :** I will answer that question. You are taking it for granted that in all cases, there will be a majority shareholders.

**Shri Barman :** Not in all cases.

**Shri Tata :** There may be cases where there are no majority shareholders. What I was thinking of, was a constitutional provision by which at least some representation would be given. I quite agree with you that there will be cases where you may have to deal with a condemned man. He would be in a minority. He cannot be a nuisance to you. The basic fact remains that the person to whom the property belongs is there. You cannot question his right. He may be a criminal. You can sue him and push him out. But, so long as he is the owner, you have to have him. I do not see why you should be chary about having him.

**Shri Barman :** Not chary ; my point was whether the working will be smooth. The condemned man will not take any responsibility ; Government will have to take all the responsibility.

**Shri Tata :** According to this Act, the entire management is going to be in your hands. There is going to be perhaps one man.

**Shri Barman :** This is not likely to work harmoniously.

**Shri Tata :** You have powers to remove him.

**Chairman :** It seems that they want it to be put in the statute.



**Shri G. P. Sinha :** You objected to permanent price control.

**Shri Tata :** Not prices.

**Shri Vaidya :** This comprehensive control.

**Shri G. P. Sinha :** You said that there are other pieces of legislation such as the Essential Supplies Act, etc. In view of the fact that we are having controlled development, we cannot do without comprehensive control on prices. I think it is better not to interfere with the Government as far as price control is concerned. Secondly, an explanation has been given by the Government about expansion. You know that Government are interested in expansion and increased production more than the industrialists. After hearing that explanation, do you still have any objection in this respect ?

**Shri Tata :** I do not think that what I have suggested would interfere with the Government's Plan of expansion in any way. I do not think these powers alone would safeguard the expansion of industries. I was speaking on a different footing. I wanted to have an assurance from the hon. Minister.

**Chairman :** I think that matter has been explained. He only wanted to know that this is not with a view to prevent industrial expansion. That matter has been explained.

**Shri G. P. Sinha :** Then about Directors. The Act is silent about the nomination of directors. Why do you insist that some definite enactment should be made ? You have to rely upon the Government. The Act does not debar the nomination.

**Chairman :** If there is a statutory provision, the atmosphere will be good. That is what he means.

**Shri Saraiya :** It gives a kind of assurance to the shareholders, to the private persons who are going to invest in industry.

**Shri G. P. Sinha :** It is only in your interest not to insist on it.

**Shri Lakshmayya :** You say that the proposed section 18G is not necessary in view of the fact that there are the Essential Supplies Act and Supply and Prices of Goods Act. These two Acts are there. The hon. Minister for Commerce and Industry finds them useless and he has introduced this section particularly to have effective control over prices and distribution. I know of several instances where the concerns are being very badly managed by the Managing Directors and ultimately Government would have to come to their rescue and take over direct control.

**Shri B. N. Misra :** You have put in that one should be a shareholder and one should be nominated by the Government, who may be a minor. Supposing the shareholders are 60 per cent. and those nominated by the Government are 5 per cent., do you think that Government's control will be effective ?

**Shri Saraiya :** Generally in practice I have been saying that the shareholders shall not dominate so much.



**Shri Tata :** It is not so, Sir. On the decision on every issue, he may not be able to hold his own but his voice will be heard so long as he puts forward what he wants to say.

**Shri B. N. Misra :** If the administration is not working smoothly, Government has to step in.

**Shri Saraiya :** These two will not be the directors. There will be other directors appointed by the Government.

**Shri Valdia :** Section 4 of the principal Act only refers to simple capital investment and in the old Act Government reserve to themselves the right to decide ultimately what is the interpretation of 'capital'. It is well-known that an important concern cannot possibly run with merely Rs. 1 lakh of invested capital and it is for the Government to interpret the capital in order to bring the concern under the purview of this Act. It will save the Ministry a lot of bother. Otherwise the Ministry will not be able to deal with all this. Anyway I am willing to leave this to Government's decision.

**Chairman :** We are extremely obliged to you for having responded and come over here. I carry the impression that it has been to our mutual good.

**Shri Saraiya :** I may mention here that you asked a question about the burden of proof. Not being a Parliamentarian I could not reply to you on the spot. Under new section 28, the burden of proof in certain cases relates to new section 18G which in its turn deals with power to control supply, distribution, price, etc. of certain articles. If I am in possession of stolen goods, certainly I am presumably guilty but the question of doing an act is something which goes beyond the ordinary rules of Criminal jurisprudence.

**Chairman :** The onus of proof on the accused is not unknown to our jurisprudence.

**Shri Saraiya :** Positive proof can be given. Even under the Evidence Act only a person who is in possession of facts can prove it. Negative evidence cannot be called from every quarter.

**Chairman :** If you are in possession of the evidence, it is for you to prove it.

**Shri Saraiya :** It is also a question of doing an act.

**Chairman :** Let us leave the matter at that.

As I said your coming over here has been to our mutual advantage. Since you have all commented on a theme in which you are hoping to have some clarification from my hon. friend here, we do hope that this Bill will not be looked upon as something in the way of a punitive or police action but as something which a guardian of a criminal or a misbehaving child does for his good. We hope it is in the interests of good Government. Thank you very much.

*(The witnesses withdrew).*







