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1. Report of the Select Committee on the Tea Bill, 1952. — Report: 14-2-53

2. Report of the Select Committee on the Food Adulteration Bill, 1952. — 14-2-53

3. Report of the Select Committee on the Estate Duty Bill, 1952. — 31-3-53

4. Report of the Select Committee on the Industries (Development And Regulation) Amendment Bill, 1953. — 29-4-53

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HOUSE OF THE PEOPLE

THE TEA BILL, 1952

(Report of the Select Committee)

PARLIAMENT SECRETARIAT
NEW DELHI
February, 1953

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THE TEA BILL, 1952

MEMBERS OF THE SELECT COMMITTEE

Shri T. T. Krishnamachari—*Chairman.*
Shri A. K. Basu
Shri Upendranath Barman
Shri Kamakhya Prasad Tripathi
Prof. Nibaran Chandra Laskar
Shri Debeswar Sarmah
Shri Bhakt Darshan
Shri R. Venkataraman
Shri G. R. Damodaran
Shri Nageshwar Prasad Sinha
Shri Hem Raj
Shri N. M. Lingam
Shri H. Siddananjappa
Shri Bhagwat Jha Azad
Shri P. T. Chacko
Shri N. C. Chatterjee
Shri Hirendra Nath Mukerjee
Shri Hari Vinayak Pataskar
Shri Jaipal Singh
Shri Tridib Kumar Chaudhuri
Shri K. Kelappan
Shri Rayasam Seshagiri Rao
Shri Purnendu Sekhar Naskar
Shri Dev Kanta Borooah
Shri T. Subramanyam
Shri D. P. Karmarkar.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to provide for the control by the Union of the Tea industry and for that purpose to establish a Tea Board and levy a customs duty on tea exported from India, was referred, have considered the Bill and I now submit this their report with the Bill as amended by the Committee annexed hereto.

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

Long title.—The Select Committee have amended the long title of the Bill in order to show that control of the tea industry in some respects is also necessary under the International Tea Agreement.

Clause 3.—Besides making some consequential and formal amendments the Select Committee have omitted the definition of "grower" as unnecessary and have recast the definition of "tea" in order to bring it in line with the international definition.

Clause 4.—As the Tea Board will work under the general control and supervision of the Central Government, the Select Committee feel that there is no need for the Central Government to be represented on the Board; but it is felt at the same time that the Board should be apprised of the views of the Central Government before taking any decision. Hence the Select Committee have deleted item (g) of sub-clause (3) and have provided in new sub-clause (5) that any officer deputed by the Central Government shall be entitled to take part in the proceedings of the Board but shall not be entitled to vote. The Select Committee recommend that provision should be made in the rules for deputing officers of the Ministries of Finance, Commerce and Industry and Railways to attend meetings of the Board. The Select Committee have also deleted item (i) of sub-clause (3) as they feel that interests of commerce and industry have already been provided for elsewhere in this clause. With a view to widen the scope of choice the Select Committe have amended item (j) of sub-clause (3).

Clause 9.—The Select Committee while agreeing to leave this clause as it is, recommend that provision should be made in the rules for associating with the Board a member of the Union Public Service Commission or of the appropriate State Public Commission at the time of selecting officers drawing a salary of Rs. 350 or above but below Rs. 1,000 per month.

Clause 10.—The Select Committee have recast this clause from the drafting standpoint.

Clause 11.—The Select Committee are of the view that provisions should be made for the Board to be reconstituted after dissolution. The Select Committee have accordingly re-drafted this clause.

Clause 14.—The Select Committee feel that the proviso to sub-clause (3) was unduly restrictive and that the distinction contemplated in that proviso between a limited liability company and an individual proprietor should go and have accordingly deleted the proviso. The Select Committee, however, recommend that the rules under the Act should provide that previous approval of the Central Government should be obtained before granting permission in a case where the area planted with tea exceeds 500 acres.

Clause 17.—The Committee feel that there should be a general clause dealing with appeals not only against orders under clauses 14 and 15 but also against orders under clause 20. The Select Committee have accordingly omitted this clause and have inserted new clause 32.

Clause 21.—The Select Committee feel that tea estates and gardens which have gone out of production for more than two years should not be granted any export quotas. It was agreed by the Committee that provisions to this effect should be made in the rules.

Clause 26 (*old clause* 27).—The Select Committee have re-drafted this clause in order to market it consistent with the existing legal and constitutional position.

Clause 30 (*old clause* 31).—The Select Committee feel that in order to exercise effective control over the tea industry the Central Government should have power to control not only prices but also distribution of tea. The Select Committee have accordingly recast this clause.

Clause 32 (*new*).—The Select Committee have inserted this new clause providing for appeals against the orders of the Board under sections 14, 15 and 20.

Clause 35.—The Select Committee feel that no export quota should be allotted to a contumacious tea estate owner and that besides tea estate owners, manufacturers, brokers and dealers also should be required to furnish returns. The Select Committee have amended this clause accordingly.

Clause 41 (*new*).—The Select Committee have inserted this new clause to provide for penalty for contravention of orders relating to control of price and distribution.

Clause 49 (*old clause* 48).—Besides making some minor and consequential changes in this clause the Select Committee have inserted new sub-clause (3) providing for the laying of the rules before both Houses of Parliament.

2. The Select Committee have considered the amendments proposed by a member to provide for investigation into the affairs of any mis-managed tea estate to give directions to the owners and managers of estates for the better administration of such estates and for the taking over of the direct control and management thereof, if and when necessary, on the lines of sections 15, 16 and 17 of the Industries (Development and Regulation) Act. This question was discussed at length and it was felt that the analogous provisions of the Industries Act would not be suitable for application in the case of tea gardens. A majority of members of the Committee were, however, of the view that Government should have some powers to deal with estates which are mismanaged over a period of time and recommended that Government should take steps to introduce legislation to that end at an early date.

3. The Bill was published in Part II, section 2 of the *Gazette of India*, dated the 27th December, 1952.

T. T. KRISHNAMACHARI,
Chairman of the Select Committee.

NEW DELHI ;
The 14th February, 1953.

Minutes of Dissent

I

While agreeing generally with the Bill as amended by the Select Committee I wish to append this note of dissent.

2. Clause 4(3) makes provision for the representation on the Tea Board, of the different interests involved. I feel that the small garden owners and growers as well as the small traders must receive adequate representation. So also those who represent the employees must be active members of the labour union with the largest membership. This clause therefore requires suitable amendment.

3. Clause 10, sub-clause (2)(j) should be amended to ensure living wage for the labourers.

4. Clause 11 makes provision for the dissolution of the Board. It must be made clear that the dissolution will not adversely affect the interests of the staff and other employees.

5. Clause 51(3) while providing for the retention of all officers and employees of the Indian Tea Licensing Committee and the Central Tea Board when this Act takes their place, does not guarantee that their conditions of service, pay, allowances etc., will be maintained. One may admit that changes in the administrative staff may become necessary in the new set-up, but there is no reason why the employees should be considered as new entrants or their service and scale of pay should not be maintained.

6. One other matter I wish to point out is that for the effective implementation of this Act it may become necessary for the Government to take over the management of estates which contravene the provisions of the Act. Unless powers are taken in this Act itself to deal with such a contingency some of the important provisions of this Act will remain otiose. Therefore a clause should be added empowering the Government to take over the administration of estates whose management proves recalitrant.

K. KELAPPAN.

New Delhi ;
The 14*th February*, 1953.

II

We regret to have to append this Note of Dissent from our colleagues on the Select Committee on the points stated below.

2. We feel there should be a proviso to clause 4(3) (a) in order to ensure that there is a majority of our own nationals in the category of "owners of tea estates and gardens and growers". This is necessary, we believe, in view of the present posture of our tea industry which is dominated by foreign interests.

3. In regard to clause 4(3) (b) we are of opinion that among appointees of Government in that category there should be at least one representative each nominated by the four principal all India organisations of the working class which are active in the Tea Garden areas, *viz.*, the All India Trade Union Congress, the Indian National Trade Union Congress, the Hind Mazdoor Sabha and the United Trades Union Congress. It is

common knowledge that in most tea estates and gardens there prevails, unfortunately, a state of things which is a negation of civil liberties, and specially of trade union rights. Workers and employees are generally subjected to conditions that are very like feudal terror and cannot always champion their own interests as effectively as they might wish to, because of the ever-present fear of victimisation, assault and other forms of physical and moral coercion. For the time being, therefore, they require a certain amount of assistance from organisations we have mentioned above, which are accepted by our working class as their accredited spokesmen. The said four organisations were invited by the Government of India to the Tripartite Conference on the tea industry held lately in Calcutta and can very. well be expected to uphold the real interests of those employed in tea estates and gardens and to fight the atmosphere of intimidation and demoralisation which weigh so heavily on tea garden workers. If in any number of statutes, Chambers of Commerce and Industry can find mention, there can be, we are convinced, no insuperable objection to the specific inclusion in the Bill of specific provisions for the representation of trade union organisations.

4. We suggest that in clause 4(3) (d) after the words "internal traders", the words "including small traders" be put in. These small traders have, as Government knows, their own organisation and feel very much in danger of being swamped by bigwigs in the trade. They require, and we may add deserve, special assistance particularly in the context of the present crisis.

5. Clauses 11 and 51(3) require, in our view, some amendment in order to ensure that persons now employed under the Board may be protected in respect of their continuity and conditions of service, *e.g.* pay, promotion, prospects etc. If, as we were told, there are at present instances of undesirable appointments, Government has sufficient powers to deal with such cases, but a hypothetical premise of this sort should not be utilised for placing the future of the generality of employees in serious jeopardy. We do not fear that many of the posts now in existence will be found to be superfluous, because we expect that the work of the Board will expand and if anything, its staff will require augmentation.

6. Regarding the amendments, to which reference is made in paragraph 2 of the Report, we are of opinion that in spite of certain legalistic doubts about the tenability in the Bill of provisions vesting Government with the right of investigating cases of mismanagement, of giving necessary directions for better administration, and of taking over, in recalcitrant instances, of direct control and management of defaulting estates, such provisions should specifically be incorporated in the Bill. We think that the legal position may reasonably be expected to be clarified by the time this Bill becomes part of the law of the land. We wish, therefore, that instead of a mere recommendation to Government to introduce fresh legislation to that end at an early date, such provisions should form part of the Bill as we report it back to Parliament. We owe it, we feel, to the basic interests of the country in general and of the tea industry in particular, to stress this point.

HIRENDRA NATH MUKERJEE.
TRIDIB KUMAR CHAUDHURI.

NEW DELHI ;
The 14th February, 1953.

III

I regret I cannot accept Clause 34 without the deletion of the words "or any member or officer of the Board". I fear the "Power of inspection" might lend itself to abuse by members of the Board representing heterogeneous and even conflicting interests.

JAIPAL SINGH.

NEW DELHI ;
The 14th February, 1953.

Bill No. 130A of 1952

THE TEA BILL, 1952

(As amended by the Select Committee)

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

A

BILL

to provide for the control by the Union of the tea industry, including the control, in pursuance of the International Agreement now in force, of the cultivation of tea in, and of the export of tea from India and for that purpose to establish a Tea Board and levy a customs duty on tea exported from India.

Be it enacted by Parliament as follows:—

CHAPTER I

Preliminary

1. Short title, extent and commencement.—(*1*) This Act may be called the Tea Act, 1953.

(*2*) It extends to the whole of India:

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to the control of the export of tea from, and the cultivation of tea in, India.

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

2. Declaration as to expediency of control by the Union.—It is hereby declared that it is expedient in the public interest that the Union should take under its control the tea industry.

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

(*a*) "Board" means the Tea Board constituted under section 4;

(*b*) "broker" means a broker of tea;

(*c*) "cess" means the customs-duty imposed by section 25;

(*d*) "Customs-collector" means a Customs-collector as defined in clause (*c*) of section 3 of the Sea Customs Act, 1878 (VIII of 1878) for the purposes of that Act, or of that Act as applied to the import and export of goods by air, or a Collector of Land Customs as defined in clause (*c*) of section 2 of the Land Customs Act, 1924 (XIX of 1924), as the case may be;

(*e*) "dealer" means a dealer in tea;

(*f*) "export" means to take out of India by land, sea or air to any place outside India other than a country or territory notified in this behalf by the Central Government by notification in the Official Gazette;

(*g*) "export allotment" means the total quantity of tea which may be exported during any one financial year;

(*h*) "Fund" means the Tea * Fund referred to in section 27;

* * * * *

(*i*) "manufacturer" means a manufacturer of tea;

(*j*) "member" means a member of the Board;

(*k*) "owner"—

(*i*) with reference to a tea estate or garden or a sub-division thereof the possession of which has been transferred by lease, mortgage or otherwise, means the transferee so long as his right to possession subsists; and

(*ii*) with reference to a tea estate or a garden or a sub-division for which an agent is employed, means the agent if, and in so far as, he has been duly authorised by the owner in that behalf;

(*l*) "prescribed" means prescribed by rules made under this Act;

(*m*) "standard export figure" means such quantity as the Central Government may, by notification in the Official Gazette, specify pursuant to any international agreement in this behalf;

(*n*) "tea" means the plant *Theasinensis* as well as all varieties of the product known commercially as tea made from the leaves of the plant *Theasinensis* including green tea * * *;

(*o*) "tea seed" includes seeds, roots, stumps, cuttings, buds, and any living portion of the plant *Theasinensis* which may be used to propagate that plant.

CHAPTER II

The Tea Board

4. Establishment and constitution of the Tea Board.—(*1*) With effect from such date as the Central Government may, by notification in the Official Gazette, specify in this behalf, there shall be established for the purposes of this Act a Board to be called the Tea Board.

(*2*) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(*3*) The Board shall consist of a Chairman and such number of other members not exceeding forty as the Central Government may think expedient, to be appointed by that Government by notification in the

Official Gazette from among persons who are in its opinion capable of representing,—

(*a*) owners of tea estates and gardens and growers of tea;

(*b*) persons employed in tea estates and gardens;

(*c*) manufacturers of tea;

(*d*) dealers including both exporters and internal traders of tea;

(*e*) consumers;

(*f*) Parliament;

* * * * *

(*g*) the Governments of the principal tea growing States;

* * * * *

(*h*) such other persons or class of persons, * * * who, in the opinion of the Central Government, ought to be represented on the Board.

(*4*) The number of persons to be appointed as members from each of the categories specified in sub-section (*3*), the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling * vacancies among, the members of the Board shall be such as may be prescribed.

(*5*) Any officer of the Central Government when deputed by that Government in this behalf shall have the right to attend meetings of the Board and take part in the proceedings thereof but shall not be entitled to vote.

5. Vacancies, etc., not to invalidate acts and proceedings.—No act done or proceeding taken by the Board under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

6. Salary and allowances of Chairman.—The Chairman shall be entitled to such salary and allowances and such conditions of service in respect of leave, pension, provident fund and other matters as may from time to time be fixed by the Central Government.

7. Vice-Chairman.—The Central Government shall appoint from among the members of the Board a Vice-Chairman, who shall exercise such of the powers and discharge such of the duties of the Chairman as may be prescribed or as may be delegated to him by the Chairman.

8. Executive and other Committees.—(*1*) There shall be an Executive Committee of the Board constituted in the manner prescribed.

(*2*) The Executive Committee shall exercise such of the powers and perform such of the duties of the Board as may be prescribed, or as the Board may delegate to it.

(*3*) Subject to such control and restrictions as may be prescribed the Board may constitute other Standing Committees or *ad hoc* Committees for exercising any power or discharging any duty of the Board or for enquiring into or reporting and advising on any matter which the Board may refer to them.

(*4*) A Standing Committee shall consist exclusively of members of the Board.

(*5*) An *ad hoc* Committee may include persons who are not members of the Board, but their number shall not exceed one half of its strength.

9. Secretary and staff.—(*1*) The Central Government shall appoint—

(*a*) a Secretary to the Board who shall exercise such powers and perform such duties as may be prescribed or as may be delegated to him by the Board or the Chairman;

(*b*) all other officers of the Board drawing a salary of rupees one thousand or more per month.

(*2*) Subject to such control and restrictions as may be prescribed, the Board may appoint such other officers and employees as may be necessary for the efficient performance of its functions and pay them such salaries and allowances as it may determine from time to time.

(*3*) The Chairman, Secretary and other employees of the Board shall not undertake any work unconnected with their duties under this Act except with the permission of the Central Government.

10. Functions of the Board.—(*1*) It shall be the duty of the Board to promote by such measures as it thinks fit the development under the control of the Central Government of the tea industry.

(*2*) Without prejudice to the generality of the provisions of sub-section (*1*), the measures referred to therein may provide for—

(*a*) regulating the production and extent of cultivation of tea;

(*b*) improving the quality of tea;

(*c*) promoting co-operative efforts among growers and manufacturers of tea;

(*d*) undertaking, assisting or encouraging scientific, technological and economic research and maintaining or assisting in the maintenance of demonstration farms and manufacturing stations;

(*e*) assisting in the control of insects and other pests and diseases affecting tea;

(*f*) regulating the sale and export of tea;

(*g*) training in tea tasting and fixing grade standards of tea;

(*h*) increasing the consumption in India and elsewhere of tea and carrying on propaganda for that purpose;

(*i*) registering and licensing of manufacturers, brokers, tea waste dealers and persons engaged in the business of blending tea;

(*j*) improving the marketing of tea in India and elsewhere;

(*k*) collecting statistics from growers, manufacturers, dealers and such other persons as may be prescribed on any matter relating to the tea industry; the publication of statistics so collected or portions thereof or extracts therefrom;

(*l*) securing better working conditions and the provisions and improvement of amenities and incentives for workers;

(*m*) such other matters as may be prescribed.

(*3*) The Board shall perform its functions under this section in accordance with and subject to such rules as may be made by the Central Government.

11. Dissolution of the Board.—(*1*) The Central Government may, by notification in the Official Gazette, direct that the Board shall be dissolved from such date and for such period as may be specified in the notification.

(2) When the Board is dissolved under the provisions of sub-section (1)—

(a) all members shall, from the date of dissolution, vacate their offices as such members;

(b) all powers and duties of the Board shall, during the period of dissolution, be exercised and performed by such person or persons as the Central Government may appoint in this behalf;

(c) all funds and other property vested in the Board shall, during the period of dissolution, vest in the Central Government; and

(d) as soon as the period of dissolution expires, the Board shall be reconstituted in accordance with the provisions of this Act.

CHAPTER III

CONTROL OVER THE EXTENSION OF TEA CULTIVATION

12. Method of control of extension of tea cultivation.—(1) No one shall plant tea on any land not planted with tea on the date of commencement of this Act unless permission has been granted to him in writing by or on behalf of the Board.

(2) No tea area shall be replaced by planting tea on area not planted with tea unless permission has been granted in writing by or on behalf of the Board.

(3) Nothing in this section shall prohibit the infilling or supplying of vacancies on land planted with tea on the date of commencement of this Act or the replanting of tea upon—

(i) land planted with tea on the 31st day of March, 1950, from which original bushes have been uprooted, or

(ii) land planted with tea on the 31st day of March, 1948. from which the original bushes have been uprooted.

13. Limitations to the extension of tea cultivation.—(1) Subject to the provisions contained in sections 15 and 16, the total area of land in respect of which the permission referred to in section 12 may be granted, shall not exceed such area as may be determined by the Board under the general instructions of the Central Government.

(2) The total area of land in any State in respect of which such permission may be granted shall be such as may be determined by the Board.

Provided that the Board may vary the total area so determined for any State in order to increase or diminish for another State the area in respect of which such permission may be granted by an amount corresponding to the extent to which the area in the first mentioned State has been diminished or increased.

(3) The Board shall publish the total area determined for India as well as the total areas determined for the various States by notification in the Official Gazette of the Central Government as soon as may be after the commencement of this Act and shall in like manner publish any subsequent variation of such total areas.

14. Grant of permission to plant tea.—(1) Applications for permission to plant tea on any land not planted with tea on the date of commencement of this Act shall be made to the Board and shall contain a clear statement of all special circumstances justifying the application.

(2) The Board may require an applicant to supply such information as it thinks necessary to enable the Board to deal with the application.

(3) Subject to such conditions and restrictions as may be prescribed, the Board may by order grant or refuse the permission applied for, or may in like manner grant it in part only or may call for further information from the applicant.

* * * * *

(4) No order by the Board under sub-section (3) shall be called in question by any court.

15. Grant of permission to plant tea in special circumstances.—(1) Where any land which was on the 31st day of March, 1933, planted with tea (including land planted with tea on the 31st day of March, 1931 from which the original bushes had been uprooted and which had not been replanted with tea on the said 31st day of March, 1933), or where any land planted with tea after the 31st day of March, 1933—

(a) has since become wholly incapable of carrying tea through circumstances due to war, or through subsidence, flood, erosion, earthquake or other irresistible superhuman cause, or

(b) has since been compulsorily acquired under the provisions of the Land Acquisition Act, 1894 (I of 1894), or of any other law for the time being in force and no longer carries tea, or

(c) has since been transferred to the Central or a State Government or to a local authority and no longer carries tea, or

(d) has since been resumed by the lessor under the terms of any lease and no longer carries tea,

the owner of the tea estate in which such land is situated may apply to the Board for permission to plant tea on land not planted with tea.

Explanation.—Land taken for purposes connected with the prosecution of war on which tea bushes have been allowed to remain for protective purposes though no longer cultivated shall be deemed for the purposes of this section to be incapable of carrying or no longer to carry tea.

(2) Upon such application being made and upon proof to the satisfaction of the Board that the applicant is entitled to the benefit of sub-section (1) the Board may by order grant permission to plant tea on land not planted with tea:

Provided that the area of land in respect of which such permission is granted shall be within the same or an adjacent district and shall belong to the same or an adjacent tea estate and shall not exceed in extent the area of the land incapable of carrying tea or compulsorily acquired, transferred or resumed, as the case may be.

(3) All areas of land in respect of which permission to plant tea is granted under this section shall be excluded when computing for the purpose of section 13 the total area of land in respect of which the permission referred to in section 12 may be granted.

(*4*) If any land falling within the *Explanation* to sub-section (*1*) is subsequently restored to the tea estate from which it was subtracted, the owner of the estate shall either uproot the tea planted thereon, or uproot any tea planted by him in pursuance of a permission granted under sub-section (*2*).

16. Tea nurseries.—(*1*) The owner of a tea estate may establish nurseries on land not previously planted with tea for the growing of plants intended for infilling or supplying vacancies or for replanting land planted with tea within the area of the estate or for any other purpose approved by the Board.

(*2*) All areas of land utilised for nurseries in accordance with this section shall be excluded when computing for the purpose of section 13 the total area of land in respect of which the permissions referred to in section 12 may be granted.

* * * * *

CHAPTER IV

CONTROL OVER THE EXPORT OF TEA AND TEA SEED

17. Control of export of tea and tea seed.—(*1*) No tea shall be exported unless covered by a licence issued by or on behalf of the Board.

(*2*) No tea seed shall be exported unless covered by a permit issued by or on behalf of the Central Government.

(*3*) No tea or tea seed shall be taken by land, sea or air out of any State to any of the French or Portuguese Settlements bounded by India, unless covered by a permit issued by or on behalf of the Board.

18. Tea or tea seed for export to be covered by licence or permit.—(*1*) No consignment of tea or tea seed shall be shipped or waterborne to be shipped for export or shall be exported until the owner has delivered to the Customs-collector a valid export licence or special export licence or a valid permit issued by or on behalf of the Board or the Central Government, as the case may be, covering the quantity to be shipped.

(*2*) No consignment of tea or tea seed shall be shipped or waterborne to be shipped for carriage (or shall be taken by land or air) to any of the French or Portuguese Settlements bounded by India until the owner has delivered to the Customs-collector a permit issued by or on behalf of the Board covering the quantity to be shipped.

(*3*) No permit for the passage of any tea or tea seed by land into any of the French or Portuguese Settlements bounded by India shall be granted under sub-section (*1*) of section 5 of the Land Customs Act, 1924 (XIX of 1924), unless the application for such permit is accompanied by a permit granted in this behalf by the Board covering the quantity to be passed.

19. Export allotment.—The Central Government shall, after consulting the Board and paying due regard to all interests concerned and to the standard export figure, declare, by notification in the Official Gazette, the export allotment for each financial year:

Provided that the Central Government may by subsequent notification at any time during the financial year alter the export allotment and thereupon the export allotment as so altered shall be the export allotment for that year.

20. Export quotas and licences.—(*1*) Subject to such conditions as may be prescribed, any tea estate or any sub-division of a tea-estate shall have the right to receive under this Act an export quota for each financial year.

(*2*) The export quota of a tea estate, or a sub-division of a tea estate that is, the total quantity of tea which may be exported by the owner of a tea estate or a sub-division of a tea estate during the financial year, shall be an amount determined by the Board in accordance with such principles as may be prescribed:

Provided that when an export allotment is altered under the provisions of section 19, the export quota shall be liable to be altered accordingly.

(*3*) The total of export quotas allotted to tea estates and to sub-divisions thereof at any time during any financial year shall not exceed the export allotment for the time being for that year.

21. Right to export licences.—(*1*) The owner of a tea estate or a sub-division of a tea estate to which an export quota has been allotted for any financial year shall have the right to obtain at any time export licences during that year to cover the export of tea upto the amount of the unexhausted balance of the quota, that is, upto the amount of the quota less the amount for which the export licences have already been issued against it.

(*2*) The right of the owner of a tea estate or a sub-division of a tea estate under this section may be transferred subject to such conditions as may be prescribed, and the transferee of any such right may again transfer the whole or any part of his right to the owner of a tea estate, or a sub-division of a tea estate but not to any other person:

Provided that nothing in this sub-section shall operate to restrict the issue of licences for the export of tea expressed to be sold with export rights.

(*3*) The owner of any tea estate or any sub-division of a tea estate to which an export quota has been allotted or any person to whom he has transferred his rights may at any time before the 21st day of March of the financial year to which the quota relates apply in writing to the Board for an export licence to cover the export of tea upto the amount of the unexhausted balance of the quota.

(*4*) Every licence shall be in duplicate in the prescribed form, shall bear the date of its issue and shall be valid upto the end of the financial year in which it is issued:

Provided that, save as provided in section 22, the Board shall not issue any export licence after the end of the financial year in which the application for licence was made.

22. Special export licences.—(*1*) Where tea in respect of which an export licence has been or could have been granted under this Act has not been exported before the end of the financial year in which the licence was or could have been issued, the person to whom the licence was or could have been granted may, before the 14th day of April of the following financial year forward an application to the Board for a special export licence covering the same quantity of tea, and the Board shall, on receipt of the prescribed fee, if any, issue a special export licence accordingly.

(*2*) A person to whom a special export licence has been issued under sub-section (*1*) may transfer the special export licence with all the rights conferred thereby to a person or persons nominated by him, but a licence once so transferred shall not be further transferable.

(*3*) A special export licence shall be in duplicate in the prescribed form, shall bear the date of its issue and shall be valid upto the 31st day of May of the financial year in which it was issued.

(*4*) The quantity of tea covered by a special export licence shall be accounted for against the export quota of the year in which the original licence was or could have been issued under this Act.

(*5*) Notwithstanding anything contained in the foregoing sub-sections the Board may, with the general or special previous sanction of the Central Government refuse to issue a special export licence or postpone for so long as the Central Government may require the issue of any special export licence.

23. Board to maintain accounts of quotas.—(*1*) The Board shall maintain an account of every export quota showing, in addition to such other particulars as the Board may think fit, the licences issued against it and the unexhausted balance.

(*2*) Any owner of a tea estate or a sub-division of a tea estate shall be entitled, on payment of the requisite fee, to a copy of the account relating to his quota, certified in the manner laid down in the by-laws made by the Board.

24. Limitation of application of Chapter.—Nothing in this Chapter shall apply to tea—

(*a*) proved to the satisfaction of the Customs-collector to have been imported into India from any port outside India; or

(*b*) shipped as stores on board any vessel or aircraft in such quantity as the Customs-collector considers reasonable having regard to the number of the crew and passengers and length of the voyage on which the vessel or aircraft is about to depart; or

(*c*) exported by post in packages not exceeding three pounds *avoirdupois* in weight; or

(*d*) exported with the previous sanction of the Central Government, within the limits prescribed in this behalf, by a Red Cross Society or by any organisation for providing amenities for troops overseas; or

(*e*) taken as part of the personal luggage of a passenger.

CHAPTER V

Finance, accounts and audit

25. Imposition of a duty of customs on export of tea.—(*1*) A duty of customs shall be levied and collected on all tea exported or taken outside India at such rate not exceeding two rupees per one hundred pounds as the Central Government may notify in the Official Gazette.

(*2*) The duties of customs levied under sub-section (*1*) shall be collected by such agencies and in such manner as may be prescribed.

26. **Payment of duties of customs to the Board.**—The proceeds of the duties of customs shall first be credited to the Consolidated Fund of India, and the Central Government may thereafter, from time to time, pay to the Board from and out of such proceeds such sums of money as it may think fit after deducting the expenses of collection.

27. **Constitution of Fund.**—(*1*) There shall be formed a Fund to be called the Tea* Fund, and there shall be credited thereto—

(*a*) the proceeds of the duties of customs made over to the Board by the Central Government;

(*b*) all fees levied and collected in respect of licences, permits and permissions issued under this Act; and

(*c*) any other fee that may be levied and collected under this Act or the rules made thereunder.

(*2*) The Fund shall be applied towards meeting the expenses of the Board and the cost of the measures referred to in section 10.

28. **Borrowing powers of Board.**—Subject to such rules as may be made in this behalf, the Board shall have power to borrow on the security of the Fund or any other asset for any purposes for which the Fund may be applied.

29. **Accounts and audit.**—(*1*) The Board shall cause accounts to be kept of all moneys received and expended by it.

(*2*) The accounts shall be audited every year by auditors appointed in this behalf by the Central Government and such auditors shall disallow every item, which in their opinion is not authorised by the Act or any rule made or direction issued thereunder.

(*3*) The Board may, within three months from the date of communication to it of the disallowance of any item, as aforesaid, appeal against such disallowance to the Central Government whose decision shall be final.

CHAPTER VI

Control by the Central Government

30. **Power to control price and distribution of tea or tea waste.**—(*1*) The Central Government may, by order notified in the Official Gazette, fix in respect of tea of any description specified therein—

(*a*) the maximum price or the minimum price or the maximum and minimum prices which may be charged by a grower of tea, manufacturer or dealer, wholesale or retail, whether for the Indian market or for export;

(*b*) the maximum quantity which may in one transaction be sold to any person.

(*2*) Any such order may for reasons to be specified therein—

(*a*) fix prices for such tea differently in different localities or for different classes of dealers, or for growers of tea or manufacturers;

(*b*) instead of specifying the price or prices to be charged, direct that price or prices shall be computed in such manner and by reference to such matters as may be provided by the order.

(3) The Central Government may, by general or special order—

(a) prohibit the disposal of tea or tea waste except in such circumstances and under such conditions as may be specified in the order;

(b) direct the sale of the whole or a specified part of the stock of tea or tea waste at such prices and to such persons or class of persons or in such circumstances as may be specified in the order;

(c) regulate by licences, permits or otherwise the production, storage, transport or distribution of tea or tea waste.

(4) Without prejudice to the generality of the powers conferred by sub-sections (1) and (3), any order made thereunder may provide—

(a) for requiring persons engaged in the production, supply or distribution of, or trade and commerce in, tea or tea waste to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;

(b) for such other matters, including in particular the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search, of tea or tea waste in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licences, permits or other documents and the charging of fees therefor.

31. General control over acts and proceedings of the Board.—(1) All acts and proceedings of the Board shall be subject to the control of the Central Government which may cancel, suspend or modify as it thinks fit any action taken by the Board.

(2) The Board shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.

(3) The records of the Board shall be open to inspection at all reasonable times by any officer authorised in this behalf by the Central Government.

32. Appeal to Central Government.—Any person aggrieved by an order of the Board under section 14, section 15 or section 20 may appeal to the Central Government within sixty days from the date thereof and the Central Government may cancel, modify or suspend any such order.

CHAPTER VII

MISCELLANEOUS

33. Licensing of brokers, tea manufacturers, etc.—The Central Government may whenever it thinks it necessary so to do, by notification in the Official Gazette require that no person shall on and from such date as may be specified in the notification engage himself as a broker, manufacturer or dealer in tea waste or engage himself in the business of blending tea except under and in accordance with the provisions of a licence issued by the Board in accordance with the rules made under this Act; and any person who on and after such date so engages himself without obtaining a licence issued by the Board shall be deemed to have contravened the provisions of this section.

34. Power of inspection.—Any person authorised in this behalf by the Central Government or by the Board or any member or officer of the Board may enter at all reasonable times any tea estate or any place or premises where tea or tea waste is stored, kept or exposed for sale and may require the production for his inspection of any book, register, record or other paper kept therein and ask for any information relating to the production, storage or keeping for sale of tea or tea waste.

35. Power of Board to call for returns.—(*1*) The Board may serve by post a notice upon the owner of any tea estate or any sub-division of a tea estate or upon his manager, requiring him to furnish, within such period as it may specify in the notice, such returns relating to the production, sale and export of tea produced on the estate or to any other matter as it may deem necessary.

(*2*) Where the owner of any tea estate or any sub-division of a tea estate or his manager being required under sub-section (*1*) to furnish any return fails to furnish such return within the period specified in the notice or furnishes a return containing any particular which is false and which he knows to be false or does not believe to be true, the Board may refuse to allot an export quota to that estate or sub-division under section 20, or where an export quota has already been allotted, may cancel the unexhausted balance of that quota and refuse to issue any further export licences against that quota or recognise or give effect to any transfer of quota under section 21.

(*3*) The Board may serve by post a notice upon any manufacturer, broker, dealer or dealer in tea waste, requiring him to furnish, within such period as it may specify in the notice, such returns relating to the manufacture, stock, purchase, sale or export of tea or tea waste as it may deem necessary.

36. Penalty for illicit export.—A breach of the provisions of sub-section (*1*) or sub-section (*2*) of section 18 shall be punishable as if it were an offence under item No. 8 of section 167 of the Sea Customs Act, 1878 (VIII of 1878), and the provisions of section 168 and of Chapter XVII of that Act shall apply accordingly.

37. Penalty for making false return.—Any person who being required by or under this Act to furnish any return fails to furnish such return or furnishes a return containing any particular which is false and which he knows to be false or does not believe to be true shall be punishable with fine which may extend to one thousand rupees.

38. Penalty for obstructing an officer or member of the Board in the discharge of his duties and for failure to produce books and records.—Any person who—

(*a*) obstructs a member or officer of the Board or a person authorised in this behalf by the Central Government or by the Board in the exercise of any power conferred, or in the discharge of any duty imposed, on him by or under this Act, or

(*b*) having the control or custody of any account book or other record, fails to produce such book or record when required to do so by or under this Act,

shall be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

39. Penalty for illicit cultivation.—Whoever knowingly plants tea or causes tea to be planted on any land in contravention of section 12 shall be punishable with fine which may extend to one thousand rupees for the first offence, and with fine which may extend to five thousand rupees for any subsequent offence.

40. Removal of tea planted without permission.—Where any person has been convicted of any offence under section 39, the convicting court may direct that the tea in respect of which the offence was committed shall be removed from the land within a specified time, and in the event of the order not being duly complied with, may cause the tea to be removed and may recover the cost from the person convicted as if it were an arrear of land revenue due on the tea estate on which the offence was committed.

41. Penalty for contravention of order relating to control of price and distribution.—(*1*) If any person contravenes any order made under sub-section (*1*) or sub-section (*3*) of section 30, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both; and the property in respect of which the order has been contravened or such part thereof as to the court may seem fit, shall be forfeited to the Central Government.

(*2*) Any person who attempts to contravene or abets the contravention of, any order under sub-section (*1*) or sub-section (*3*) of section 30 shall be deemed to have contravened that order.

42. Other penalties.—Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder other than the provisions, punishment for the contravention whereof has been provided for in sections 36, 37, 38, 39 and 41 shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

43. Offences by companies.—(*1*) If the person committing an offence under this Act, or the rules thereunder is a company, every person, who at the time the contravention was committed was incharge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

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

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

Explanation.—For the purposes of this section—

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

(*b*) "director" in relation to a firm means a partner in the firm.

44. Jurisdiction of courts.—No court inferior to that of a Presidency magistrate or a magistrate of the First Class shall try any offence punishable under this Act.

45. Previous sanction of Central Government for prosecution.—No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Central Government.

46. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

47. Power to delegate.—The Central Government may, by order notified in the Official Gazette, direct that any power exercisable by it under this Act may also be exercised in such cases and subject to such conditions, if any, as may be specified in the order by such officer or authority as may be specified therein.

48. Suspension of operation of Act.—(*1*) If the Central Government is satisfied that circumstances have arisen rendering it necessary that certain of the restrictions imposed by this Act should cease to be imposed or if it considers it necessary or expedient so to do in the public interest, the Central Government may, by notification in the Official Gazette, suspend or relax to a specified extent either indefinitely or for such period as may be specified in the notification the operation of all or any of the provisions of this Act.

(*2*) Where the operation of any provisions of this Act has under subsection (*1*) been suspended or relaxed indefinitely, such suspension or relaxation may at any time while this Act remains in force be removed by the Central Government by notification in the Official Gazette.

49. Power of Central Government to make rules.—(*1*) The Central Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

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

(*a*) the constitution of the Board, the number of persons to be appointed as members from each of the categories specified in subsection (*3*) of section 4, the term of office and the other conditions of service of, the procedure to be followed by, and the manner of filling * vacancies among, the members of the Board;

(*b*) the circumstances in which, and the authority by which members may be removed;

(*c*) the holding of a minimum number of meetings of the Board every year;

(*d*) the pay, allowances and other conditions of service of the Secretary and other officers appointed by the Central Government;

(*e*) the maintenance of records of all business transacted at meetings of the Board and the submission of copies of such records to the Central Government;

(*f*) the conditions subject to which, and the mode in which, contracts may be made by or on behalf of the Board;

(*g*) the preparation of budget estimate of the receipts and expenditure of the Board and the authority by which such estimates shall be sanctioned;

(*h*) the powers of the Board and the Executive Committee and the Chairman, in regard to the incurring of expenditure; and the re-appropriation of estimated savings in any budget head to another such head;

(*i*) the conditions subject to which the Board may incur expenditure;

(*j*) the conditions subject to which the Board may borrow;

(*k*) the form and the manner in which accounts should be kept by the Board;

(*l*) the basis on which the export quota of a tea estate or a sub-division of a tea estate shall be determined;

(*m*) the conditions subject to which export quota, export licences and special export licences shall be transferable ;

(*n*) the conditions subject to which permits for the planting of tea on land not carrying tea shall be granted;

(*o*) the collection of any information or statistics in respect of the tea industry and the tea trade;

(*p*) the fees to be levied in respect of licences, permits and permissions issued under this Act;

(*q*) the procedure for the grant or issue of licences, permits and permissions under this Act, the time within which such licences, permits or permissions shall be granted or issued including, in particular, the publication of notices calling for applications and the holding of such * inquiry in regard thereto as may be necessary in the circumstances;

(*r*) the form of application for licences, permits or permissions under this Act;

(*s*) the manner in which a broker or a dealer in tea waste or a manufacturer shall be licensed under this Act and the levy of fees in respect of such licence;

(*t*) the matters which may be taken into account in the granting or issuing of any licence, permit or permission under this Act including in particular the previous consultation with the Central Government by the Board in regard to the grant or issue of any such licences, permits or permissions;

(*u*) the conditions which may be included in any licences, permits or permissions;

(*v*) the returns to be furnished by owners of tea estates, or sub-divisions thereof, manufacturers, dealers and brokers relating to the production, manufacture, stock, sale and export of tea and tea waste and the form and manner in which such returns are to be furnished;

(*w*) the fees to be charged for granting certified copies of accounts of quotas;

(*x*) any other fee that may be necessary for the Board to levy in order to determine or redetermine the basis on which export quota may be fixed;

(*y*) any other matter which is to be or may be prescribed.

(3) All rules under this Act shall, as soon as they are made, be laid before both Houses of Parliament.

50. Power of Board to make by-laws.—(*1*) The Board may make by-laws consistent with this Act and the rules made thereunder, to provide for—

(*a*) the dates, times and places of its meetings and of the meetings of the Executive and other Committees and quorum for such meetings, and the procedure thereat;

(*b*) the delegation of powers and duties to the Executive or any other Committee, or to its Chairman, Vice-Chairman, Secretary or any other of its officers;

(*c*) the travelling allowances of members and of members of Committees;

(*d*) the appointment, promotion and dismissal of its officers and other employees other than those appointed by the Central Government and the creation and abolition of their posts;

(*e*) the conditions of service of its officers and other employees other than those appointed by the Central Government, including their pay, leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a provident fund for them;

(*f*) the maintenance of its accounts;

(*g*) the persons by whom, and the manner in which payments, deposits and investments may be made on its behalf;

(*h*) the custody of moneys required for its current expenditure and the investment of moneys not so required;

(*i*) the preparation of statements showing the sums allotted to Departments of the Central and State Governments and other institutions.

(*2*) No by-law shall take effect until it has been confirmed by the Central Government and published in the Official Gazette, and the Central Government, in confirming a by-law may make any change therein which appears to be necessary.

(*3*) The Central Government may, by notification in the Official Gazette, cancel any by-law which it has confirmed and thereupon the by-law shall cease to have effect.

51. Repeals and savings.—(*1*) The Indian Tea Control Act, 1938 (VIII of 1938) and the Central Tea Board Act, 1949 (XIII of 1949) are hereby repealed.

(*2*) All moneys and other property and all rights and interests, of whatever kind, owned by, vested in, used, enjoyed or possessed by, or held in trust by or for, the Indian Tea Licensing Committee constituted under the Indian Tea Control Act, 1938, and the Central Tea Board constituted under the Central Tea Board Act, 1949, as well as all liabilities legally subsisting against that Committee or that Board shall pass to the Board with effect from the commencement of this Act.

(*3*) All officers and other employees of the Indian Tea Licensing Committee and the Central Tea Board who hold office as such immediately before the commencement of this Act shall be deemed to have been appointed as officers or other employees of the Board with effect from the commencement of this Act and, notwithstanding anything contained in any contract of service entered into by any such officer or other employee with the Indian Tea Licensing Committee or the Central Tea Board, shall

be entitled to such pay and allowances and to such conditions of service in respect of other matters as may be determined by the Board with the approval of the Central Government.

(4) Any proceedings taken by the Indian Tea Licensing Committee or the Central Tea Board before the commencement of this Act may be continued by the Board after such commencement.

(5) Until action in that behalf is otherwise taken under the corresponding provisions of this Act or the rules made thereunder, all licences, permits and permissions issued or granted, all export quotas allotted and all fees fixed under the provisions of the Indian Tea Control Act, 1938, shall, unless inconsistent with the provisions of this Act, be deemed to have been issued, granted, allotted or fixed under the corresponding provisions of this Act and the rules made thereunder.

(6) Any offence punishable under the Indian Tea Control Act, 1938, or the Central Tea Board Act, 1949, shall be punishable and may be dealt with as if it were an offence punishable under the corresponding provisions of this Act.

(7) Any other thing or action done or taken before the commencement of this Act by the Indian Tea Licensing Committee or the Central Tea Board shall so long as it is not inconsistent with any of the provisions of this Act, be as valid and effectual as if it had been done or taken by the Board after the commencement of this Act.

(8) For the removal of doubts, it is hereby declared that the provisions contained in sub-sections (2) to (7) inclusive shall be without prejudice to the general application of section 6 of the General Clauses Act, 1897 (X of 1897).

(9) If any difficulty arises in giving effect to any of the provisions of this Act, the Central Government may as occasion may arise, by order, do anything which appears to be necessary for the purpose of removing the difficulty.

(As amended by the Select

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill to provide for the control by the Union of the tea industry, and for that purpose to establish a Tea Board and levy a customs duty on tea exported from India.

(As amended by the Select Committee)

GIPD—LAD—107 PS—30-4-53—500

HOUSE OF THE PEOPLE

THE FOOD ADULTERATION BILL, 1952

(Report of the Select Committee)

सत्यमेव जयते

PARLIAMENT SECRETARIAT
NEW DELHI

Februaary, 1953

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THE FOOD ADULTERATION BILL, 1952

MEMBERS OF THE SELECT COMMITTEE

Rajkumari Amrit Kaur.—*Chairman.*
Shri Santosh Kumar Dutta.
Shri Lokenath Mishra.
Dr. Ram Subhag Singh.
Shri Kailash Pati Sinha.
Shri Hira Singh Chinaria.
Shri Amarnath Vidyalankar.
Shri Bheekha Bhai.
Sardar Raj Bhanu Singh Tewari.
Shri K. G. Deshmukh.
Shri Vaijanath Mahodaya.
Shri T. Madiah Gowda.
Shri Halaharvi Sitarama Reddy.
Shri K. Periaswami Gounder.
Shri Maneklal Maganlal Gandhi.
Shri Rajaram Giridharlal Dubey.
Shri Hoti Lal Agarwal.
Shri Biswa Nath Roy.
Shrimati Uma Nehru.
Shri Narayan Sadoba Kajrolkar.
Shri C. R. Narasimhan.
Shri R. V. Dhulekar.
Dr. Indubhai B. Amin.
Sardar Lal Singh.
Shri K. Kelappan.
Dr. Ch. V. Rama Rao.
Shri Tridib Kumar Chaudhari.
Shrimati Sucheta Kripalani.
Shrimati Indira A. Maydeo.
Shri Hirendranath Mukerjee.
Shri Shankar Shantaram More.
Dr. P. S. Deshmukh.
Shrimati M. Chandrasekhar.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill to make provision for the prevention of adulteration of food was referred, have considered the Bill and I now submit this their Report, with the Bill as amended by the Select Committee annexed hereto.

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

Clause 1.—The amendment of the short title is to bring out the object of the Act more clearly.

A commencement clause has now been inserted in order to enable the State Governments in particular, to bring section 7 of the Act into force in their States or parts thereof on suitable dates.

Clause 2.—Apart from clarificatory amendments in clauses (i)(a) and (b), in sub-clause (f), certain redundant words have been omitted and the words "or is insect-infested" added to cover all the articles of food like *atta* and flour which are often found to be weevil-infested.

In sub-clause (g), the words "or from an animal fed upon unwholesome food" have been omitted as it is often difficult to detect whether an animal was fed upon unwholesome food and also because the retention of these words would include fowls and pigs within its ambit.

Clause 3.—The Select Committee have reduced the number of experts in item (c) of sub-clause (2) and have at the same time widened the choice for selection. The Select Committee also feel that representatives of industry, commerce and the medical profession should also be on the Committee and the clause has been amended accordingly.

Clauses 5 and 7.—As a commencement provision has now been inserted in clause 1, the words omitted are no longer necessary. Incidentally, in clause 7, the Select Committee have inserted the word "store" in conformity with the language of clause 16(1).

Clause 10.—The Select Committee have amended this clause in order to provide—

(a) that in suitable cases, for example, where the articles are bulky in nature, they will be left in the custody of the vendor after seizure;

(b) that the power to break open the door of any premises is exercised reasonably;

(c) that food inspectors are also empowered to seize any material which may be used as an adulterant;

(d) that food inspectors have the powers of a Police Officer under section 57 of the Code of Criminal Procedure for the purposes of ascertaining the name and address of offenders and that food inspectors do not exercise their powers vexatiously.

Clause 11.—The Select Committee feel that in some cases, as for example in the case of integral packages, it may not always be possible to separate the sample of food into three parts. Hence the words "except in special cases provided by rules under this Act" have been inserted at the beginning of item (b) of sub-clause (1). The Select Committee have omitted sub-clause (4) as unnecessary.

In order to provide against any undue delay caused by any food inspector in the production of any seized article of food specially of a perishable nature, before the magistrate, the Select Committee feel that the owner of the article should also have the power to apply to the magistrate for production of the article of food. The Select Committee have accordingly added a second proviso to sub-clause (5).

The Select Committee have added a new sub-clause (6) providing for cases where an article of food is found by the magistrate to be not adulterated.

Clause 12.—The Select Committee feel that sub-clause (2) is quite unnecessary but at the same time the Select Committee are of the view that the purchaser should inform the vendor at the time of purchase and not afterwards, of his intention to have an article of food purchased by him analysed. The Select Committee have, therefore, recast this whole clause.

Clause 13.—Sub-clause (2) has been recast from a drafting point of view. The proviso to sub-clause (5) has been revised because in the opinion of the Select Committee only the Director of the Central Food Laboratory should have the privilege of exemption from appearing in courts in connection with any certificates issued under this Act.

Clause 16.—In order to make the Act effective, the Select Committee are of the opinion that the penalty should be made more deterrent and provision should also be made for the publication of names of contumacious offenders. They also feel that—

(a) manufacturers of articles of food who have in their possession adulterants ; or

(b) persons who tamper with any seized article; or

(c) persons who use reports or certificates of analysis for the purpose of advertisement; and

(d) persons who give false warranties to purchasers of articles of food ;

should also be punished. The clause has, therefore, been recast accordingly.

Clause 19.—Sub-clause (4) has been omitted because it may offer a loophole to an employer who is the real offender, to escape.

Clause 20.—In view of the enhanced penalties now leviable, jurisdiction to try offences in the first instance should be given to presidency magistrates and magistrates of the 1st class.

Clause 21.—This is new and authorises a presidency magistrate or a magistrate of the 1st class to award any punishment in excess of his powers.

Clause 23 (old clause 22).—The Select Committee feel that the Central Government should have power to make rules for imposing rigorous control over the production and distribution or sale not only of milk, milk products, vanaspati and edible oils but also of any article of food which the Central Government may specify in this behalf. The Select Committee have, therefore, combined items (c) and (d) into one single item and have omitted specific references to milk, milk products, vanaspati and edible oils.

The rule-making power has been expanded.

Clause 24 (old clause 23).—Apart from minor amendments, the Select Committee have included local authorities in sub-clause 2(e) to which powers could be delegated.

Clause 25 (*old clause 24*).—The amendment to the proviso to sub-clause (1) is consequential upon the amendment to clause 1. Sub-clause (2) has been inserted in order to provide for the continued operation of existing rules, regulations and bye-laws until new rules, regulations or bye-laws are framed.

3. The Bill was published in Part II, Section 2, of the *Gazette of India*, dated the 15th November, 1952.

AMRIT KAUR,
Chairman of the Select Committee.

NEW DELHI;
The 14th February, 1953.

Minute of Dissent

We feel it necessary to record our dissent from the provision, recommended by the majority in the Select Committee, of minimum punishment by the Courts in cases of conviction for food adulteration. We agree, of course, that food adulteration is a serious offence and every effort is justified if it proves a real deterrent. But we fear that in the present position of affairs in the country, there are likely to be more prosecutions against the smaller fry (who are often pawns in the game of cleverer and more resourceful people) than against big men behind transactions that are primarily responsible for the adulteration of our people's food. We are of opinion that the judiciary may well be left its discretion regarding minimum punishment. Otherwise we are afraid, there might be cases of acquittal where, on account of a rigid insistence on minimum punishment, the trying magistrates would feel that such punishment might not be warranted by the circumstances though a lesser punishment might well prove helpful in the campaign against food adulteration.

2. Therefore we suggest that the proviso under sub-clauses (b) and (c) in clause 16 be omitted.

3. Secondly, under clause 12, it is mandatory for the purchaser to inform the vendor of his intention to have the article analysed.

4. We feel it should be optional for the purchaser to inform the vendor though it may lessen the chances of direct prosecution. Therefore we suggest that "may" be substituted for "shall" in the proviso under clause 12.

HIRENDRA NATH MUKERJEE,
CH. V. RAMA RAO.

New Delhi ;
The 14th February, 1953.

Bill No. 101A of 1952

THE FOOD ADULTERATION BILL, 1952

(AS AMENDED BY THE SELECT COMMITTEE)

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

A

BILL

to make provision for the prevention of adulteration of food.

BE it enacted by Parliament as follows :—

PRELIMINARY

1. Short title, *extent and commencement.—(*1*) This Act may be called the Prevention of Food Adulteration Act, 1953.

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

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; but section 7 shall take effect in any State only from such date as the State Government may, by like notification, appoint and different dates may be appointed by the State Government for different areas of the State.

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

(*i*) "adulterated"—an article of food shall be deemed to be adulterated—

(*a*) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(*b*) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

(*c*) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

(*d*) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof ;

(*e*) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health ;

(*f*) if the article, * * * consists wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;

(*g*) if the article is obtained from a diseased animal;

* * *

(*h*) if * * * the article contains any poisonous or other ingredient which renders it injurious to health ;

(*i*) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health ;

(*j*) if any colouring matter other than that prescribed in respect thereof and in amounts not within the prescribed limits of variability is present in the article ;

(*k*) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(*l*) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability;

(*ii*) "Central Food Laboratory" means any laboratory or institute established or specified under section 4 ;

(*iii*) "Committee" means the Central Committee for Food Standards constituted under section 3 ;

(*iv*) "Director of the Central Food Laboratory" means the person appointed by the Central Government by notification in the Official Gazette as the Director of the Central Food Laboratory and includes any person appointed by the Central Government in like manner to perform all or any of the functions of the Director under this Act;

(*v*) "food" means any article used as food or drink by man, other than drugs and water and includes—

(*a*) any article which ordinarily enters into, or is used in the composition or preparation of human food, and

(*b*) any flavouring matter or condiments ;

(*vi*) "Food (Health) Authority" means the Director of Medical and Health Services or the Chief Officer in charge of Health administration in a State by whatever name he is called ;

(*vii*) "local area" means any area, whether urban or rural, declared by the State Government, by notification in the Official Gazette, to be a local area for the purposes of this Act;

(*viii*) "local authority" means in the case of—

(*1*) a local area which is—

(*a*) a municipality, the municipal board or municipal corporation;

(*b*) a cantonment, the cantonment authority;

(*c*) a notified area, the notified area committee;

(*2*) any other local area, such authority as may be prescribed by the State Government under this Act;

(*ix*) "misbranded"—an article of food shall be deemed to be misbranded—

(*a*) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character :

(*b*) if it is falsely stated to be the product of any place or country ;

(*c*) if it is sold by a name which belongs to another article of food ;

(*d*) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is;

(*e*) if false claims are made for it upon the label or otherwise ;

(*f*) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;

(*g*) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular ; or if the package is otherwise deceptive with respect to its contents ;

(*h*) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article ;

(*i*) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses ;

(*j*) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirement of this Act or rules made thereunder;

(*k*) if it is not labelled in accordance with the requirements of this Act or rules made thereunder ;

(*x*) "package" means a box, bottle, casket, tin, barrel, case, receptacle, sack, bag, wrapper or other thing in which an article of food is placed or packed;

(*xi*) "premises" include any manufacturing shop, stall, or place where any article of food is sold or manufactured or stored for sale :

(*xii*) "prescribed" means prescribed by rules made under this Act ;

(*xiii*) "sale" with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article ;

(*xiv*) "sample" means a sample of any article of food taken under the provisions of this Act or of any rules made thereunder ;

(*xv*) the words "unwholesome" and "noxious" when used in relation to an article of food mean respectively that the article is harmful to health or repugnant to human use.

CENTRAL COMMITTEE FOR FOOD STANDARDS AND CENTRAL FOOD LABORATORY

3. The Central Committee for Food Standards.—(*1*) The Central Government shall, as soon as may be after the commencement of this Act, constitute a Committee called the Central Committee for Food Standards to advise the Central Government and the State Governments on matters arising out of the administration of this Act and to carry out the other functions assigned to it under this Act.

(*2*) The Committee shall consist of the following members, namely :—

(*a*) the Director-General, Health Services, *ex-officio*, who shall be the Chairman;

(*b*) the Director of the Central Food Laboratory, *ex-officio*:

(*c*) two experts * * * nominated by the Central Government;

(*d*) one representative each of the Central Ministries of Food and Agriculture, Commerce and Industry, Railways and Defence nominated by the Central Government;

(*e*) one representative each nominated by the Government of each Part A State and Part B State;

(*f*) two representatives nominated by the Central Government to represent the Part C States;

(*g*) two representatives of industry and commerce nominated by the Central Government;

(*h*) one representative of the medical profession nominated by the Indian Council of Medical Research.

(3) The members of the Committee referred to in clauses (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) of sub-section (2) shall, unless their seats become vacant earlier by resignation, death or otherwise, be entitled to hold office for three years and shall be eligible for renomination.

(4) The functions of the Committee may be exercised notwithstanding any vacancy therein.

(5) The Committee may appoint such and so many sub-committees as it deems fit and may appoint to them persons who are not members of the Committee to exercise such powers and perform such duties as may, subject to such conditions, if any, as the Committee may impose, be delegated to them by the Committee.

(6) The Committee may, subject to the previous approval of the Central Government, make bye-laws for the purpose of regulating its own procedure and the transaction of its business.

4. Central Food Laboratory.—(*1*) The Central Government may, by notification in the Official Gazette,—

(*a*) establish a Central Food Laboratory ; or

(*b*) specify any laboratory or institute as a Central Food Laboratory;

to carry out the functions entrusted to the Central Food Laboratory by this Act or any rules made under this Act.

(2) The Central Government may, after consultation with the Committee, make rules prescribing—

(*a*) the functions of the Central Food Laboratory;

(*b*) the procedure for the submission to the said Laboratory of samples of articles of food for analysis or tests, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports;

(*c*) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions.

General Provisions as to Food

5. Prohibition of import of certain articles of food.— * * * No person shall import into India—

(*i*) any adulterated food;

(*ii*) any misbranded food;

(*iii*) any article of food for the import of which a licence is prescribed, except in accordance with the conditions of the licence; and

(*iv*) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

6. Application of law relating to sea customs and powers of Customs Officers.—(*1*) The law for the time being in force relating to sea customs and to goods, the import of which is prohibited by section 18 of the Sea

Customs Act, 1878 (VIII of 1878) shall, subject to the provisions of section 16 of this Act, apply in respect of articles of food, the import of which is prohibited under section 5 of this Act, and officers of Customs and officers empowered under that Act to perform the duties imposed thereby on a Customs Collector and other officers of Customs shall have the same powers in respect of such articles of food as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of sub-section (*1*) the Customs Collector, or any officer of the Government authorized by the Central Government in this behalf, may detain any imported package which he suspects to contain any article of food the import of which is prohibited under section 5 of this Act and shall forthwith report such detention to the Director of the Central Food Laboratory and, if required by him, forward the package or send samples of any suspected article of food found therein to the said Laboratory.

7. Prohibition of manufacture, sale, etc., of certain articles of food.—

* * * * *

No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—

(*i*) any adulterated food;

(*ii*) any misbranded food;

(*iii*) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(*iv*) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority with a view to preventing the outbreak or spread of infectious diseases; or

(*v*) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

ANALYSIS OF FOOD

8. Public Analysts.—The State Government may, by notification in the Official Gazette, appoint persons in such number as it thinks fit and possessing such qualifications as may be prescribed, to be public analysts and define the local areas over which they shall exercise jurisdiction:

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be so appointed:

Provided further that the State Government may appoint one public analyst for two or more local areas, such local areas being regarded as one unit for the purposes of this Act.

9. Food Inspectors.—(*1*) Subject to the provisions of section 14 the State Government may, by notification in the Official Gazette, appoint persons in such number as it thinks fit, having the prescribed qualifications to be food inspectors for the purposes of this Act, and they shall exercise their powers within such local areas as that Government may assign to them:

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be so appointed.

(*2*) Every food inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (Act XLV of 1860).

10. Powers of food inspectors.—(*1*) A food inspector shall have power—

(*a*) to take samples of any article of food from—

(*i*) any person selling such article;

(*ii*) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

(*iii*) a consignee after delivery of any such article to him; and

(*b*) to send such sample for analysis to the public analyst for the local area within which such sample has been taken;

(*c*) with the previous approval of the health officer having jurisdiction in the local area concerned, or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food with a view to preventing the outbreak or spread of any infectious disease.

(*2*) Any food inspector may enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for analysis.

(*3*) Where any sample is taken under clause (*a*) of sub-section (*1*) or sub-section (*2*), its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

(*4*) If any article intended for food appears to any food inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided.

(*5*) The power conferred by this section includes power to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food may be kept for sale:

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called upon to do so.

(*6*) Any material found in the possession of a manufacturer of any article of food or in any of the premises occupied by him as such and being apparently of a kind which may be employed for purposes of adulteration and for the possession of which he is unable to account to the satisfaction of the food inspector, may be seized by the food inspector and if necessary a sample of such material submitted for analysis to a public analyst.

(*7*) Any food inspector may exercise the powers of a police officer under section 57 of the Code of Criminal Procedure, 1898 (Act V of 1898) for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an article of food is seized.

(*8*) Any food inspector exercising powers under this Act or under the rules made thereunder who—

(*a*) vexatiously and without any reasonable grounds of suspicion seizes any article of food; or

(*b*) commits any other act to the injury of any person without having reason to believe that such act is necessary for the execution of his duty shall be guilty of any offence under this Act and shall be punishable for such offence with fine which may extend to five hundred rupees.

11. Procedure to be followed by food inspectors.—(*1*) When a food inspector takes a sample of food for analysis, he shall—

(*a*) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample;

(*b*) except in special cases provided by rules under this Act separate the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits; and

(*c*) (*i*) deliver one of the parts to the person from whom the sample has been taken;

(*ii*) send another part for analysis to the public analyst; and

(*iii*) retain the third part for production in case any legal proceedings are taken or for analysis by the Director of the Central Food Laboratory under sub-section (*2*) of section 13, as the case may be.

(*2*) If the person from whom the sample has been taken declines to accept one of the parts, the public analyst receiving a sample for analysis shall divide it into two parts and shall seal or fasten up one of those parts and shall cause it, either upon receipt of the sample or when he delivers his report, to be delivered to the food inspector who shall retain it for production in case legal proceedings are taken.

(*3*) When a sample of any article of food is taken under sub-section (*1*) or sub-section (*2*) of section 10, the food inspector shall send a sample of it in accordance with the rules prescribed for sampling to the public analyst for the local area concerned.

* * *

(*4*) An article of food seized under sub-section (*4*) of section 10, shall be produced before a magistrate as soon as possible:

Provided that in the case of any article of which samples have been sent to the public analyst for analysis it may be produced on or after the receipt of the report of the public analyst:

Provided further that if an application is made to the magistrate in this behalf by the person from whom any article of food has been seized, the magistrate shall by order in writing direct the food inspector to produce such article before him within such time as may be specified in the order.

(*5*) If it appears to the magistrate on taking such evidence as he may deem necessary that the article of food produced before him under sub-section (*5*) is adulterated, he may order it—

(*a*) to be forfeited to the local authority, or

(*b*) to be destroyed at the cost of the owner of or the person from whom it was seized so as to prevent its being used as human food, or

(*c*) to be so disposed of as to prevent its being again exposed for sale or used for food under its deceptive name, or

(*d*) to be returned back to the owner for being sold under its appropriate name, after taking adequate guarantee from the owner.

(*6*) If it appears to the magistrate that any such article of food is not adulterated the person from whose possession the article was taken shall be entitled to have it restored to him and it shall be in the discretion of the magistrate to award such person from such fund as the State Government may direct in this behalf, such compensation not exceeding the actual loss which he has sustained as the magistrate may think proper.

12. Purchaser may have food analysed.—Nothing contained in this Act shall be held to prevent a purchaser of any article of food other than a food inspector from having such article analysed by the public analyst on payment of such fees as may be prescribed and from receiving from the public analyst a report of his analysis:

Provided that such purchaser shall inform the vendor at the time of purchase of his intention to have such article so analysed:

Provided further that if the report of the public analyst shows that the article of food is adulterated, the purchaser shall be entitled to get refund of the fees paid by him under this section.

13. Report of public analyst.—(*1*) The public analyst shall deliver, in such form as may be prescribed, a report to the food inspector of the result of the analysis of any article of food submitted to him for analysis.

(*2*) After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the court for sending the part of the sample mentioned in sub-clause (*i*) or sub-clause (*iii*) of clause (*c*) of sub-section (*1*) of section 11 to the Director of the Central Food Laboratory for a certificate; and on receipt of the application the court shall first ascertain that the mark and seal or fastening as provided in clause (*b*) of sub-section (*1*) of section 11 are intact and may then despatch the part of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the sample, specifying the result of his analysis.

(*3*) The certificate issued by the Director of the Central Food Laboratory under sub-section (*2*) shall supersede the report given by the public analyst under sub-section (*1*).

(*4*) Where a certificate obtained from the Director of the Central Food Laboratory under sub-section (*2*) is produced in any proceeding under this Act, or under sections 272 to 276 of the Indian Penal Code (Act XLV of 1860), it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

(*5*) Any document purporting to be a report signed by a public analyst unless it has been superseded under sub-section (*3*), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any

proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (Act XLV of 1860):

Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein.

MISCELLANEOUS

14. Import of food and sale of food in railway and other premises.—(*1*) The Central Government may, by notification in the Official Gazette, appoint any person to exercise the powers of a food inspector under sections 10 and 11,—

(*a*) at any major port, air port or land customs station in respect of any article of food which is being imported through such port or station;

(*b*) in respect of any railway station or group of railway stations where food is being sold :

Provided that the Central Government may, instead of making any appointment under this section, authorise any food inspector in any State in which the major port, air port or land customs station or railway station is situate to exercise such powers.

(*2*) Every person appointed or authorised under sub-section (*1*) shall be deemed to be a food inspector for the purposes of this Act.

15. Notification of food poisoning.—The State Government may, by notification in the Official Gazette, require medical practitioners carrying on their profession in any local area specified in the notification to report all occurrences of food poisoning coming within their cognizance to such officer as may be specified in the notification.

16. Penalties.—(*1*) If any person—

(*a*) whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes, any article of food in contravention of any of the provisions of this Act or of any rule made thereunder, or

(*b*) prevents a food inspector from taking a sample as authorised by this Act, or

(*c*) prevents a food inspector from exercising any other power conferred on him by or under this Act, or

(*d*) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any material which may be employed for the purpose of adulteration, or

(*e*) being a person in whose safe custody any article of food has been kept under sub-section (*4*) of section 10, tampers or in any other manner interferes with such article, or

(*f*) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory, or by a public analyst or any extract thereof for the purpose of advertising any article of food, or

(*g*) whether, by himself or by any person on his behalf gives to the purchaser a false warranty in writing in respect of any article of food sold by him,

he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable—

(*a*) for the first offence, with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees;

(*b*) for a second offence with imprisonment for a term which may extend to two years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees;

(*c*) for a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees.

(*2*) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the court may direct. The expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

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

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

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

Explanation.—For the purposes of this section—

(*a*) "company" means any body corporate, and includes a firm or other association of individuals; and

(*b*) "director" in relation to a firm means a partner in the firm.

18. **Forfeiture of property.**—Where any person has been convicted under this Act for the contravention of any of the provisions of this Act or of any rule thereunder, the article of food in respect of which the contravention has been committed may be forfeited to the Government.

19. **Defences which may or may not be allowed in prosecutions under this Act.**—(*1*) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(*2*) A vendor shall not be deemed to have committed an offence if he proves—

(*i*) that the article of food was purchased by him as the same in nature, substance and quality as that demanded by the purchaser and with a written warranty in the prescribed form, if any, to the effect that it was of such nature, substance and quality;

(*ii*) that he had no reason to believe at the time when he sold it that the food was not of such nature, substance and quality; and

(*iii*) that he sold it in the same state as he purchased it:

Provided that such a defence shall be open to the vendor only if he has, within seven days of the receipt of a copy of the report of the public analyst, submitted to the food inspector or the local authority a copy of the warranty with a written notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person:

Provided further that the warranty given by a person resident in any area in which this Act is not in force, shall be a defence to the vendor only if the vendor proves to the satisfaction of the court that he had taken reasonable steps to ascertain and did in fact believe in, the accuracy of the statement contained in the warranty.

(*3*) Any person by whom a warranty as is referred to in sub-section (*2*), is alleged to have been given shall be entitled to appear at the hearing and give evidence.

* * * * *

20. **Cognizance and trial of offences.**—(*1*) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorised in this behalf by the State Government or a local authority.

(*2*) No court inferior to that of a Presidency magistrate or a magistrate of the first class shall try any offence under this Act.

21. **Magistrate's power to impose enhanced penalties.**—Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (Act V of 1898), it shall be lawful for any Presidency magistrate or any magistrate of the first class to pass any sentence authorised by this Act, in excess of his powers under section 32 of the said Code.

22. **Protection of action taken in good faith.**—No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

23. Power of the Central Government to make rules.—The Central Government may, after consultation with the Committee and subject to the condition of previous publication, make rules—

(*a*) specifying the articles of food or classes of food for the import of which a licence is required and prescribing the form and conditions of such licence, the authority empowered to issue the same and the fees payable therefor;

(*b*) defining the standards of quality for, and fixing the limits of variability permissible in respect of, any article of food;

* * * * *

(*c*) laying down special provisions for imposing rigorous control over the production, distribution and sale of any article or class of articles of food which the Central Government may, by notification in the Official Gazette, specify in this behalf including registration of the premises where they are manufactured, maintenance of the premises in a sanitary condition and maintenance of the healthy state of human beings associated with the production, distribution and sale of such article or class of articles;

(*d*) restricting the packing and labelling of any article of food and the design of any such package or label with a view to preventing the public or the purchaser being deceived or misled as to the character, quality or quantity of the article;

(*e*) defining the qualifications, powers and duties of food inspectors and public analysts;

(*f*) prohibiting the sale or defining the conditions of sale of any substance which may be injurious to health when used as food or restricting in any manner its use as an ingredient in the manufacture of any article of food or regulating by the issue of licences the manufacture or sale of any article of food;

(*g*) defining the conditions of sale or conditions for licence of sale of any article of food in the interest of public health;

(*h*) specifying the manner in which containers for samples of food purchased for analysis shall be sealed up or fastened up;

(*i*) specifying a list of permissible preservatives, other than common salt and sugar, which alone shall be used in preserved fruits, vegetables or their products or any other article of food as well as the maximum amounts of each preservative;

(*j*) specifying the colouring matter and the maximum quantities thereof which may be used in any article of food;

(*k*) providing for the exemption from this Act or of any requirements contained therein and subject to such conditions, if any, as may be specified, of any article or class of articles of food;

(*l*) prohibiting or regulating the manufacture, transport or sale of any article known to be used as an adulterant of food;

(*m*) prohibiting or regulating—

(*i*) the addition of any water, or other diluent or adulterant to any article of food;

(*ii*) the abstraction of any ingredient from any article of food;

(*iii*) the sale of any article of food to which such addition or from which such abstraction has been made or which has been otherwise artificially treated;

(*iv*) the mixing of two or more articles of food which are similar in nature or appearance;

(*n*) providing for the destruction of such articles of food as are not in accordance with the provisions of this Act or of the rules made thereunder.

24. Power of the State Government to make rules.—(*1*) The State Government may, after consultation with the Committee and subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act in matters not falling within the purview of section 23.

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

(*a*) define the powers and duties of the Food (Health) Authority and local authority and jurisdiction of food inspectors and public analysts;

(*b*) prescribe the forms of licences for the manufacture for sale, for the storage, for the sale and for the distribution of articles of food or any specified article of food or class of articles of food, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor;

(*c*) direct a fee to be paid for analysing any article of food or for any matter for which a fee may be prescribed under this Act;

(*d*) direct that the whole or any part of the fines imposed under this Act shall be paid to a local authority on realisation;

(*e*) provide for the delegation of the powers and functions conferred by this Act on the State Government or the Food (Health) Authority to subordinate authorities or to local authorities.

25. Repeal and saving.—(*1*) If, immediately before the commencement of this Act, there is in force in any State to which this Act extends any law corresponding to this Act, that corresponding law shall upon such commencement stand repealed:

Provided that in so far as any such corresponding law makes provision for any of the matters dealt with in section 7 or for the punishment of offences committed in contravention of any such law, the repeal shall take effect in a particular State or in any particular area thereof only on the date appointed by the State Government in respect of such State or such area thereof in exercise of the powers conferred upon it by sub-section (*3*) of section 1.

(2) Notwithstanding the repeal by this Act of any corresponding law, all rules, regulations and bye-laws relating to the prevention of adulteration of food, made under such corresponding law and in force immediately before the commencement of this Act shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered, amended or repealed by rules made under this Act.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill to make provisions for the prevention of adulteration of food.

(As amended by the Select Committee)

GIPD—LAD—919 PS—5-1-54—400

HOUSE OF THE PEOPLE.

CORRIGENDA

to

THE ESTATE DUTY BILL, 1952.

(As amended by the Select Committee)

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1. At page 1,

In line 5, -

<u>for</u> "(3) It shall come into force on such date as the Central Government"

<u>read</u> "(2) It extends to the whole of India except the State of Jammu and"

2. At page 4, line 35, <u>for</u> "Mitakshars" <u>read</u> "Mitakshara"

3. At page 9, line 33, <u>for</u> "disributed" <u>read</u> "distributed"

4. At page 12, line 1, <u>for</u> "generlly" <u>read</u> "generally"

5. At page 20, line 46,

<u>for</u> "duty, the estate duty leviable on the property which is not so exempt"

<u>read</u> "duty under section 32 and also any agricultural land situate in any State"

6. At page 34, line 26, <u>for</u> "property" <u>read</u> "properly"

New Delhi,
The 7th August, 1953.

M.N. KAUL,
S E C R E T A R Y.

HOUSE OF THE PEOPLE

THE ESTATE DUTY BILL, 1952

(Report of the Select Committee)

सत्यमेव जयते

PARLIAMENT SECRETARIAT
NEW DELHI
March, 1953.

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THE ESTATE DUTY, BILL, 1952

Members of the Select Committee

Shri M. Ananthasayanam Ayyangar (*Chairman*).
Shri Khandubhai Kasanji Desai.
Shri Narahar Vishnu Gadgil.
Shri Dev Kanta Borooah.
Shri R. Venkataraman.
Shri Nityanand Kanungo.
Shri Feroze Gandhi.
Shri Tribhuan Narayan Singh.
Shri Basanta Kumar Das.
Shri Balwantrai Mehta.
Prof. Shriman Narayan Agarwal.
Shrimati Anasuyabai Kale.
Shri P. T. Chacko.
Shri N. Keshavaiengar.
Shri U. Srinivasa Malliah.
Shri S. Sinha.
Shri C. D. Pande.
Shri Tek Chand.
Shri Harihar Nath Shastri.
Pandit Munishwar Dutt Upadhyay.
Shri Sadath Ali Khan.
Shri Radheshyam Ramkumar Morarka.
Shri Kamakhya Prasad Tripathi.
Shri N. C. Chatterjee.
Shri B. Ramachandra Reddi.
Shri K. A. Damodara Menon.
Shri K. S. Raghavachari.
Shri Tulsidas Kilachand.
H.H. Maharaja Sri Karni Singhji Bahadur of Bikaner.
Shri V. P. Nayar.
Shri Kamal Kumar Basu.
Dr. Lanka Sundaram.
Shri B. R. Bhagat.
Shri Mahavir Tyagi.
Shri Chintaman Dwarkanath Deshmukh.

Report of the Select Committee

The Select Committee, to which the Bill to provide for the levy and collection of an estate duty was referred, have considered the Bill and the memoranda placed before them by certain persons and the evidence tendered by the representatives of the Institute of Chartered Accountants of India, New Delhi, the Punjab Chamber of Commerce, New Delhi, and the Federation of Indian Chambers of Commerce and Industry, New Delhi, and now submit this their Report with the Bill as amended by the Committee annexed hereto.

The Select Committee considered at the outset whether the Bill should not be recast as a Succession Duty Bill in preference to the Estate Duty Bill but this would mean a complete revision of the scheme of the Bill, the principle of which has already been approved by Parliament. Moreover, the present legislation is with reference to entry 87 of the Union List which reads "Estate duty in respect of property other than agricultural land." The suggestion was not, therefore, pursued.

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

Clause 2.—As "controlled company" is now defined in clause 17 of the Bill itself and not left to be defined by rules, a consequential amendment has been carried out in clause 2(4).

The definition of "property" in clause 2(15) has been slightly modified to make it clear that property converted from one species into another is also within this definition.

Clause 4.—The provisos to sub-clause (2) are intended to provide for cases where properties are situate within the jurisdiction of more than one Controller.

Clause 7.—In certain parts of South India, some properties are held as *Sthanam* properties, the word "Sthanam" merely indicating a dignity or status. By the Explanation it is made clear that such properties are not properties held by holders of offices or corporations sole within the meaning of sub-clause (4).

Clause 11.—The amendments to this clause are based on the amendments made by section 43 of the United Kingdom Finance Act, 1950, in section 43 of the Finance Act, 1940, on which clause 11 is based. In Law Reports (1950) 2 K.B. 451, the Court of Appeal held that the section corresponding to clause 11 in the United Kingdom Law applied only to a disposition or determination of the limited interest which prevented the property from passing on the death. As now amended, the section imposes in regard to each and every disposition or determination of a limited interest in possession, a *prima facie* liability to duty upon the death on which the interest was limited to cease. That is to say, where an interest limited to cease on death has been the subject of more than one transaction and the property in which it subsisted would have passed on that death if any one of those transactions had not taken place, the property will be deemed to pass on the death unless each of the transactions satisfies all the conditions of sub-clause (2). The amendments make no charge in the conditions of liability where the limited interest is disposed of or determined by the effect of only one transaction.

The new sub-clause (4) provides that even though the determination of the life interest is effected in one step, if a benefit is reserved to the

disponer by some other disposition, either before or after the determination of the life interest, the transaction will not be protected by sub-clause (2).

Clause 17.—Under sub-clause (4) of this clause, it was left to the Board to make rules prescribing the class of companies which shall be deemed to be controlled companies. The Select Committee think that, as in the corresponding provision of the United Kingdom Finance Act, this Bill also should itself define the expression "controlled company" and not leave it to the rules to be made by the Central Board of Revenue. This clause has been amended accordingly.

Clause 18.—The amendments are designed with a view to fixing the responsibility on the principal officer of the company, who, for the purposes of this law, has been defined somewhat on the lines of a similar definition in the Indian Income-tax Act, 1922. The Select Committee also feel that a past officer of the dissolved company should be obliged to furnish such information as may be within his knowledge only if called upon to do so. The period for compliance has also been extended from one month to forty-five days.

Clause 20.—The Select Committee have omitted the words "or immovable property consisting of agricultural land situated in any State other than the States specified in the Schedule to this Act", as these words are likely to create some confusion. The position under this Bill is that all agricultural land in the territories to which this law will extend should be taken into account for determining the rate of duty, although no duty will be actually levied on agricultural land in States not specified in the Schedule.

Clause 21.—The Select Committee have amended this clause to provide that where a trust has been declared by the deceased and he is himself the trustee, he should hand over possession and enjoyment of the trust property to the beneficiary at least five years before his death in the case of ordinary trusts and one year in the case of public charitable trusts if he desires that the trust property should not be considered his own property at the time of his death. By the Explanation it is made clear that assumption of possession and enjoyment of property by a legal guardian or other person entitled to take charge of the property in the case of a minor, lunatic etc. is assumption of possession and enjoyment by the beneficiary within the meaning of this provision.

Clause 23.—In the opinion of the Select Committee it is difficult to differentiate between a case where A settles property on trust for B for life and then for himself absolutely and a case where A settles property on trust to pay an annuity to himself and subject thereto for B for life with remainder to A. As the clause originally stood, in the first case no estate duty was payable on B's death while in the latter case, it was payable. Section 15 of the United Kingdom Finance Act, 1896, on which this clause is based was criticised adversely in 83 L.T. 103. If the property reverts to the disponer on the cesser of the life interest created by him, the exception under this clause should, in the opinion of the Select Committee, apply even where the settlor might have carved out for himself some interest out of the life interest created by him, for, after all, estate duty is payable on the death of the settlor on his entire property, including the remainder. This clause has, therefore, been amended accordingly.

Clause 26.—With respect to transfers of property, this clause depends for its efficacy on the proposition that under clauses 8, 9, 10 etc. duty attaches, subject to any specific exemptions, to all property transferred within a specified period of the transferor's death or outside that period unless taken and enjoyed by the transferee to the entire exclusion of the transferor from possession, enjoyment or benefit. In Law Reports (1950) Chancery 448, the application of this provision to transfers other than gifts was doubted because of the language employed in the relevant clauses and this clause has now, therefore, been amended on the lines of the United Kingdom Finance Act, 1950, section 46, to make it clear that dispositions made by a deceased in favour of relatives are to be treated on the same footing as gifts *inter vivos* unless—

(a) the disposition was for full consideration in money or money's worth, or

(b) the disposition was made by the deceased in a fiduciary capacity.

Clause 30.—The Select Committee feel that the allowance for quick succession should not be confined to lands and business only, as this will mean that a large number of persons who own, say, only buildings do not obtain the benefit of this provision. This clause has, therefore, been amended to cover all property. Incidentally, an Explanation has been inserted defining "second death" for the purpose of this provision. It has also been provided that in the case of quick deaths occurring within a period of three months, no estate duty shall be leviable on any property more than once by reason of the subsequent deaths occurring within that period.

Clause 31.—This clause, which was inserted in this Bill by the previous Select Committee, has been slightly modified to make it clear that it is applicable in all cases where a Hindu widow dies within seven years of her husband's death and the property devolves upon members of a coparcenary.

Clause 32.—In the opinion of the Select Committee, the Bill itself should make provision for certain exemptions, and the Select Committee, after a careful consideration of the conditions obtaining in India and the suggestions made by various members in this connection, have provided for cases which in their opinion, deserve to be exempted expressly. At the same time there may be cases where further reliefs have to be given and, therefore, a general power is retained in sub-clause (2) authorising the Central Government to grant further reliefs in suitable cases.

Clause 33.—This clause has been modified to provide that agricultural properties situate in States which have not passed the requisite resolutions shall also be included in the properties passing on death for the purpose of determining the rate of duty although no duty will be actually levied upon such agricultural lands. At the same time it is made clear that property exempted under clause 34 is not taken into account at all for the purposes of estate duty.

Clause 34.—The Select Committee feel that no estate duty should be levied on property below a value to be fixed by the law itself. Further they are unanimously of the view that there should be some kind of differentiation between the exemption limits in the case of property which consists of an interest in a Hindu joint family property and other property. By a decision of the majority, the exemption limits have been fixed at Rs. 50,000 in the case of an interest in property belonging to

a joint Hindu family and Rs. 75,000 in other cases. It is expected that the first scale of rates will be indicated in a separate measure which will be introduced in Parliament before this Bill is passed into law.

Clause 39.—The power of the Controller to ascertain the value of any property or to authorise any person to inspect any property should, in the opinion of the Select Committee, be controlled by rules made in this behalf and the clause has been amended accordingly.

Clause 42.—This clause has been amended to provide that funeral expenses should include expenses in connection with the *sraddha* ceremonies of the deceased but, in the opinion of the Select Committee, the maximum amount permissible should be fixed at Rs. 1,000. Consistently with the provisions contained in clause 32(j), it has also been provided that dower debts in excess of Rs. 5,000 should be removed from the category of deductible expenses. Moreover, if any such provision were not made, a large scale evasion of estate duty may result therefrom.

Clause 44.—The period of three years specified in sub-clause (2) has been reduced to two years in conformity with the provision made in respect of gifts.

Clause 47.—In order that the discretion of the Controller is exercised in a proper manner, the Select Committee have subjected it to rules to be made by the Board in this behalf.

Clause 48 (new).—In practically all countries with a federal structure of Government where inheritance or succession duties are paid in the component States side by side with estate duty, the principle of granting relief in respect of such duties when estate duty comes to be paid is well-recognised. The Select Committee feel that a similar relief should be provided in this Bill also within a specified limit.

Clause 52 (new).—Whether trustees, beneficiaries and others who have parted with property before death which gives rise to the charge of estate duty remain accountable for that duty was not free from doubt. This new provision which is based on section 44 of the United Kingdom Finance Act, 1950, settles the question so far as concerns the duty payable under clause 11 by expressly making the trustees of the settlement accountable for the duty whether or not they have parted with the property. As a corollary, sub-clause (2) will enable the trustees to make advance arrangements with the Revenue authorities for restricting their liability and to recoup themselves in respect of any duty they may have paid by establishing a lien for the prospective duty upon any property remaining in the settlement.

Clause 57 (new).—In the opinion of the Select Committee, a limit should be fixed after the expiration of which no proceedings for the levy of estate duty may be commenced.

Clause 60 (new).—In the opinion of the Select Committee a provision like this for the rectification of mistakes is necessary in every taxing Statute.

Clause 61 (old clause 57).—The Select Committee feel that the administration of the Act may, for the first few years, be left in the hands of the Board and thereafter the question whether an appellate Tribunal should be interposed may be considered, if necessary. This clause, however, has been amended to provide that in determining questions relating to valuation,

it will be open to each of the parties to nominate a valuer, and, in the case of a difference of opinion, the matter may be referred to a third valuer nominated by both parties by agreement or, failing agreement, by the Central Government. It has also been provided that where the person accountable is successful in his reference, costs should be in the discretion of the Board.

Clause 62 (*old clause 58*).—The amendment is to define "High Court" in relation to Part C States.

Clause 65 (*old clause 61*).—The Select Committee have prescribed a period of two months for both payments and refunds under this clause. They have also reduced the penalty under sub-clause (4) to twice the amount due.

Clause 68 (*old clause 64*).—In the opinion of the Select Committee a provision should be made for allowing executors and accountable persons reasonable time by the law itself to raise the necessary funds for discharging the liability to duty so that the interest of the heirs or beneficiaries may not be adversely affected and sales of immovable property do not become too frequent. Hence the amendment making provision for payment of estate duty by reasonable instalments.

Clause 75 (*old clause 71*).—A proviso has been inserted for the protection of *bona fide* purchasers who may elect to pay the purchase money direct to the Controller to satisfy the estate duty payable which is a first charge on property.

Clause 78 (*new*).—The Select Committee have inserted this provision as being useful for the purpose of exchanging information. Similar provision exists in other enactments relating to levy of estate duty in other countries.

Clause 79 (*new*).—This clause provides for the service of notices.

Clause 80 (*new*).—The Select Committee think that a clause like this will ensure speedy realisation of estate duty in the case of deceased shareholders of companies.

2. The Bill was published in Part II, Section 2, of the *Gazette of India*, dated the 16th August, 1952.

3. The Select Committee recommend that the Bill be passed as now amended.

M. ANANTHASAYANAM AYYANGAR,
Chairman of the Select Committee

NEW DELHI;
The 31st March, 1953.

MINUTES OF DISSENT

I

I am gratified to record that the Bill, as it emerges from the Select Committee has been modified and improved on certain essential details. Thus the scope of possible harassment has been narrowed down. Nevertheless there are many clauses in the Bill, if they are not suitably amended there will be considerable room for vexatious proceedings. Severe and stringent provisions for realising the duty will be particularly harsh when the bread winner of the family is dead and the burden of attending to assessment proceedings falls to helpless widows and minor children. Therefore, particular care should be taken to make the provisions as less irksome as possible in regard to smaller estates. In most of the cases of this category the survivors will not be able to have the benefit of expensive legal aid nor will there be any relief available commensurate with the effort and expenses involved. With this object in view I suggest the following changes in the Bill as amended by the Select Committee:

(*1*) In clause 7 provision should be made to do away with the discrimination between persons governed by Mitakshara school of law and those governed by Dayabhag school of law. Such a course will not be tenable under articles 14 and 15 of the Constitution to make discrimination between the citizens of the Indian Union. This differentiation can be rectified either by treating all persons governed by Dayabhag school of law as if they were governed by Mitakshara school of law or by providing double the amount of exemption limit as is done under the Income-Tax Act with regard to Individuals and undivided Hindu families.

(*2*) In clause 9 no time limit should be prescribed in respect of gifts made for public charitable purposes.

(*3*) In clause 32 after sub-clause (j) a clause (*k*) be added to the effect that one residential house be also excepted from estate duty.

(*4*) In clause 61 in sub-clause (*1*) in line 6 in the place of 'Board' the words "a judicial tribunal" be substituted.

C. D. PANDE.

NEW DELHI;
The 31*st March*, 1953.

II

Though I agree with the majority report in several respects, there are certain important issues on which I hold different views and have, therefore, thought it necessary to write this Minute of Dissent covering some of those issues. There is no doubt in my mind that the changes I am proposing in some of the provisions would definitely improve the Bill and would help to serve the public good in a greater measure.

2. *Clause 4.*—This clause describes the various authorities for the purpose of administration of Estate Duty and their functions. These include the Controller of Estate Duty, the Central Board of Revenue and the Valuers. The Controller of Estate Duty will be the first authority to make assessment to Estate Duty and from the order of the Controller an appeal has been provided to the Central Board of Revenue under clause 61.

If the dispute relates to valuation of property (under Clause 61), the Board may and if the person accountable so requires it shall refer the matter to Valuers. As the Controller and the Central Board of Revenue are both limbs of the same revenue collecting machinery of Government, the latter occupying a superior status and position, an appeal to the Central Board of Revenue from the order of the Controller may not be found of much practical value. The Board will not only lay down the guiding principles on which assessments are to be made under the Act but will also be dealing with such of those cases which come to it in appeal. This militates against the objective of an impartial and unbiased decision taken by an independent tribunal entirely divorced from considerations of revenue accruing to Government. It is necessary that the assessee must feel that he has been justly dealt with and that in the execution of the law the scales have been held even as between himself and the revenue imposing authority. There ought, therefore, to be an independent Appellate Tribunal on the lines of the appellate tribunal under the Income-tax Act to which appeals should be provided from the orders of the Controller, and the provision of appeal to the Board should be deleted. The final fact finding authority as in the case of the Income-tax Act should be an independent appellate tribunal, as otherwise the benefit of appeal to assessees would be of an illusory character.

3. It might be argued that though the Central Government will appoint Valuers and also fix a scale of charges for their remuneration [under sub-clause (5)], the Valuers will not be called upon to observe and follow the orders, instructions and directions of the Board and may, therefore, be considered to be sufficiently independent. This is good so far as it goes. But it is necessary that the provision should be more specific and definite and if there has to be a Board of Valuers, it should be made clear beyond doubt that it will be an independent body like the Appellate Tribunal under the Income-tax Act, with a Chairman appointed by Government. Such a body would ensure much greater confidence in the public mind about the correctness and fairness of the final assessments.

4. *Clause 9.*—This clause brings under charge gifts made *inter vivos* within a period of two years before death or in the case of gifts so made for public charitable purposes within six months before death. It is reasonable and necessary that when Estate Duty is being first introduced in India the time limit of two years should be reduced to one year in the case of gifts *inter vivos*. As for gifts for public charitable purposes there should be no time limit at all. This point has been elaborated in greater detail while discussing Clause 32.

5. *Clause 10.*—In the proviso to this clause the period of two years should be reduced to one year. This is consequential to what has been stated under clause 9.

6. *Clause 11.*—In sub-clause (2) the period of two years should be reduced to one year and the period of six months for dispositions effected for public charitable purposes should be reduced to nil. These amendments are consequential to what has been stated under clause 9.

7. *Clause 21.*—This clause as it was in the Bill before being changed by the Select Committee provided that property held by the deceased as a trustee shall not be included in the property passing on his death provided that the property was held by him as a trustee under a disposition made by another person. Where the disposition was by himself, the pro-

perty will be excluded only if possession and enjoyment of the property were *bona fide* assumed by the beneficiary two years before the death and retained by him to the entire exclusion of the deceased or of any benefit to the deceased. The Select Committee have altered the clause so that where the trust is declared by the deceased and he is himself the trustee, the property will be included in his estate unless he hands over possession and enjoyment to the beneficiary at least five years before his death in the case of ordinary trusts and one year in the case of public charitable trusts. Further, under the Explanation where the beneficiary is a minor, lunatic, etc., and is not able to take possession, possession and enjoyment of the property must be assumed by a legal guardian or any other person entitled to take charge of the property for purposes of exemption. The Select Committee have thus made this clause more stringent by extending the time limit to five years in the case of an ordinary trust and two years in the case of a public trust. It would have been reasonable if they had at least followed the time limit prescribed in other cases, for example under clause 9 namely six months in the case of public charitable purposes and two years in other cases. There is no warrant for this change by the Select Committee and the period should be reduced in conformity with the suggestions already made. It is further necessary to amend this clause by removing the conditions about possession as also enjoyment of the property being in the beneficiary during the prescribed period of time before the death of the deceased. If a person makes a trust in favour of his minor child who is not capable of assuming possession, an obligation is placed on him to hand over possession of the property to a third person if that property is to be excluded from the estate for purposes of duty. This is not reasonable. The criterion should only be whether the income is being set apart exclusively for the benefit and use of the minor child. The law recognises that a person may have different capacities. There is, therefore, nothing to militate against a person having possession of property as trustee even though the trust might have been created by him so long as he holds the property in the capacity of a trustee and is discharging his duties in regard to the disposal of the income. The condition that possession also should be retained by the beneficiary or some other person should, therefore, be deleted.

8. *Clause 30.*—This clause provides for allowances in case of quick succession to property. The rates of allowances and the period of time within which such allowances will be available have been taken as they exist at present in the U.K. Act. The U.K. is a much advanced country socially and the rate of mortality is not as high as is prevalent in India. It is worth noting that in other countries where the rate of mortality is not also as high as in India, the periods allowed for reduction in duty in the case of second and successive deaths are much longer. It is understood that in U.S.A., there is no levy of Estate Duty on the second death if it occurs within five years of the first death. It is also understood that in Japan there is complete exemption on second death if it occurs within five years of the first death. Further, if the third death occurs within two years of the second death the rate would be reduced by 50 per cent. Similarly in Chile there is exemption from duty on a second death if it occurs within a period of ten years. It is, therefore, reasonable that the law in India should be framed on these lines particularly in the context of the mortality rate in India, which still continues to be high. The average span of life is short and it is desirable that till such time as the conditions improve the exemption from duty should be more in accordance with the liberal provisions of the law prevailing in other countries referred to above.

This clause should, therefore, be modified so that if the second succession occurs within five years of the first death there should be complete exemption from duty and if it occurs after five years then after the fifth year the rate should be reduced in the manner provided in the clause according as the death occurs between the sixth and the tenth year.

9. *Clause 32.*—The Select Committee have substituted a new clause and specific mention has been made of some items of property on which estate duty will not be payable. Sub-clause (*2*) vests the residuary power in Government to make exemptions in deserving cases and all such cases should be reported to the House of the People. In the first instance, the list has been considerably restricted and there is scope for enlarging the list. Further the limits set to the amounts provided by way of exemption have been fixed at a ridiculously low figure. Property taken under a gift made for a charitable purpose within a period of six months before death to the extent of Rs. 2,500 in value and property taken under any other gift within a period of two years before death to the extent of Rs. 1,500 will be exempt from duty. It is necessary that gifts, whatever might be the amounts, made for charitable purposes at any time before death should be exempt. Governments at the Centre or in the States are not able to provide all the necessary institutions for the advancement of technology and scientific knowledge nor do they endow charities for educational, artistic, cultural, religious purposes etc. It is only private philanthrophy that can cater to such necessary needs of the public and in order to foster such donations, endowments, gifts, bequests and charities there should be no limit to the amounts of charity that could be made. It is also to be noted that to the extent such institutions rendering useful services to the public benefit from gifts made by individuals, the assistance required by them from Government will be considerably less. It might be mentioned here that even the recent Finance Bill has recognised the necessity for enlarging the scope for exemptions for donations to charitable institutions and funds by making suitable amendments to Section 15B of the Indian Income-tax Act. One of the objects of levying Estate Duty is that it will tend to reduce inequalities, and such gifts from the well-to-do classes to deserving institutions have also the effect of reducing disparities in wealth. Moreover, an Indian considers it his sacred duty to gift away some of his properties when he anticipates death or while he is on his death-bed. This limitation will be fundamentally opposed to the sentiments, traditions and customary habits of the people. It is, therefore, necessary that the limitation of six months' period should be removed and there should also be no limit to the amount of gifts that might be made for public charitable purposes.

10. As for other gifts, the limit of Rs. 1,500 provided by the Select Committee is too meagre. It is usual and quite natural for persons to give part of their wealth to relatives in poor circumstances who do not inherit their property in the natural course. Gifts to poor relatives, dependents and employees who have served faithfully and long are also a common phenomenon. What a person of ordinary means can give will bear no comparison to what a very rich man can give. To circumscribe his generosity towards all such persons is not reasonable. Such gifts and bequests to the poor and to persons in necessitous circumstances have also a tendency to reduce inequality for they result in the distribution of increased incomes or services to the poorer sections of the population. In this connection reference is invited to the provisions in the Australian

Estate Duty Act, Section 8(5) of which runs as follows:

> "Estate Duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific or public educational purposes in Australia, or to a public hospital or public benevolent institution in Australia or to a fund established and maintained for the purpose of providing money for use for such institutions or for the relief of persons in necessitous circumstances in Australia."

11. The exemption in respect of moneys payable under one or more insurance policies effected by the deceased on his life has been limited by the Select Committee to Rs. 5,000. The limit should be raised to Rs. 25,000. This will give a fillip to Insurance Companies apart from being necessary from the point of view of the family of the deceased.

12. The Select Committee have provided that in the case of gifts made in consideration of marriage by a deceased parent or a natural guardian in respect of each female dependent an exemption should be granted to the extent of a sum not exceeding Rs. 5,000 for each person. The exemption would be available not only for gifts but also for monies earmarked for such purposes under policies of insurance or declarations of trust or settlements made by the deceased. It is necessary to extend this relief to male members also and it is also necessary to provide for exemption of educational expenses of any member of the family or a dependent person. If necessary, a limit of Rs. 5,000 might be placed for exemption in respect of educational expenses also.

13. In addition to the exemptions specifically mentioned in this clause, exemption should also be provided for the principal residential building of the deceased as it is necessary that every family should be provided with a dwelling house and, therefore, the building in which the deceased used to live must be passed on to the family. If it becomes necessary to part with the house for the payment of duty which is likely to happen in some cases, it will not only be a hardship to the family by being deprived of their residential house but will also be a very unhappy thing for them as a family house is generally associated with ancestral sentimental feelings.

14. Another item of property for which exemption is necessary is certain Government Securities. This principle has been accepted by Government in the Income-tax Act also by the grant of exemption from income-tax in the case of certain Securities. The effect of such exemption will be conducive to the flow of investment in Government Securities and will also impart strength to the Securities Market.

15. On the same principle, investments made in new ventures should be excluded from the estate of the deceased. This principle has been accepted in the Income-tax Act which grants certain allowances in the case of new plant and machinery which may be for new ventures or for expansion of old ones and exempts from tax income upto six per cent. per annum of the capital employed in new industrial undertakings for a period of five years. The character and type of the new ventures and the conditions for their exemption may be determined by Government and the exemption may also be limited to investments for a certain period of time. This will give a fillip to investments in new ventures which would be beneficial for the economic development of the country. It may also be pointed out that functioning as we do under the concept of a mixed economy, every encouragement should be given for private enterprise to start and invest in new ventures.

16. *Clause 33.*—A new clause has been substituted by the Select Committee under which for determining the rate of estate duty to be paid on the property of the deceased the property exempted from duty under Section 32 will be aggregated with all property passing on death. It has been pointed out under clause 32 how there is scope for further adding to the specific exemptions provided in that clause and how the exemptions have been restricted to very small amounts in particular cases. Having provided such restrictions, further to aggregate the exempted amounts of property for the purpose of determining the rate of duty is like taking away by the left hand what has been given by the right. The whole purpose of the exemption under Section 32 would be lost if the exempted items are aggregated for rate purposes. Government have taken the U.K. law as its model and the Select Committee have adopted many clauses of the U.K. Act. But here is a case in which the U.K. provision does not aggregate such exempted properties for rate purposes and yet it is not being adopted in India, obviously on extraneous considerations of revenue. Otherwise it is not understandable why a perfectly legitimate and reasonable provision found in other statutes and absolutely necessary to alleviate hardship that would otherwise be caused to estates, is not being adopted. The clause certainly requires to be so modified that exempted items under Section 32 are not aggregated with other property to determine the rate of duty on that other property.

17. Under sub-clause (*2*) income accrued on any property included in the estate down to and outstanding on the date of the death of the deceased will have to be included. That is, interest accrued on a loan and rents due from house properties will be included in the estate even though such interest or rents might not be recovered later on. If the borrowers become bankrupt not only the interest but the principal amount of the loan itself will become a bad debt. In the case of rents due also they might not be recovered from the tenants for various reasons. Similarly, tax liability in respect of past years might become payable after the date of the death of the deceased as a result of the reopening of income-tax assessments. Income-tax might also become payable by the estate of the deceased as a result of the action taken by the Income-tax Officer under Section 23-A of the Income-tax Act. Neither the person accountable nor the revenue authorities might be aware of such liability at the time of the death. As a result, if such outstandings are included in the estate and tax payments which are legitimate deductions from the estate are not taken into account, Estate Duty would become payable not only on a larger estate but also at a higher rate than need be. There is no provision in this clause for a refund of duty overpaid on such account and a proviso should, therefore, be introduced to the effect that if any income is included in the estate and is not subsequently realised or recovered or if the estate has been over-valued as a result of allowable deductions not having been made, refund of the additional duty paid on such account shall be granted.

18. *Clause 34.*—The Select Committee have inserted a new clause and the minimum exemption limit has been fixed at Rs. 50,000 in the case of property which consists of an interest in a Hindu joint family governed by the Mitakshara, Marumakkattayam or Aliyasantana law and at Rs. 75,000 in the case of property of any other kind. It is necessary that the exemption limit should be raised to Rs. one lakh and Rs. 1½ lakh respectively having due regard to the present value of the Rupee which has depreciated to about a fourth of its pre-war value. It might be re-

membered that in the 1948 Bill the limit of exemption was placed at Rs. one lakh even though that Bill did not contemplate the inclusion of agricultural property for the levy of Estate Duty. The analogy of the U.K., where the exemption limit is fixed at £2,000 is pointed out in this connection; but the analogy is far from correct, for the U.K. Government confer on people many social and ameliorative benefits. The comprehensive advantages of social security against unemployment, old age, infirmity, sickness and widowhood and other more positive benefits are available to every man, woman and child, and this, to a great degree, offsets the necessity of saving for one's own retirement after active life or for the family. An amount of Rs. one lakh under the present conditions cannot be considered to be excessive in the context of the securing of such benefits even partially by private effort and saving. Apart from these considerations, if a comparison is made with the exemption limit of £2,000 in the U.K., why should not a similar comparison be made with the exemption limit in the U.S.A., fixed at one lakh Dollars equal to about Rs. five lakhs. Considered from any angle, it is very reasonable that the exemption limit should be raised to at least one lakh of Rupees.

19. *Clause 35.*—Under sub-clause (2) the Controller will fix the price of the property according to the market prices at the time of the deceased's death, but he will grant no reduction on account of the fact that the whole property is to be placed on the market at one and the same time. There seems to be no reason why this should be so. The section itself recognises the fact that realisations on sale will be much less when the whole property is sold in the market at one time. It is then reasonable that the estate should pay duty only on the actual value of the property which has been ascertained and not on a notionally higher value. Otherwise, it would result in the payment of duty on a larger estate and at a higher rate. There might also be other considerations why an item of property might not fetch the market value on the deceased's death. Property might have a valuation attached to it in the market by reason of its being associated with the deceased for personal reasons such as his knowledge and abilities. For instance, the shares of a Company managed by a person of known abilities might have a particular value on the market while he is alive, but on his death, the value of the shares might depreciate because the Company will no longer be managed by that particular person. Further, if whole lots of shares or any other big items of property are brought to sale for purpose of paying Estate Duty, then also there is the possibility of property realising less than what otherwise they ordinarily would. Other instances can also be pointed out where the realisation on the sale of property would be much less than the market value or the valuation adopted by the Controller. A depreciation in value of such a character which is known to have actually happened should be taken into account in determining the value of the property. It would seem that the Select Committee even though appreciative of the reasonableness of this suggestion have still expressed themselves in favour of the retention of this clause as it is because it is modelled on the U.K. provision. It is indeed a strange reason.

20. *Clause 42.*—This clause deals with deductions to be allowed for determining the chargeable value of an estate. There is no provision, however, for allowing taxes whether Central, State or Local, from the value of the estates. Such taxes form a compulsory outgoing from the estate of the deceased and it is only the net estate which will pass on his

death. In the U.K., in practice, the whole of the current year's taxation together with any arrears is usually allowed. Sections 17(1)(c) and 17(1)(d) of the Australian Estate Duty Act are as follows:

Section 17(1).

"From the gross value of the estate shall be deducted.....

(c) Federal and State income taxes assessed in respect of income derived by him before the date of his death and Federal income taxes assessed in respect of any amount which is included in the assessable income of the trust estate of the deceased person in accordance with the provisions of section one hundred and one of the Income-tax Assessment Act 1936—1941 or of that Act as amended at any time, and which is included in the estate for the purposes of this Act;

(d) Federal and State land taxes assessed in respect of the ownership on or before the date of his death, of land owned or deemed to be owned by him."

21. It is, therefore, necessary that taxes, Central, State or Local whether assessment in respect of them have been completed or not before the death of the deceased should be allowed.

22. *Clause 46.*—Under this clause the Controller is authorised to deduct from the value of the estate any additional expenses in administering or realising the property situate outside India subject to the limitation of 5 per cent. of the value of property. As the expenses would actually be much more, the limit should be raised to 10 per cent. or to the actual expenses incurred whichever is lower.

23. *Clause 47.*—This clause provides for the allowance for the duty paid in a non-reciprocating country. The Select Committee have left it to the discretion of the Controller to grant such amount of relief from double payment of duty as might be necessary in particular cases. The discretion, however, is to be subject to such rules as may be framed in this behalf by the Board. The Select Committee have felt that this discretion must be left with the Controller so that there would be an inducement to the non-reciprocating territories to come to terms of reciprocity with India. Clause 29 of the Bill provides for entering into agreements with foreign countries for the avoidance or relief of double taxation with respect to Estate Duty. Where no such agreement has been entered into with any country, the principle accepted in the recent Indian Income-tax Amending Bill now pending before Parliament should be adopted in the Estate Duty Act also. The provision in the Income-tax Bill is that unilateral relief is allowed on income in a foreign country with which there is no double taxation relief agreement to the extent of the full foreign tax or the Indian tax on such foreign income whichever is lower. The same provision with necessary changes can be introduced in this section. Such a provision will not prevent an agreement for relief from payment of double duty being concluded with foreign countries wherever they are possible. If it is not so provided, it will result in double taxation to the extent that the relief granted by the Controller falls short of the full relief which should be available as suggested above. Further, if this discretion is left to the Controller, there is every possibility of the discretion being used differently in different cases and there are likely to be discriminatory decisions.

24. *Clause 48.*—This is a new clause introduced by the Select Committee giving relief for probates, letters of administration and succession certificate fees paid on the same property. But this relief has been restricted to one sixth of the Estate Duty payable under this Act in respect of such property. If the principle of the relief which is that there should be no double levy of duty on the same property is accepted, there is no reason for limiting this relief to 1/6th of the Estate Duty. The whole of the probate or other duty paid should, therefore, be allowed to be deducted from the Estate Duty.

25. *Clause 49.*—This clause provides that Estate Duty may be collected by such means and in such manner as the Board may prescribe. This is perhaps the most important clause in the whole Bill from the point of view of the persons liable to pay the duty. Though the manner and means of paying Estate Duty might be determined by the Central Board of Revenue generally, it is desirable that certain specific provisions should be made in this clause for facilitating the payment of duty and for relieving hardships in payment. If the estate left by the deceased consists of ready cash or other items of property which are easily convertible in cash, there would be no difficulty in the payment of duty out of such resources. But where the estate consists only of immovable property or of property not readily convertible in cash, the payment of duty will be rendered difficult. In the case of very small estates particularly, the hardship will be greater as certain properties will have to be sold. One of the ways of relieving hardships in such cases will be to recognise payment of duty in the shape of immovable property. That will considerably help not only the estate by easy payment of duty but also Government by easy and ready collection of duty. Payment of duty in this way is also recognised in the U.K., in certain cases. Reference may be made in this connection to Section 56 of the U.K., Finance Act of 1910. It is, therefore, necessary to provide that, when the Controller has completed the assessment and determined the duty payable, the person liable to pay duty should be given the option to offer any item of property towards payment at the valuation adopted by the Controller. The suggestion that the valuation should be the one adopted by the Controller is not only reasonable but also ensures that the valuation is not a forced one and is one that has been accepted by Government. Another specific mode of payment that should be provided under this clause is that trustee securities should be accepted towards payment, either at the average market value during the year preceding the date of the death or at the face value whichever is higher. Though clause 50 provides that the Board may prescribe that Government Securities shall be accepted in payment of Estate Duty on such terms as it thinks fit, it is desirable that specific provision should be made as suggested above.

26. *Clause 54.*—Under this clause, any person failing, without reasonable cause, to comply with the provisions of Section 51 or 53 will be liable to a penalty of Rs. 1,000 or a sum equal to double the amount of the Estate Duty, if any, remaining unpaid according as the Controller may determine. The Controller, has, however, been given the discretion to reduce the penalty in any particular case. Section 51 deals with persons accountable, their duties and liabilities and under Section 53, every person believed to be in possession of the property of the deceased is to deliver a statement of particulars as required by the Controller. The penalty provided is unduly drastic and severe in relation to the defaults contemplated under Section 51 or 53. Though the Controller has been given the discretion to reduce the penalty in any particular case, it would seldom be exercised by him and

this is amply borne out by experience with the Income-tax Officers. Moreover, the Controller having himself imposed a full penalty in the first instance, it is too much to expect of him to modify his previous decision. It is rather curious to vest the power to reduce penalty in the same person who levies the penalty. The clause should, therefore, be amended fixing the penalty at Rs. 1,000 or the amount of Estate Duty remaining unpaid whichever is lower.

27. *Clause 60.*—This is a new clause introduced by the Select Committee for rectification of mistakes relating to valuation for Estate Duty. The provision is not comprehensive enough for it may not be possible to obtain refund in all cases where there has been overpayment of duty for any reason whatsoever. For instance, it does not provide for a refund being granted where overpayment of duty has occurred on account of aggregation of amounts mentioned in Section 33(2) which, however, are found to be latterly not legitimately aggregable. This clause should be modified on the lines of Section 48 of the Income-tax Act so that in all cases where refunds are due, it might be made possible by rectification of assessments under this clause.

28. *Clause 61.*—This clause provides for appeals to the Central Board of Revenue against the orders of the Controller. It has already been suggested under clause 4 that instead of an appeal to the Board the appeal should be to an independent Appellate Tribunal. The Select Committee have felt that the administration of the Act may be left in the hands of the Board for the first few years and that the question whether an Appellate Tribunal should be interposed may be considered later, if necessary. It might be pointed out that, for the administration of the Income-tax Act, it was thought necessary not only to bifurcate the judicial and executive functions of the Assistant Commissioners but also to have an independent Appellate Tribunal. There seems to be no reason why what has been felt to be necessary by experience for the purpose of the Income-tax Act should not be adopted here.

29. Under sub-clause (4) where the dispute is regarding the valuation of property, it will be decided by the valuers. A sort of an arbitration has been provided and the award of the valuers will be final. In the next clause it is being suggested that it is necessary to provide for an appeal to the High Court against the decisions of the valuers.

30. *Clause 62.*—Provision has been made in this clause for a reference to the High Court against the orders of the Board of any question of law arising out of such order and for a reference by the Board direct to the Supreme Court under certain circumstances. In view of the suggestions already made for an Appellate Tribunal this clause should be amended so that appeals will lie to the High Court on questions of law arising out of the orders of the Appellate Tribunal and not of the Board. Further, it is necessary that an appeal should be provided to the High Court against the decisions of the valuers under sub-clause (4) of clause 61. Questions of law are likely to arise even in the determination of the value of the estate. Various sections and rules and regulations made for purposes of valuation. for instance, under clause 17(5) will have to be interpreted. It is, therefore, necessary that at least in such cases where questions of law are involved, appeals should be provided to the High Court.

31. One last point I am constrained to make and I am doing it with very great hesitation. I do venture to say that the wordings, the qualifying clauses and the long sentences in the different clauses of the Bill are too complicated, if not clumsy, for the understanding of the ordinary man. Clauses 23 and 25 may be particularly instanced in this connection. It is true that the language of law cannot be expected to be a sample of simple expression. But at least a lay man like me also feels that it need not be an essay in what amounts to calculated confusion and verbal complexities. I am afraid that apart from the substance and subject matter of the provisions, the very language in which they are couched will give rise to endless litigation and a bewildering variety of interpretation.

NEW DELHI;
The 31*st March*, 1953.

TULSIDAS KILACHAND.

III

I associate myself with the above minute of dissent of Shri Tulsidas Kilachand, M.P., on the following clauses of the Bill, *viz.*:—

Clauses 9, 21, 33, 34, 47, 61 and 62.

NEW DELHI;
The 31*st March*, 1953.

N. C. CHATTERJEE.

IV

In appending this Note of Dissent to the Report of the Select Committee on the Estate Duty Bill, I sincerely hope that the arguments put forward by me in suggesting the various amendments which I had sent to the Select Committee would be appreciated in their proper perspective.

2. It does not need to be emphasised that it is the desire of every Indian to see our Motherland march forward with the Democratic Nations of the World and this would be done more by judiciously following the steps taken by these Nations and adapting them to meet the special conditions prevalent in our country. Such a step is fraught with a lot of difficulties and is a difficult problem, for in India there is no uniform law of inheritance which varies according to the different religions and customs which have the force of law.

3. A hurried reference to the history of Death Duties in the United Kingdom is very revealing. The present laws in existence there are not the result of the deliberations of Parliament extending over a few years. As David Harrison says in his "A practical Epitome on the Death Duties", this is "the result of a long historical process" and Woolley in his "Hand Book on the Death Duties", says that death duty came into existence first as a Stamp Duty in 1694 and by a long process of amendment in the light of experience gained and the conditions prevalent in the U.K. the present Death Duties have taken form.

4. It would therefore seem just and fair that if we adopt this Bill, then the facilities and concessions enjoyed by the people of the U.K., say even 50 years before, should be given to our people and the restrictions and high percentage relaxed at least for a period after which in the light of experience can be revised to be more in conformity with what is now in the U.K.

5. Besides the civic amenities available to the common man in India are far below the standard obtained in the U.K. and the following are special reasons to show that our country is now not quite ready for an enactment in the form now proposed—

(*i*) A high powered Taxation Enquiry Committee is to be set up shortly with the object of securing an equitable distribution of the burden of taxation as between various classes of tax-payers.

(*ii*) The Hindu Code Bill is under the consideration of the Indian Parliament and it intends to change the inheritance and succession rights of male and female members in a joint family which will have serious repercussions on the levy of Estate Duty.

(*iii*) All the States have not passed so far resolutions under Article 252 to enable the Central Legislature to frame legislation on agricultural land and this Bill will thus very seriously discriminate between States and States.

(*iv*) The payment of Estate Duty will make the disposal of joint property compulsory and lead to dismemberment of the Estate and will sound the death knell of the joint family system.

6. In the Statement of Objects and Reasons of the Bill it is stated that the aim of this Bill is to prevent "to some extent further concentration of wealth in the hands of those who are already wealthy" and the hope is expressed that "by the imposition of an estate duty such unequal distribution may be rectified to a large extent".

7. Whilst this Bill may, to a certain extent, achieve its object, to a greater extent this would adversely affect the middle class people who will become almost paupers in one generation if certain exemptions, concession, etc. are not given.

8. Whilst therefore I feel that all the amendments suggested by me should be incorporated, even though in a modified form, I am here referring only to certain amendments which I still feel should be included in the Bill—

(*1*) *Clause 5, sub-clause* (*i*)—

The words "including agricultural land situate in the States specified in the Schedule to this Act" may be deleted.

At present only a few out of the 28 States have passed the necessary resolution. Therefore so long as all the States do not pass such a resolution, agricultural land should not be included in the list of property on which Estate Duty is charged. If it is included in some States and not included in others, there would be discrimination. There will be a large number of cases where non-inclusion of agricultural property will make the property fall within the non-taxable limit even; while in States where duty will be charged on agricultural land, a number of cases will arise where simply on account of duty on agricultural land they would come within the taxable limit. The rate of taxation would also be different. The principle of uniform taxation should be followed.

(2) *Clause 5, sub-section (2)*—

The following proviso should be added—

"provided that in case any State does not agree to the passing of such a resolution, the average rate of duty applicable to such of the Estate (minus the exempted agricultural property of the deceased) as would be liable to duty under the Act, will be the average rate of duty applicable to the total Estate Property of the deceased".

This would be a very strong inducement to those States which have not passed resolutions under Article 252, to pass such a resolution, in order to save the persons residing there from being charged a higher rate, thus bringing about a uniform policy of taxation in the whole Country.

(3-A) *Clause 9.*—As regards this clause the following amendment should be incorporated—

(*i*) As for gifts *inter vivos*, the period of 2 years should be curtailed to 1 year. This period of 1 year also should be relaxed completely in case a person in good health dies suddenly due to accident or unnatural causes.

(*ii*) No period whatsoever should be fixed for gifts made for charitable purposes.

(*iii*) Provisions enshrined in Section 2(5) of the Australian Act should be adopted under Clause 32 which lay down that Estate Duty is not payable in the case of gifts to religious, scientific or public purposes or to public Hospitals or other public benevolent Institutions or to a Fund maintained for the relief of persons in necessitous circumstances.

Clause 30.—The majority in the Committee has rejected the suggestion that for a period of five years no duty should be leviable on second death. It seems to have simply preferred the British practice to that of the Americans though the latter is more equitable and is expected to mitigate the rigour of the law and will also be a great boon to joint family systems. Thus I emphasise that as in U.S.A. no levy may be made on the second death if it occurs within five years of the first.

If the second occurs in the sixth year, the reduction in duty will be by 50 per cent. and if the second death occurs between the seventh and tenth year, the reduction in duty should range from 40 per cent. to 10 per cent. according to the time interval between the deaths.

It is also necessary to provide that a third death in relation to the same property shall be entitled to the same relief as above, but the relief need not be extended to the fourth death.

Even in countries where the rate of mortality is not nearly so high as in India, the periods allowed under reduction in duty in the case of second and successive deaths are much longer. In the U.S.A., no levy is made on the second death if it occurs within five years of the first death. In Japan only 50 per cent. of the basic rate has to be paid if the third death occurs within two years of the second death with a full exemption from the charge, if the second succession occurs within five years of the first. In Chile there is no levy on the second succession within the period of ten years. If the whole or part of the same estate becomes liable for duty a number of times during a short interval as deaths follow in quick succession, it would easily wipe out a large family property.

(4) *Clause 32*—

In addition to the amendments moved by me, I wish to lay emphasis on the following—

(*i*) The exemption limit should be raised and brought on a level with that in the U.S.A. *i.e.* $100,000 which according to the present rate of exchange comes to about Rs. 5,00,000.

(*ii*) One dwelling house, more specially residential house in which the deceased and his family used to live, ceremonial ornaments, furniture, crockery, linen, utensils, etc., customary jewellery, heir-looms, drawings, paintings, family deities, prints books, manuscripts, works of art, etc. to be exempted and NOT included in the aggregate to calculate Death Duty.

(*iii*) Provision for marginal relief to be made.

(*iv*) Some Special concession in case of quick succession in Joint Hindu Families.

(*v*) Exemption of Armed Forces—I suggest section 61 of the U.K. Finance Act, 1952 be adopted.

NOTE.—Provision may also be made for giving similar concession to Police Personnel killed in action or civilians killed by enemy action during war or by any hostile action, epidemics and the like.

(5) *Clause 33*—

Proceeds of Insurance Policies specially ear-marked for purposes of payment of Estate Duty should not be included in the aggregate for calculating Estate Duty.

(6) *Clause 34*—

(*i*) This clause should be so amended that the fixation of the rates of duty and the maximum limits of exemption should be prescribed in the Bill and not be regulated by the annual Finance Acts.

To start with the rates should be low and not be altered for at least five years.

(*ii*) The minimum exemption limit should be as in the U.S.A. but anyhow not lesser than Rs. 3,00,000, even according to the former rate of exchange.

(7) *Clause 35*—

(*i*) This should be so amended that sub-clause 2 should afford relief where the holding could not be sold for a long period.

Alternatively the American law may be adopted.

(*ii*) An option should be given to the assessee as to whether he prefers the valuation of property according to market value at time of death or at time of assessment.

(8) *Clause 36-A (proposed by me)*—

A new clause 36-A may be added to provide for the valuation of assets of certain companies. Under sub-clause (4) it is provided that the Board of Revenue will provide rules for such companies. So much power should not be given to the Board to be exercised in its unfettered discretion. The law in England has been made quite definite by Section 55, sub-sections 1, 2 and 3 of the Finance Act of 1940 and therefore the same may be adopted here.

(9) *Clause 47*—

Under the clause it is provided that the amount of duty actually paid in a foreign country be deducted from the value of the property liable to Estate Duty under the Bill. I propose that the amount of duty actually paid or payable in a foreign country may be allowed to be deducted from the *Quantum* of duty payable in India in respect of the property of the deceased.

(10) *Clause 48*—

This clause should be amended to enable the assessee to pay Estate Duty in kind also and an option should be given to him to hand over any of the properties to Government at the price at which it is valued by the Government Officers.

Death Duties by D. Harrison, page 128 provides—

"Section 56 of the Finance Act (1909-1910), as amended by Section 49 of the Finance Act 1946, authorises the Commissioners to accept real or leasehold property in satisfaction of any duty payable on any death in respect of any property (whether passing on such death or not)".

(11) *Clause 49*—

This clause should be amended to allow duty to be paid by surrendering shares, debentures and securities of public bodies approved by the Government at least for the value, for which they were listed in arriving at the value of the estate liable to duty inasmuch as the forced selling of such shares and debentures would have very detrimental effect upon the trade and commerce of the country apart from fetching the owner less than what they are actually worth.

9. I will not dilate on the other amendments moved by me as my Note has run to some length. Whilst we should march ahead with the progressive Democratic countries, I report that we should go slow and take into full consideration the peculiar circumstances in which our countrymen are placed and the present handicaps we are working under, due to various causes which could all be removed only by a slow progressive method. Apart from the fact that the standard of living of the average Indian is far below that of an average Englishman the fact has to be taken into consideration that the longevity of our Countrymen is also far below that of our western brethren and the periods that we prescribe for quick succession should take this point specially into consideration.

10. I sincerely hope that the points raised by me and arguments put forth will make it possible for the House even at this stage to reconsider the clauses and wherever possible incorporate these amendments which

are mainly put forth with a view to helping the middle class people who will be the hardest hit if the Bill is passed in the form approved by the Select Committee.

KARNI SINGH.

NEW DELHI;
The 31st March 1953.

V

I have carefully examined the report of the Select Committee representing the majority view. I am appending my note of dissent with respect to matters which, to my mind, are of a fundamental character, and upon which, I do not see eye to eye with my other colleagues. Before expressing my views on the respective clauses upon which I differ, I wish to make general observations of a prefatory character.

2. In the second paragraph of the majority report, the principle of Succession Duty has not been accepted, firstly on the ground that that would be a complete revision of the scheme of the Bill, and secondly, for the reason that entry 87 of the Union List I of the Seventh Schedule of the Constitution of India reads: "Estate Duty In respect of property other than agricultural land".

3. The principal distinction between Estate Duty and Succession Duty is that in the case of the former tax is levied on the inheritance as a whole, or, in other words, on the estate which is being treated as one unit immediately on the death of the deceased and before its appropriation by his heirs. Succession Duty, on the other hand, has reference to the separate portion of the estate which is inherited. Estate Duty may, perhaps, be a more productive source of revenue but it is admitted on all hands that Succession Duty is more equitable, especially, as its incidence depends upon the quantum of the portion inherited.

4. In the case of deceased leaving one son and an estate valued at Rs. 5 lakhs, the burden of the taxation will be far less than in the case of a deceased who leaves five sons and property worth Rs. 20 lakhs. The hardship and inequity lie in the fact that a person who is inheriting much less may have to pay a higher duty as compared to another who has inherited much more. The Estate Duty works greater hardship than Succession Duty, as it does not take into consideration the ages and the number of dependants left by the deceased who are to be provided for.

5. The difficulty referred to in the majority report with reference to entry 87, List I of the Seventh Schedule of the Constitution, is not real as the term "Estate Duty" as defined in article 366(9) is very wide and flexible so as to include within its ambit, the vital principles underlying Succession Duty, *viz.* levy on separate portions inherited. For ready reference, I reproduce below, the definition as contained in article 366(9):

> "'Estate Duty' means a duty to be assessed on, or by reference to, the principal value, ascertained in accordance with such rules as may be prescribed by, or under, laws made by Parliament or the Legislature of a State relating to the duty of a property passing upon death, or deemed, under provisions of the said laws, so to pass.".

6. I feel that while the Bill embodies most of the provisions as are to be found in the corresponding laws applicable in the United Kingdom, sufficient consideration is not given to the peculiar conditions, habits, mode of life, family system, economic development and absence of social security and other distinguishing features ruling in the country. Social justice will be more effectively rendered if some of the basic principles of Succession Duty were incorporated in this Bill. In the matter of rates of duty a provision distinction ought to be made having regard to the proximity of the relationship with the deceased.

7. *Clause 7.*—Under this clause in case of the family governed by the Mitakshara, Marumakkattayam or Aliyasantana Law no duty would be payable on death of member unless he was 18 years of age at the time of his death or unless his father or other male ascendent in the male line was not a co-parcener of the same family at the time of his death. In view of the high rate of mortality and low average age at death, the age limit should be raised from eighteen years to twenty-one years in sub-clauses (2) and (3).

8. *Clause 8.*—Gifts made *mortis causa*, not exceeding a specified limit, should not be deemed to pass on the donor's death, where the donees are dependants, servants or relatives.

9. *Clause 9.*—I suggest the following changes in clause 9:

(a) The period of two years or more which must pass before death of the deceased in order to justify exemption from the levy of Estate Duty should be reduced to one year. When Estate Duty was first introduced in the United Kingdom and Australia, the limit was one year. The Pakistan Estate Duty Act provides a limit of one year only.

(b) The word '*bona fide*' unless preceded by the word 'or' in clause 9 will render nugatory the effect of the two years limit. In order to earn an exemption from Estate Duty, proving of creation of gift, two years or more previous to death will not be sufficient if the provisions stand as they are worded at present. The danger in retaining the words '*bona-fide*' is that gifts made even twenty or thirty years before death may not be exempted, until the heirs of the deceased are successful in gigging up proof of their having been made by the deceased '*bona-fide*'.

(c) The limit of two years should not be insisted upon in those cases where, subsequent to the gift, death occurs due to a fatal accident or sudden unforeseen calamity; for, in such a case, it will not be possible to hold that the particular gift was made in contemplation of death or in order to escape Estate Duty.

(d) In the proviso to clause (9) the word 'or' after the word 'public' and before the word 'charitable' should be inserted. The expression 'public charitable purpose' is vague and does not admit of a clear-cut and precise definition. These words, if retained, will create many a trap for the unwary though well-intentioned, people, and attempts at their clarification will prove needlessly expensive.

10. *Clause 10.*—If the period of two years is reduced to one year in clause 9, then the period of two years in clause 10 should also be reduced to one year for reasons already submitted.

11. The object of clause 10 is to exclude the donor from the possession and enjoyment of the property gifted. That object will be served by inserting the following words: "or by some other person on his behalf", after the word 'donee' in the fourth line. This is to provide protection to donees who are either minor or suffer from certain mental or other infirmities which may disable them from assuming control and possession of the property gifted.

12. *Clause 17.*—It will be desirable, as is the case in the United Kingdom, if rules relating to Controlled Company are embodied in the Act.

13. *Clause 21.*—By extending the time-limit to five years in the case of a private trust and to two years in the case of a public trust, the clause, as amended, has made the provisions more stringent. The limits prescribed in other clauses, *viz.* two years and six months should not be extended any further.

14. The term "*sui juris*" should have been avoided as it is both narrow and vague. Private trusts of the nature contemplated by this clause are created not only for the benefit of persons who are minors but also for the benefit of those who suffer from mental or other infirmities. Trusts are very often created for prodigals and wastrels. It will defeat the very object of creating a trust if the beneficiaries are given the power to assume possession of the property which they cannot manage. Similarly, a beneficiary may be a fit and capable person to assume possession but may be otherwise incapacitated from doing so, as for example, he may be employed abroad, or where he may be undergoing a long term of imprisonment. Similar examples can be multiplied. The explanation, in the light of the above comments, does not make an adequate and satisfactory provision.

15. *Clause 30.*—Despite a few changes made in clause 30 this provision still continues to be extremely stringent in cases of quick succession of deaths. Laws of other countries where Estate Duty has been levied since some decades, may be compared with advantage. In Chile in South America, no Estate Duty is charged where gap between two deaths is of less than ten years as that is the period within which, according to the law of Chile, the estate of the deceased can recuperate the blow of the death. In the United States of America, and in Japan, Estate Duty is not levied where second death occurs within a period of five years of the first death. In India, where there is a high rate of mortality, where health schemes have not yet been introduced, where the average longevity is very low, the exemptible period between two deaths, should, in no case, be less than five years. Even after adding the explanation 2, within the course of twelve months, an estate can be subjected to a duty four times. The provision in the case of rapid succession on account of deaths taking place after short intervals, deserves to be substantially liberalised.

16. *Clause 32.*—This clause, as amended has given some relief, but the exemptions should at least have included the principal residential building of the deceased. Such an exemption will be in accord with the prevailing sentiments of the people and the sentiments associated with ancestral or family residences. In the case of forest land the value of standing trees ought not to be taken into consideration in assessing the value of the estate passing on death, except in those cases where standing trees are cut and converted into timber.

17. In clause 31(i)(a) instead of the words "public charitable purpose" they ought to be "public or charitable purpose". The provisions, as they stand, put a check on private philanthropy. Endowments for institutions

like museums, scientific, technological or research institutes may not fall within the narrow scope of "public charitable purpose". The express object of the Bill being to reduce inequalities, gifts of the nature contemplated in clause 32(1), (a) and (b) do, in no way, come into conflict with the underlying principles. On the other hand, they have the effect of reducing the disparities of wealth. If our law with respect to exemptions in the case of philanthropic gifts had approximated to section 8(15), of the Australian Estate Duty Act, it would be far more advantageous. The relevant provisions of the Australian Act runs as under:

> "Estate Duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passed by gift *inter vivos* or settlement for religious, scientific or public educational purposes in Australia, or to a public hospital or public benevolent institution in Australia, or to a fund established and maintained for the purpose of providing money for use for such institutions or for the relief of persons in necessitous circumstances in Australia".

18. The exemption under clause 32(1)(g) as to monies payable under policies of insurance, is confined to Rs. 5,000 only and ought to be substantially increased as otherwise, it would discourage thrift.

19. The list of exemptions from payment of Estate Duty, should further be extended by inclusion of the following items:

(a) Small annuities;

(b) All taxes payable by the deceased at the time of his death;

(c) Gifts in the nature of maintaining funds as a source of income for the upkeep of the property gifted;

(d) Life assurance policy in order to provide for Estate Duty after death.

Either a new clause should be added to the Bill or a provision made under clause 5 or clause 32 for exempting levy of Estate Duty in the case of deaths due to the following causes:

(a) Persons killed in war, whether they belong to the armed forces or are civilians. Section 460 of the United Kingdom Finance Act of 1941 grants relief from Death Duties in case of deaths due to operations of war and applies equally to the case of civilians and soldiers.

(b) Members of the police force, killed in the discharge of duty.

(c) Deaths due to *vis major* or on account of negligence of persons other than the deceased, should be exempted. The desirability of such a provision will be appreciated by noticing a few illustrations. Case of deaths in dacoities accompanied with murder, where the cash, jewellery and movables are looted by the dacoits and the bread-winner and adult members are murdered. In such a case it will be extremely harsh to call upon the bereaved heirs to pay Death Duty.

20. Another case in point is where death is due to the negligence of persons other than the deceased. For instance, many persons die in consequence of fatal accidents which might have been averted but for the negli-

gence of other persons. Every year, thousands are killed by reason of negligent or criminal acts of other persons. For example, in railway and other road accidents and air crashes, many lives are lost. In a number of cases, the persons responsible for the killing are Government servants. In such cases, it will be extremely harsh to visit the members of the bereaved family with a demand for Death Duty, especially where death has been caused in consequence of an omission to discharge their duty properly on the part of Government servants responsible for the death.

21. *Clause 33.*—Clause 33 as to aggregation, very much restricts the reliefs which were given under the preceding clause. There are likely to be cases where, what has been given under clause 32 is taken away under clause 33. Exempted properties for rate purposes ought not to be aggregated. In the United Kingdom there is no similar provision. This clause should be modified so as to exclude exempted items from aggregation for purposes of determining the rate of the duty. Sub-clause (2) of clause 33 takes into account for purposes of aggregation, outstandings at the date of the death of the deceased. Usually rents and interest on loans advanced are likely to figure most among the outstandings. Debts very often become bad because of the bankruptcy of the borrowers, and tenants quite often, are either unable to pay rent or quietly leave the premises. There may be a case of fresh demands being made by the income-tax authorities on re-opening assessments under section 23(a) of Income-tax Act, 1922. If such outstandings are not excluded, persons may be called to pay Estate Duties on assets which may never be realised.

22. *Clause 34.*—Under clause 34, the minimum exemption limit has been fixed at Rs. 50,000 in case of the property consisting of an interest in a Hindu coparcenary and in other cases, at Rs. 75,000. The exemption limit should be increased to Rs. 1 lakh and Rs. 1½ lakhs respectively. Apart from the value of the rupee having depreciated to a fraction of its pre-war value, the expense and the task of the Administration will increase to a disproportionate extent. It will be extremely difficult for the Administration to take account of all such estates as are of the values which are proposed. The earlier Estate Duty Bill of 1948 fixed the exemption limit at Rs. one lakh and furthermore, it contemplated exclusion of agricultural property from being leviable to Estate Duty. The example of England does not safely admit of comparison when the other measures of social security in the form of insurance against unemployment, old age, infirmity, sickness, etc., etc., do not find their counter-part in this country.

23. *Clause 35.*—Clause 35, while providing for making an estimate of principal value has not taken into consideration the reduced value due to forced or distress sales. This matter deserves consideration, particularly where the value of the property is of a fluctuating nature like shares in joint stock companies and in certain cases, bonds and securities.

24. *Clause 42.*—Among the list of deductions there ought to be included taxes, whether Central, States or local, payable at the time of the death. In so far as they are outgoings from the estate of the deceased, they ought to be eliminated before assessing the net value of the estate. Under law, both in the United Kingdom and in Australia, similar deductions on account of such taxes are allowed. Cases will not be found wanting where taxes payable by the estate may be pending or in the process of assessment at the time of the death.

25. *Clause 47.*—This clause merely confers discretionary power upon the Controller to make an allowance for the whole or any part of duty payable in a non-reciprocating country. This leaves the law in an unsatisfactory state and similar principles as have been accepted in the recent income-tax amending Bill now pending before the Parliament should be incorporated in the Estate Duty Bill as well. A mere discretion left to the Controller will be objectionable and there is the risk of the Controller giving discriminatory decisions.

26. *Clause 48.*—The proviso to clause 48 should be deleted. The retention of the proviso where the fees exceed one-sixth of the estate duty payable, will be tantamount to levying of double duty.

27. *Clause 49.*—This confers wide and unrestricted powers upon the Board as to the means and manner which may be employed in collecting estate duty. Apart from the procedural details which may be left to be prescribed by the Board, the Act should embody specifically, the basic principles.

28. *Inter alia* it should be expressly provided that the duty is payable by easy instalments spread over a sufficiently long period so that the heirs of the deceased may not be driven to make distress sales. It is not always that the deceased will have ready cash or property which may be easily and without loss in value, be convertible into money. Forced sales under pressure put by the Boards will frequently be ruinous.

29. Payment of duty in kind should be permissible and recognised by the Act, especially in those cases where there is a sharp difference of opinion as to the value of the property between the assessee and the Board. Section 56 of the United Kingdom Finance Act of 1910 permits the Commissioners, on the application of a person liable to pay estate duty, to accept in satisfaction of the whole or any part of such duty, such part of the property as may be agreed upon between the Commissioners and that person. In such a case no stamp duty should be payable on any conveyance or transfer of property to the Government. A similar but a more liberal provision will act as a proper check against over-valuation. The Bill should have provided that when the Controller has completed the assessment and determined the duty payable, the person liable to pay the duty should have the option to offer any item of property towards payment at the valuation as assessed by the Controller.

30. *Clause 54.*—Clause 54 provides for the imposition of penalty in case of failure to comply with the provisions of clause 51 or 53, and the penalty extends to Rs. 1,000 or a sum equal to double the amount of the estate duty. This is a very harsh measure and the penalty should be limited to a sum up to Rs. 1,000. The measure imposing double the amount of estate duty as penalty is too high and this portion of the clause should be deleted.

31. *Clause 61.*—Appeals against decisions by the Controller should be before an independent tribunal presided over, preferably, by a High Court Judge. Over-valuation or under-valuation of estate can cause incalculable injury to the subject as well as to the Exchequer. One cannot lay too much stress on the desirability of having an impartial, independent and unbiassed authority with no pre-conceived prejudices in favour of either the tax-payer or the tax-collector. It is feared that in matters of valuation endless avenues will be open for corrupt valuers and officers to deprive the State of the just duty on the one hand and to bleed the tax-payer on the other. If the

appellate authority consists of the Board, their decision will not satisfy the assessee appellants before them, as they, all the time, have a lurking suspicion and fear that the Board, in all doubtful and ambiguous cases, will stress a point in favour of the revenue, to the prejudice of the assessee.

32. If the above view finds favour, then corresponding changes of a consequential nature have to be made in clause 4 of the Bill.

33. *Clause 76.*—Clause 76 which bars the jurisdiction of Courts, needs re-modelling. According to the provision as it now stands, nothing done by any Estate Duty authority shall be called in question in any Court. This gives unrestricted licence for wrong doing. The immunity should not be absolute. Clause 76 should read as follows:

> "Save as provided in this Act, nothing lawfully done by an Estate Duty authority under this Act shall be called in question in any Court, and no prosecution, suit or other proceeding shall lie against any officer of an Estate Duty authority for anything in good faith purporting to be done by such authority under this Act."

TEK CHAND.

NEW DELHI;
The 31*st March*, 1953.

VI

I regret that I am not in agreement with my colleagues in the Committee with respect to clauses 32 and 61, for the following reasons:

Clause 32.—In the Committee I had pressed for the inclusion of exemption of a dwelling house, for the reason that it is not only the focal point but also the haven of Indian domestic life, under which shelter is taken in exceptional circumstances by the near relatives of the head of the family. I have said so in the Committee, and I repeat again, that Parliament in its wisdom might agree to a ceiling to the value of one dwelling house, with the additional proviso that it should not be rented even in part for purposes of securing this exemption.

Clause 61.—Some sort of an appellate machinery, whether fully judicial or quasi-judicial, seems called for in the interests of equity, under sub-clause (4). I had originally asked for a Board of Referees, and I am prepared to accept anything equivalent to it, or an Appellate Tribunal proper. The argument advanced on behalf of Government that in the case of the Income-tax Act such an Appellate Tribunal took long years to be constituted, and that Government would like to have some experience of the administration of this legislation before they can agree to its creation, does not hold water.

LANKA SUNDARAM.

NEW DELHI;
The 31*st March*, 1953.

VII

On one point we disagree with the opinion of the Committee, namely, provision of an appeal only to the Board provided for under Clause 61, against the orders of the Controller. Both the Board and the Controller

are limbs of the revenue-collecting machinery of the Government, the Controller acting always under the directions of the Board, *vide* clause 4(5). An entirely independent Appellate Tribunal is essential to secure public confidence. We feel there is no need for waiting for actual experience, later to justify the need for such a Tribunal as under the Income-tax Act but provide for it even now.

K. A. DAMODARA MENON.
K. S. RAGHAVACHARI.

NEW DELHI ;
The 31*st March*, 1953.

VIII

This complicated piece of legislation is being rushed through when the economic stability in the country is uncertain. The plea that there should be a more distribution of property and wealth is not in consonance with the programme of development of the resources of the country which needs building up of capital, rather than disintegrating it.

2. Inclusion of agricultural land which has no uniform money value in the states or parts of states makes the working of the act very difficult.

3. Exemptions granted and deductions indicated in clauses 32, 34, 42, etc. are inadequate.

4. The rates of duty could be fixed in the Act itself for the first 5 years so that during the period of transition, the public might know where they stand and get accustomed to this new mode of taxation and be prepared to cooperate with the Government in the successful implementation of this new law.

5. Accountable responsibility is placed on too many and even if one fails to do or ignorant of doing duty in time, assessments will be delayed. The consequent difficulties to the assessees will be patent.

6. Despite the elaboration and the clarification effected in the Bill by the Select Committee, this law will not be immune from most of the evils prevalent in the administration of similar taxation measures in force today and as such there will be further depreciation in the morale of the people that govern and are governed by this new law.

B. RAMACHANDRA REDDI.

NEW DELHI;
The 31*st March*, 1953.

IX

It was because of our agreement with the principle of this Bill that in spite of its numerous shortcomings we participated in the Select Committee. And we did so with a view to bring about all possible improvements in the draft Bill. We regard that our efforts did not have much success. We, therefore, append this note of dissent from the majority view of the Select Committee.

2. We have long had in our mind suspicion regarding Government's softness, especially the softness of the Finance Minister, for the microscopic minority of very prosperous citizens occupying the topmost rung of our social ladder. The deliberate procrastination in this legislation, which is so notable a feature of the history of this Bill, is more than significant. The Bill as it now emerges from the Select Committee will not and cannot contribute towards the ushering in of a new egalitarian society. Even if Government had at any time such a real intention, it has been given the go by in the present form of the Bill.

3. This Bill as it is, will not make any mentionable contribution towards the financing of the Five Year Plan, although it was stated by the Finance Minister that this was one of the principal objectives of the Bill. This perhaps was well known to the Finance Minister, who, depends for the success of the Plan upon the mercy of foreign agencies and the perpetuation of a colonial economy, whatever high sounding appellation it may be given.

4. We know that the law relating to the realisation of death duties has been long in vogue in countries like the U.K. and the U.S.A. We also know that such laws have not prevented the formation of colossal monopolies, widening the gulf between the rich and the poor, resulting in periodic recurrence of economic crises sought to be overcome as at present by the drive towards War and most frantic effort to perpetuate imperialism. It is clear to us that Estate Duty legislation in India,. in spite of some enthusiastic cannot usher in Socialism. The Bill, however, as reported by the Select Committee, we regret to say, leaves very much to be desired even as regards its limited scope and objectives.

The experience accumulated from the working of Death Duty laws in the U.K. for a period of seventy-five years or more makes it clear that in our country there is bound to be a keener race between tax evaders and their attorneys and lawyers on the one hand and the tax officials on the other, with the dice heavily loaded against public interest. Tax-dodging being very common among the richest sections, helped by the lack of stringent provisions and deterrent punishment, and a corrupt administration, proper provisions to defeat tax evasion ought to have been specifically provided. On the other hand, the Select Committee have softened the meagre provisions regarding the consequences of evasion, by vesting the Controller with powers to reduce even the inadequate penalty prescribed.

Clear and specific provision has not been made to ensure that under cover of agreements in force between the ex-rulers of States and the Central Government, the enormous hidden wealth of those feudal potentates shall not escape tax liability. The position in regard to this hoarded wealth may present some constitutional difficulty in view of Articles 362 and 363 of the Constitution. This point was sought to be discussed in the Committee when clause 32 came up for consideration. The question is whether Government should at all be clothed with powers to grant exemptions in respect of Estate Duty in favour of any class of property, or the whole or any part of the property of any class of persons. Government was asked in the Committee to place a schedule of the categories of properties proposed to be exempted before the Committee. Even this, we regret to say, was not done. Our efforts in this matter were dismissed as merely airy apprehensions.

Specially stringent provision regarding the property of foreigners resident in India and who have long fattened on India's life-blood has not been made.

In general, the Bill has been drafted on the lines of existing legislation in the United Kingdom, which has evolved from an entirely different background. The concepts of feudality and real property which have influenced the British legislation are different from what we have in India, with the result that this Bill may have several complications under the Indian conditions.

We are giving below some of the important suggestions which we have made in vain before the Select Committee.

Clause 9.—The period fixed for *bona fide* disposition of property to be out of reach of this law is 2 years. The corresponding period in the U.K. at present is 5 years. The intention to have some legislation on Estate Duty, having been declared as early as in 1946, those who may consider themselves as to be liable for taxation have had sufficient notice. But thanks to the policy of procrastination, such taxable sections have had sufficient time to make adequate provisions to evade the law as far as possible. The period should, in fairness to public interest, have covered the period from now upto the first official declaration about this legislation. But even a suggestion to fix the period as 5 years was not accepted.

Clause 11.—Here also the period of two years is absolutely inadequate in view of what is stated under clause 9. Together with the provision of clause 9, this clause will deprive the Government of a substantial amount as in clause 9, the experience gained in the U.K. has been discarded.

Clause 20.—We apprehend that this provision will be taken advantage of especially in view of the special powers of the Board by the foreigners residing in India and owning movable properties in India and outside and also by the Indian citizens who have movable properties outside India.

Clause 23.—This clause, we feel is very cumbersome. Similar provision in the U.K. Act seems to have confused their Judiciary. The complex nature of this provision may afford facilities to the crafty assessee to take advantages while it will not give any benefit to the really honest people. We suggest that this clause be deleted.

Clause 30.—Allowances for quick succession are provided for the argument that Government do not desire to disturb the productive economy except in cases of absolute necessity. There is considerable danger to the interests of the State in this provision. In the present economy, wealth is hoarded in unproductive property also. To extend the scope of allowances for quick succession to unproductive property, both immovable and movable, and subject to the discretion of the executive authority will defeat the purpose of the Act in a considerable measure. There are landlords owning extensive tracts of unproductive land, which they neither cultivate nor give over to the landless for cultivation. There are rich men who hoard in gold and silver. The inclusion of non-productive property also in this exemption will open a way for the rich to avoid the incidence of taxation. The proviso to this clause is also likely to prejudice the Government because an exemption from duty on two or more successive deaths in three months' time, during normal days is a con-

cession unwarranted in the interests of public revenue. We suggest that such concessions need be made only in cases occurring during a national emergency. As the clause now stands those who can really pay will enjoy an undeserved concession.

Clause 32.—In this clause certain improvements have been made by the Select Committee regarding marriage expenses for unmarried daughters and wards etc. But we could not find any justification for totally exempting the life policies (insurance) meant or assigned for payment of Death duties. We suggested that such sums also be taken into account in arriving at the aggregate for the levy. This also is a concession to the rich squeezed in a clause primarily intended for the relief of the poor and middle classes. It is also intended that such concession is not available in the U.K.

Clause 34.—In view of the very low average income in this country we suggest exemption limit at Rs. 50,000/- and Rs. 30,000/- respectively against Rs. 75,000/- and Rs. 50,000/- now fixed.

Clause 61.—In providing for appeals from the decisions of the Controller, the creation of an independent Appellate Tribunal in the place of a Board was suggested. This, we thought, was very necessary in view of our accumulated experience in the working of non-independent governmental institutions.

Some improvements have no doubt been made by the Select Committee in the provisions regarding the administration of the Act also. But, our experience has been that in spite of rules and statutes, tax-evasion is very common especially in the richest class, while tax collection presents several difficulties to the poorer sections. To a very large measure this is due to the corrupt administration. It is, therefore, for the Government to effect the necessary changes in the administration if they sincerely desire to have the Act well received by the public and properly administered for them.

Subject to our dissent we agree with the legislation and hope that further delay will be avoided and the Bill put into Statute Book very soon.

NEW DELHI;

The 31st March, 1953.

V. P. NAYAR

KAMAL KUMAR BASU.

Bill No. 92A of 1952.

THE ESTATE DUTY BILL, 1953

(As Amended by the Select Committee)

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

A

BILL

to provide for the levy and collection of an estate duty.

BE it enacted by Parliament as follows:—

PART I.—PRELIMINARY

1. **Short title, extent and commencement.**—(*1*) This Act may be called the Estate Duty Act, 1953.

(*3*) It shall come into force on such date as the Central Government Kashmir.

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

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

(*1*) "affidavit of valuation" means the affidavit of valuation made under section 19-I of the Court-fees Act, 1870 (VII of 1870), in connection with an application for the grant of representation;

(*2*) "Board" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (IV of 1924);

(*3*) "company" includes any body corporate wheresoever incorporated;

(*4*) "controlled company" means a company as defined in section 17;

(*5*) "Controller" means a person appointed to be a Controller of Estate Duty under section 4 and includes a person appointed to be a Deputy Controller of Estate Duty or an Assistant Controller of Estate Duty;

(*6*) "deceased person" and "the deceased" mean a person dying after the commencement of this Act;

(*7*) "estate duty" means estate duty under this Act;

(*8*) "executor" means the executor or administrator of a deceased person and includes, as regards any obligation under this Act, any person who takes possession of, or intermeddles with, the estate of a deceased person or any part thereof;

(*9*) "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or exercisable as mortgagee;

(*10*) "incumbrances" includes mortgages and terminable charges;

(*11*) "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent but does not include reversions expectant upon the determination of leases;

(*12*) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and also includes, in the case where the deceased was a coparcener of a Hindu family, the manager for the time being of the family;

(*13*) "power to appoint property" means power to determine the disposition of property of which the person invested with the power is not the owner;

(*14*) "prescribed" means prescribed by rules made under this Act;

(*15*) "property" includes any interest in property, movable or immovable, *the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method;

Explanation 1.—The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition the expression "property" shall include the debt or right created.

Explanation 2.—The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression "property" shall include the benefit conferred by the extinguishment of the debt or right;

(*16*) "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and "on the death" includes "at a period ascertainable only by reference to the death";

(*17*) "representation" means probate of a will or letters of administration;

(*18*) "settled property" means property which stands limited to, or in trust for, any persons, natural or juridical, by way of succession, whether the settlement took effect before or after the commencement

of this Act; and "settlement" means any disposition, including a dedication or endowment, whereby property is settled;

(*19*) "Valuer" means a Valuer appointed under section 4.

3. Interpretation.—(*1*) For the purposes of this Act,—

(*a*) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property;

(*b*) a person shall be deemed to dispose of property to which he has acquired title, even if he has acquired title to it in one form and disposes of it in another;

(*c*) a disposition taking effect out of the interest of the deceased shall be deemed to have been made by him, whether the concurrence of any other person was or was not required ;

(*d*) money which a person has a general power to charge on the property of another person shall be deemed to be an interest in that property of which the former has power to dispose ;

(*e*) the domicile of a person shall be determined as if the provisions of the Indian Succession Act, 1925 (XXXIX of 1925), on the subject applied to him.

(*2*) In Parts II and III of this Act, any reference to any interest disposed of, policy of insurance effected, annuity or other interest purchased or provided or to any gift, settlement, disposition or transfer of property made, shall be construed as including any such interest, policy, annuity, gift, settlement, * disposition or transfer, as the case may be, whether it was disposed of, effected, purchased or provided, or made before or after the commencement of this Act.

4. Estate duty authorities.—(*1*) There shall be the following authorities for the purposes of this Act, namely:—

(*a*) the Board,

(*b*) Controllers of Estate Duty,

(*c*) Valuers.

(*2*) The Central Government may appoint as many Controllers of Estate Duty as it thinks fit and they shall, subject to the control of the Board, perform their functions in respect of such estates or classes of estates and such areas as are assigned to them by the Board:

Provided that, subject to such rules as may be made by the Board in this behalf, every Controller, within the local limits of whose jurisdiction any part of the estate of the deceased is situated, may exercise in relation to the whole estate or any part thereof any of the powers conferred on the Controller by this Act:

Provided further that the Board may, by general or special order, direct that any Controller specified by it in this behalf may exercise all or any of the powers conferred on the Controller by this Act to the exclusion of any other Controller.

(*3*) The Central Government shall, within twelve months after the commencement of this Act and may thereafter, from time to time, appoint a sufficient number of qualified persons to act as Valuers for the purposes of this Act and shall fix a scale of charges for the remuneration of such persons.

(*4*) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, a Controller may appoint such executive or ministerial staff as may be necessary to assist him in the execution of his functions.

(*5*) All officers and persons employed in the execution of this Act, other than Valuers, shall observe and follow the orders, instructions and directions of the Board.

PART II.—Imposition of Estate Duty

Extent of charge

5. Levy of estate duty.—(*1*) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, including agricultural land situate in the States specified in the Schedule to this Act, which passes on the death of such person, a duty called "estate duty" at the rates fixed in accordance with section 34.

(*2*) The Central Government may, by notification in the Official Gazette, add the names of any other States to the Schedule in respect whereof resolutions have been passed by the Legislatures of those States that Parliament may legislate in respect of estate duty on agricultural lands situate in those States, and on the issue of any such notification the States so added shall be deemed to be States specified in the Schedule within the meaning of sub-section (*1*).

Property which is deemed to pass

6. Property within disposing capacity.—Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.

7. Interests ceasing on death.—(*1*) Subject to the provisions of this section, property in which the deceased or any other person had an interest ceasing on the death of the deceased shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law.

(*2*) If a member of a Hindu coparcenary governed by the Mitakshara school of law dies, then the provisions of sub-section (*1*) shall not apply with respect to the interest of the deceased in the coparcenary property unless the deceased had completed his eighteenth year, or unless, at the time of his death, his father or other male ascendant in the male line was not a coparcener of the same family.

Explanation.—Where the deceased was also a member of a sub-coparcenary (within the coparcenary) possessing separate property of its own, the provisions of this sub-section shall have effect separately in respect of the coparcenary and the sub-coparcenary.

(*3*) If a member of any *tarwad* or *tavazhi* governed by the Marumakkattayam rule of inheritance or a member of a *kutumba* or *kavaru* governed by the Aliyasantana rule of inheritance dies, then the provisions of sub-section (*1*) shall not apply with respect to the interest of the deceased in the property of the *tarwad*, *tavazhi*, *kutumba* or *kavaru*, as the case may be, unless the deceased had completed his eighteenth year.

(*4*) The provisions of sub-section (*1*) shall not apply to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefits of a charity, or as a corporation sole.

Explanation.—For the removal of doubts, it is hereby declared that the holder of a *Sthanam* is neither the holder of an office nor a corporation sole within the meaning of this sub-section.

8. Gifts *mortis causa.*—Property taken as a gift made in contemplation of death shall be deemed to pass on the donor's death.

Explanation.—In this section, the expression "gift made in contemplation of death" has the same meaning as in section 191 of the Indian Succession Act, 1925 (XXXIX of 1925).

9. Gifts within a certain period before death.—Property taken under a disposition made by the deceased purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been *bona fide* made two years or more before the death of the deceased shall be deemed to pass on the death:

Provided that in the case of gifts made for public charitable purposes the period shall be six months.

10. Gifts whenever made where donor not entirely excluded.—Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that *bona fide* possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise:

Provided that the property shall not be deemed to pass by reason only that it was, not, as from the date of the gift, exclusively retained as aforesaid, if, by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years before the death.

11. Limited interests disposed of within a certain period before death.—(*1*) Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession, and the disposition or determination (or any of them if there are more than one) is not excepted by sub-section (*2*), then—

(*a*) if, had there been no disposition or determination, as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have passed on the death under section 6, that property shall be deemed by virtue of this section to be included as to the whole thereof in the property passing on the death: or

(*b*) if, had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have been deemed by virtue of section 7 to be included to a particular extent in the property passing on the death, the property in which the interest subsisted shall be deemed by virtue of this section to be included to that extent in the property passing on the death.

(2) Where a disposition or determination of an interest limited to cease on the death was *bona fide* effected or suffered not less than two years before the death (or, if it was effected or suffered for public charitable purposes, not less than six months before the death), the disposition or determination shall be excepted by this sub-section—

(*a*) if *bona fide* possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforward retained to the entire exclusion of the person who immediately before the disposition or determination had the interest and of any benefit to him by contract or otherwise; or

(*b*) in the case of a partial determination, if the conditions specified in the preceding paragraph were not satisfied by reason only of the retention or enjoyment by the deceased of possession of some part of the property, or of some benefit, by virtue of the provisions of the instrument under which he had the interest:

Provided that nothing in this sub-section shall be construed as affecting any charge of estate duty arising otherwise than by virtue of the provisions of the preceding sub-section.

(3) In the application of sub-section (*1*) to a case in which an incumbrance on the property in which the interest in question subsisted has been created by associated operations (as hereinafter defined in section 26) which included a disposition of that interest, references to that property shall be construed as references to that property free from the incumbrance, except in a case in which the incumbrance was created for consideration in money or money's worth which was applied for purposes calculated to maintain or increase the value of that property, and, in that case, shall be construed as references to that property subject to the incumbrance to the extent to which the consideration was so applied.

(4) Where an interest limited to cease on a death has been disposed of or has determined, *bona fide* possession and enjoyment of the property shall not be deemed for the purposes of sub-section (*2*) to be assumed immediately thereafter and thenceforward retained to the entire exclusion of a person who had the interest and of any benefit to him by contract or otherwise, if at any time thereafter he has a benefit by virtue of any operations associated with the disposition or determination, nor while he has such a benefit shall the property be deemed to be enjoyed to the entire exclusion as aforesaid for the purposes of the proviso to section 10.

(5) In the preceding sub-section—

(*a*) the reference to any operations associated with the disposition shall be taken as referring to any associated operations as defined in section 26, of which the disposition is one; and

(*b*) the reference to any operations associated with the determination shall be taken as referring to any associated operations as so defined of which any disposition resulting in, or effected in contemplation of or with reference to, the determination is one.

12. Settlements with reservation.—Property passing under any settlement made by the deceased by deed or any other instrument not taking effect as a will whereby an interest in such property for life or any

other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by the exercise of any power, to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settlor's death.

Explanation.—A settlor reserving an interest in the settled property for the maintenance of any of his relatives (as defined in section 26) or of himself and any of his relatives shall be deemed to reserve an interest for himself within the meaning of this section.

13. Joint investments.—Where a person, having been absolutely entitled to any property or to the funds with which any property was purchased, has caused it to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, either by himself alone, or in concert, or by arrangement, with any other person so that the beneficial interest in some part of that property passes or accrues by survivorship on his death to the other person, the whole of that property shall be deemed to pass on the death.

14. Policies kept up for a donee.—(*1*) Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit, shall be deemed to pass on the death of the assured.

Explanation.—A policy of insurance on the life of a deceased person effected by virtue or in consequence of a settlement made by the deceased shall be treated as having been effected by the deceased.

(*2*) For the purposes of sub-section (*1*), so much of the premiums paid on any policy of insurance as was, by virtue or in consequence of a settlement made by the deceased, paid out of property, whether or not provided by the deceased, comprised in the settlement or out of income, whether or not provided by the deceased, arising under the settlement, shall be treated as having been paid by the deceased:

Provided that any payments which were not made either out of property provided directly or indirectly by the deceased for the purposes of the settlement, or out of property representing that property, or out of income provided directly or indirectly by the deceased whether arising from such property or otherwise, shall not be treated as having been made by the deceased if the Controller is satisfied that those payments were not made as part of any reciprocal arrangements between the deceased and any other person.

(*3*) For the purposes of this section,—

(*a*) the expression "settlement" includes any disposition, trust, covenant, agreement or arrangement; and

(*b*) a person shall be deemed to have made a settlement if he has made or entered into the settlement directly or indirectly, and in particular (but without prejudice to the generality of the foregoing words of this clause) if he has provided or undertaken to provide funds directly or indirectly for the purposes of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

15. Annuity or other interest purchased or provided by the deceased.—Any annuity or other interest, including moneys payable under a policy of life assurance, purchased or provided by the deceased, either by himself

alone or in concert or by arrangement with any other person shall be deemed to pass on his death to the extent of the beneficial interest accruing or arising, by survivorship or otherwise, on his death.

Explanation.—The extent of the beneficial interest must be ascertained without regard to any interest in expectancy which the beneficiary may have had therein before the death.

16. Annuity or other interest purchased or provided out of property derived from the deceased.—(*1*) Section 15 shall have effect in relation to any annuity or other interest that was purchased or provided wholly or in part by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased, as if that annuity or other interest had been provided by the deceased, or, if it is proved to the satisfaction of the Controller that the application of all the property derived from the deceased would have been insufficient to provide the whole of that annuity or other interest, as if a similar annuity or interest of an amount reduced to an extent proportionate to the insufficiency proved had been provided by the deceased:

Provided that for the purpose of determining whether there would have been any such insufficiency as aforesaid, and the extent thereof, there shall be excluded from the property derived from the deceased any part thereof as to which it is proved to the satisfaction of the Controller that the disposition of which it, or the property which it represented, was the subject-matter, was not made with reference to, or with a view to enabling or facilitating, the purchase or provision of the annuity or other interest, or the recoupment in any manner of the cost thereof.

(*2*) In this section the following expressions have the meanings hereby assigned to them respectively, namely :—

(*a*) "property derived from the deceased" means any property which was the subject-matter of a disposition made by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to him for his own use or benefit, or which represented any of the subject-matter of such a disposition, whether directly or indirectly, and whether by virtue of one or more intermediate dispositions and whether any such intermediate disposition was or was not for full or partial consideration:

Provided that where the first-mentioned disposition was for full consideration in money or money's worth paid to the deceased for his own use or benefit and it is proved to the satisfaction of the Controller that the disposition was not part of associated operations which included—

(*a*) a disposition by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to the deceased for his own use or benefit, or

(*b*) a disposition by any other person operating to reduce the value of the property of the deceased ;

then, in considering whether estate duty should be charged the said first mentioned disposition shall be left out of account as if this provision did not apply in relation to it;

(*b*) "disposition" includes any trust, covenant, agreement or arrangement; and

(*c*) "subject-matter" includes, in relation to any disposition, any annual or periodical payment made or payable under or by virtue of the disposition.

(*3*) For the purposes of section 33 the deceased shall be deemed to have had an interest in any property included by virtue of this section in the property passing on the death of the deceased.

Special provisions relating to transfers to companies

17. Property transferred to a controlled company.—(*1*) Where the deceased has made to a controlled company a transfer of any property (other than an interest limited to cease on his death or property which he transferred in a fiduciary capacity), and any benefits accruing to the deceased from the company accrued to him in the three years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included in the property passing on his death to an extent determined in accordance with sub-section (*2*).

(*2*) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net income of the company for the said years:

Provided that—

(*a*) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net income of the company;

(*b*) where the company came into existence in the last year but one, or in the last, of the said accounting years, the references in this sub-section to the said accounting years shall be construed as references to the last two, or, as the case may be, the last, of those years.

(*3*) The assets of the company which are deemed to be included in the property passing on the death of the deceased by virtue of this section shall include any assets thereof which have been disposed of or disributed by the company at any time between the beginning of the first of the accounting years aforesaid and the death of the deceased either—

(*a*) in or towards satisfaction of rights attaching to shares in or debentures of the company, or

(*b*) otherwise howsoever except as follows, that is to say, by way of sale for full consideration in money or money's worth received by the company for its own use and benefit, or in or towards discharge of taxes or rates or other liability imposed by or under an enactment, or in or towards discharge of a fine or penalty or a liability for tort incurred without collusion with the injured party, including assets which have been so disposed of or distributed in a winding up, whether continuing at or completed before the death:

Provided that this sub-section shall not apply to assets disposed of or distributed by way of payments from which income-tax was deductible, or which were assessable to income-tax, of amounts not exceeding in the aggregate, as respects payments made in any accounting year or in the period between the end of the last accounting year and the death of the deceased, the amount of the income of the company for that year or period.

(4) (*i*) A controlled company is any company which at any relevant time, was or would, if these provisions had always been in force, have been deemed to be, under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially interested.

Explanation.—For the purposes of this sub-section,—

(*a*) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this sub-section apply, or of two or more companies none of which is a company to which the aforesaid provisions apply;

(*b*) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year or other period for which the accounts of the company have been made up beneficially held by the public (not including a company to which the provisions of this sub-section apply) and any such shares have, in the course of such year or other period, been the subject of dealings on a recognised stock exchange or are in fact freely transferable by the holders to other members of the public.

(*ii*) A company shall be deemed to be under the control of not more than five persons—

(*a*) if any five or fewer persons together exercise, or are able to exercise or are entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing words, if any five or fewer persons together possess, or are entitled to acquire, the greater part of the share capital or voting power of the company; or

(*b*) if any five or fewer persons together possess, or are entitled to acquire, either the greater part of the issued share capital of the company, or such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitled them to receive the greater part of the amount so distributed; or

(*c*) if,—

(*i*) on the assumption that the company is a company to which this sub-section applies; or

(*ii*) on the assumption that the company and any other company or companies are companies to which the said sub-section applies,

more than one half of the income of the company (including any income which has been apportioned to it, or could on either of those assumptions be apportioned to it, for the purposes of the said sub-section) could be apportioned for those purposes among not more than five persons.

(*iii*) In determining whether a company is or is not under the control of not more than five persons, persons who are relatives of one another, persons who are nominees of any other persons together with that other

person, persons in partnership, and persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, shall respectively be treated as a single person.

Explanation.—For the purpose of this clause,—

(*a*) the expression "relative" means a husband, wife, ancestor, lineal descendant, brother or sister;

(*b*) a person shall be deemed to be the nominee of another person, if, whether directly or indirectly, he possesses on behalf of that other person, or may be required to exercise on the direction of or on behalf of that other person, any right or power which, by virtue of any of the provisions of this sub-section, is material in determining whether a company is or is not to be deemed to be under the control of not more than five persons.

(*iv*) An investment company shall be deemed to be under the control of not more than five persons if any five or fewer persons would, if the company were wound up, be entitled as members or loan creditors of the company to receive more than half of the assets of the company which would be available for distribution to members and loan creditors.

(*v*) Notwithstanding anything contained in clause (*i*), a company which is deemed for the purposes of that clause to be under the control of not more than five persons shall not be deemed to be a subsidiary company, unless it can be deemed to be under the control of not more than five persons only by including among the persons mentioned in sub-clauses (*a*), (*b*) or (*c*) of clause (*ii*) or in clause (*iv*) a company to which the provisions of the said clause (*i*) do not apply and which is not the nominee of any other person.

(*vi*) The expression "relevant time" in this sub-section means any time during the period ending with the death of the deceased and beginning at the date of the disposition, transfer or other transaction or even relevant for the purposes of this Act, or, if that disposition, transfer or other transaction or event was one of associated operations, at the date of the earliest of those operations.

(*5*) The Board may make rules---

(*a*) prescribing * * * * * the class of dispositions or operations which shall be deemed to be transfers;

(*b*) prescribing the matters to be treated as benefits accruing to the deceased from such a company, the manner in which their amount is to be determined, and the time at which they are to be treated as accruing;

(*c*) prescribing the manner in which the net income and the value of the assets of such a company are to be determined;

(*d*) prescribing the manner in which the accounting year is to be reckoned;

(*e*) prescribing the manner in which the shares and debentures of such a company passing upon the death of the deceased are to be valued for estate duty;

(*f*) prescribing the conditions upon which and the extent to which transactions in the name of such a company shall be deemed to be *bona fide* transactions for full consideration; and

(*g*) generlly for the purpose of checking the avoidance of estate duty through the machinery of such a company:

Provided that all rules made under this sub-section shall be laid before the House of the People not less than fifteen days before the date of their final publication.

(*6*) For the purposes of section 33 the deceased shall be deemed to have had an interest in the property deemed by virtue of this section to be included in the property passing on his death.

18. Duty of company and officers of company to give information to Controller on death of transferor.—(*1*) Where the deceased has made a transfer of property to a controlled company, * * * * the company shall be under obligation to inform the Controller within forty five days from the date of the death of the deceased, of the death, of the fact that the deceased made a transfer of property to the company, and of the fact that benefits accrued to the deceased from the company, and every person who was a principal officer of the company at that date, or if the company has been wound up and dissolved before that date, who was a principal officer of the company at any time and who has been called upon to furnish any information under this section, shall be under the like obligation as respects such of the facts aforesaid as are within his knowledge, unless he knows, or has reasonable cause for believing, that the information in question has already been given to the Controller by the company or some other person.

(*2*) If the company or any such person as aforesaid who is under obligation by virtue of the preceding sub-section to give any information to the Controller makes default in the performance of that obligation, the Controller may impose upon the defaulter a penalty not exceeding one thousand rupees.

Explanation.—For the purposes of this section "principal officer" means a manager, managing agent or secretary, and includes ony person connected with the company upon whom the Controller has served a notice under this section of treating him as the principal officer thereof.

19. Collection and incidence of duty under section 17.—(*1*) The following persons shall be accountable for the duty payable on the death of the deceased by virtue of section 17, namely:—

(*a*) the company;

(*b*) any person (other than a *bona fide* purchaser for full consideration in money or money's worth received by the company for its own use and benefit) who receives, whether directly from the company or otherwise, or disposes of, any assets which the company had, whether as capital or as income, at the death or at any time thereafter;

(*c*) any person who received any distributed assets of the company on their disribution:

Provided that a person shall not,—

(*i*) by virtue of clause (b), be accountable in respect of any assets for any duty in excess of the value of those assets, or

(*ii*) by virtue of clause (*c*), be accountable in respect of any assets for more than a part of the duty bearing to the whole thereof the same proportion as the value of the distribution of those assets bears

to the principal value of the assets of the company passing on the death by virtue of section 17.

Explanation.—For the purposes of this sub-section the expressions "distributed assets" and "assets of the company passing on the death" do not include any distributed assets of the company which the deceased received on their distribution; and a person who, having received any distributed assets of the company, has died before the deceased shall be deemed to have been a person accountable by virtue of clause (*c*).

(*2*) Where a company incorporated outside the territories to which this Act extends is accountable for any duty by virtue of the preceding sub-section or of this sub-section, every person who is a member of that company at the death shall also be accountable for a rateable part of that duty in proportion to the value of his interest in that company.

(*3*) A person accountable for any duty by virtue of this section shall, for the purpose of raising and paying the duty, have all the powers conferred on accountable parties.

(*4*) On a winding up of the company, sub-section (*1*) of section 230 of the Indian Companies Act, 1913 (VII of 1913), shall have effect as if there were included in clause (*a*) of that sub-section a reference to any duty payable in respect of assets of the company passing on a death by virtue of section 16 of this Act, and section 129 of the Indian Companies Act, 1913, shall have effect accordingly.

(*5*) The duty payable on the death of the deceased by virtue of section 17 shall be a first charge by way of floating security on the assets which the company had at the death or has at any time thereafter, and any part of the duty for which by virtue of clause (*c*) of sub-section (*1*) any person is accountable in respect of any distributed assets shall be a first charge also on those assets:

Provided that nothing in this sub-section shall operate to make any property chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(*6*) Where any duty has been—

(*a*) paid by a person accountable therefor by virtue only of clause (*c*) of sub-section (*1*); or

(*b*) raised by virtue of sub-section (*5*) out of any distributed assets charged therewith;

that person or, as the case may be, the person who was entitled to those assets subject to the charge, may (without prejudice to any right of contribution or indemnity which he may have apart from this sub-section) recover the amount of the duty so paid or raised as aforesaid from any person who is accountable therefor otherwise than by virtue of the said clause (*c*).

(*7*) No part of the duty paid by the company shall be recoverable by it from any person on the ground only that he is entitled to any interest in, or to any sum charged on, the assets which the company had at the death of the deceased.

(*8*) The provisions of sub-sections (*1*) and (*3*) of section 51 shall not have effect in relation to the duty payable by virtue of section 17.

PART III.—EXCEPTIONS FROM THE CHARGE OF DUTY

20. Foreign property.—(*1*) There shall not be included in the property passing on the death of the deceased—

(*a*) immovable property situated outside the territories to which this Act extends; * * * * *

(*b*) movable property situated outside the territories to which this Act extends at the time of the death unless—

(*i*) in the case of any property, whether settled or not, the deceased was domiciled in the said territories at the time of his death; or

(*ii*) in the case of settled property of which the deceased was a life tenant, the settlor was domiciled in the said territories at the date the settlement took effect.

(*2*) The Board may make rules regulating the manner in which the nature and locality of different classes of assets shall be determined for the purposes of this section.

21. Property held by the deceased as trustee.—Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased where (whether by virtue of the original disposition or of a subsequent surrender of any benefit originally reserved to the deceased or otherwise) possession and enjoyment of the property was *bona fide* assumed by the beneficiary at least five years before the death and thenceforward retained by him to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise:

Provided that in the case of property held by the deceased as a trustee for public charitable purposes the period shall be one year.

Explanation.—In the case of a beneficiary who is not *sui juris*, the assumption of possession and enjoyment of the property by the person authorised by law to deal with any property belonging to the beneficiary shall be deemed to be assumption of possession and enjoyment by the beneficiary within the meaning of this section.

22. Interest failing before becoming an interest in possession.—In the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and one or more subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death by reason only of the failure or determination of that interest.

Explanation 1.—Where property is settled by a person on himself for life and after his death on any other person, with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed to pass to the settlor on the death of such other person by reason only that the settlor being then in possession of the property as tenant for life becomes, in consequence of such death, entitled to the immediate reversion or acquires an absolute power to dispose of the whole property.

Explanation 2.—Where the interest of a person in settled property consists of an interest in the residue or part of the residue of an estate

of a testator or intestate and the said estate continues to be under administration until the death of the person, the said interest of the person in the residue or part of the residue shall be deemed to have become an interest in possession on the date as from which the income from the residue or part of the residue would have been attributable to that interest if the residue had been ascertained immediately after the death of the testator or intestate.

23. Property reverting to disponer.—(*1*) Where by a disposition of any property an interest is conferred on any person, other than the disponer for the life of such person or determinable on his death, the remainder being conferred upon the disponer absolutely, and such person enters into possession of the interest, and thenceforward retains possession of it, * * * * * then, on the death of such person, the property shall not be deemed to pass by reason only of its reverter to the disponer in his life time.

(*2*) Where by a disposition of any property any such interest as is mentioned in sub-section (*1*) is conferred on two or more persons either severally or jointly or in succession, sub-section (*1*) shall apply in like manner as where the interest is conferred on one person:

Provided that sub-section (*1*) shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

24. Income of settled property acquired on death of spouse.—Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which took effect before the commencement of this Act and on his or her death the survivor becomes entitled to the income of the property (as distinguished from the property itself) settled by such survivor, estate duty shall not be payable in respect of that property until the death of that survivor.

25. Property passing by reason of a *bona fide* purchase for full or partial consideration in money.—(*1*) Subject to the provisions of section 26 and section 44 estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bona fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(*2*) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

26. Dispositions in favour of relatives.—(*1*) Any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of section 9 as a gift unless—

(*a*) the disposition was made on the part of the deceased for full consideration in money or money's worth paid to him for his own use or benefit; or

(*b*) the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only; and references to a gift in this Act shall be construed accordingly:

Provided that where the disposition was made on the part of the deceased for partial consideration in money or money's worth paid to him for his own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

(*2*) Where the deceased has made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of this section as consideration for the disposition made by the deceased.

(*3*) If a controlled company was concerned in a transaction in relation to which it is claimed that the provisions of clause (*a*) of or the proviso to sub-section (*1*) have effect, those provisions shall have effect in relation thereto if and only if, and to the extent only to which, the Controller is satisfied that those provisions would have had effect in the following circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company and the terms on which any such liability was incurred, and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein.

(*4*) Any gift made in favour of a relative of the deceased by a controlled company of which the deceased at the time of the gift had control within the meaning of section 17 shall be treated for the purposes of section 9 as a gift made by the deceased, and the property taken under the gift shall be treated as included by virtue of that section in the property passing on the death of the deceased, if and to the extent to which the Controller is satisfied that they would fall to be so treated in the circumstances mentioned in the last foregoing sub-section.

(*5*) If the deceased has made in favour of a controlled company a disposition which, if it had been made in favour of a relative of his, would have fallen within sub-section (*2*), this section shall have effect in like manner as if the disposition had been made in favour of a relative of his, unless it is shown to the satisfaction of the Controller that no relative of the deceased was, at the time of the disposition or subsequently during the life of the deceased, a member of the company.

Explanation.—For the purposes of this sub-section a person who is, or is deemed by virtue of this provision to be, a member of a controlled company which is a member of another such company shall be deemed to be a member of that other company.

(*6*) Where there have been associated operations effected with reference to the receiving by the deceased of any payment in respect of such an annuity or other interest as is mentioned in sub-section (*2*), or effected with a view to enabling him to receive or to facilitating the receipt by him of any such

payment, this section shall have effect in relation to each of those associated operations as it has effect in relation to the creation or disposition in favour of the deceased of such an annuity or other interest.

(7) In this section—

(*i*) "relative" means, in relation to the deceased,—

(*a*) the wife or husband of the deceased,

(*b*) the father, mother, children, uncles and aunts of the deceased, and

(*c*) any issue of any person falling within either of the preceding sub-clauses and the other party to a marriage with any such person or issue;

(*ii*) reference to "children" and "issue" include reference to illegitimate children and to adopted children;

(*iii*) "annuity" includes any series of payments, whether interconnected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise, and payments of dividends or interests on shares in or debentures of a company shall be treated for the purposes of this section as a series of payments constituting an annuity limited to cease on a death if the payments are liable to cease on the death, or the amounts thereof are liable to be reduced on the death, by reason directly or indirectly of the extinguishment or any alteration of rights attaching to, or of the issue of any shares in or debentures of a company;

(*iv*) "associated operations" means any two or more operations of any kind being—

(*a*) operations which affect the same property, or one of which affects some property and the other or others of which affect property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income; or

(*b*) any two operations of which one is effected with reference to the other, or with a view to enabling it to be effected or to facilitating its being effected, and any third operation having a like relation to either of those two, and any fourth operation having a like relation to any of those three, and so on;

whether those operations are effected by the same person or by different persons, whether they are connected otherwise than as aforesaid or not, and whether they are contemporaneous or any of them precedes or follows any other.

27. Effect of new or increased rates of duty on certain prior sales and mortgages.—Where an interest in expectancy in any property has, whether before or after the commencement of this Act, been *bona fide* sold or mortgaged for full consideration in money or money's worth, and the rates of estate duty in force in the case of a person dying when the interest falls into possession are higher than the rates in force, if any, in the case of a person dying at the time of the sale or mortgage, then—

(*a*) no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than the

duty, if any, which would have been payable if the rates of estate duty applicable had been the rates in force, if any, in the case of a person dying at the time of the sale, or mortgage, and

(*b*) in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

28. Settled property in respect of which since the date of the settlement estate duty has been paid on the death of the deceased's spouse.—If estate duty has already been paid in respect of any settled property since the date of the settlement, on the death of one of the parties to a marriage, the estate duty shall not be payable in respect thereof on the death of the other party to the marriage, unless the latter was at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose of such property, and, if on his death subsequent limitations under the settlement take effect in respect of such property, was *sui juris* at the time of his death, or had been *sui juris* at any time while so competent to dispose of the property.

29. Agreement for avoidance or relief of double taxation with respect to estate duty.—The Central Government may enter into an agreement with the Government of any reciprocating country for the avoidance or relief of double taxation with respect to estate duty leviable under this Act and under the corresponding law in force in the reciprocating country and may, by notification in the Official Gazette, make such provision as may be necessary for implementing the agreement.

Explanation.—The expression "reciprocating country" for the purposes of this Act means any country which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating country.

30. Allowance for quick succession to property.— Where the Board is satisfied that estate duty has become payable on any property * * * * passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death in respect of the property so passing shall be reduced as follows:—

Where the second death occurs within one year of the first death, by fifty per cent.;

Where the second death occurs within two years of the first death, by forty per cent.;

Where the second death occurs within three years of the first death, by ten per cent.;

Where the second death occurs within four years of the first death, by twenty per cent.;

Where the second death occurs within five years of the first death, by ten per cent.:

Provided that where the value on which the duty is payable of the property on the second death exceeds the value on which the duty was payable of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

Explanation 1.—For the purposes of this section every death shall be deemed to be a second death in relation to the death immediately preceding.

Explanation 2.—In computing any period for the purposes of this section, deaths occurring within a period of three months after the death of any person in respect of whose property estate duty has become payable, shall be treated as one death, and no estate duty shall again be payable on the same property by reason of the subsequent deaths occurring within the said period of three months.

31. Exemption of * interest of a Hindu widow dying within seven years of her husband's death.—Where on the death of any person governed by any school of Hindu law, his interest in any property has devolved on his widow, then, if the widow dies within seven years of her husband's death and the interest aforesaid devolves upon persons who were members of a coparcenary immediately before or after his death or any of them, no estate duty shall be leviable in respect of the passing of the interest aforesaid on the death of the widow, if and in so far as estate duty had been paid in respect of the passing of such interest on the death of her husband.

32. Exemptions.—(*1*) To the extent specified against each of the clauses in this sub-section, no estate duty shall be payable in respect of property of any of the following kinds belonging to the deceased which passes on his death—

(*a*) property taken under a gift made by the deceased for a public charitable purpose within a period of six months from his death, to the extent of rupees two thousand and five hundred in value;

(*b*) property taken under a gift made by the deceased for any other purpose within a period of two years before his death, to the extent of rupees one thousand and five hundred in value;

(*c*) household goods, including tools of artisans, agricultural implements or any other tools or implements as were necessary to the deceased to enable him to earn his livelihood, to the extent of rupees two thousand and five hundred in value;

(*d*) books not intended for sale;

(*e*) wearing apparel, but not including any precious or semi-precious stones or ornaments worked or sewn into the wearing apparel;

(*f*) moneys payable under one or more policies of insurance effected by the deceased on his life for the purpose of paying estate duty or assigned to the Government for the said purpose, to the extent of the amount of duty payable;

(*g*) moneys payable under one or more policies of insurance effected by the deceased on his life, to the extent of rupees five thousand;

(*h*) drawings, paintings, prints, manuscripts, works of art or scientific collections which are of national, scientific or historical interest and which are retained in the family of the deceased and dealt with or disposed of in accordance with such conditions as the Board may prescribe, or which are given absolutely or bequeathed to Government or to any University or other public institution;

(*i*) drawings, paintings, photographs, prints, manuscripts and any other heir-loom, not falling within clause (*h*), which are retained in the family of the deceased and are not intended for sale;

(*j*) gifts made by a deceased parent or natural guardian in consideration of the marriage of any of his female relatives dependent upon him for the necessaries of life, or moneys earmarked for such purpose under policies of insurance or declarations of trust or settlements effected or made by the deceased, to the extent of rupees five thousand in respect of the marriage of each of such relatives.

(*2*) If the Central Government is of opinion that in respect of any class of property or class of persons the circumstances are such that some relief in addition to the reliefs provided in sub-section (*1*) should be given, it may, by notification in the Official Gazette, make any exemption, reduction in rate or other modification in respect of estate duty in favour of any such class of property or the whole or any part of the property of any class of persons, and any notification so issued shall be laid before both Houses of Parliament as soon as may be after it is issued.

PART IV.—AGGREGATION OF PROPERTY AND RATES OF DUTY

33. Aggregation.—(*1*) For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing, excluding property on which no estate duty is leviable under section 34, but including property exempted from duty under section 32 and agricultural land situate in any State not specified in the Schedule, shall be aggregated so as to form one estate and the duty shall be levied at the rate or rates applicable in respect of the principal value thereof:

Provided that any property so passing, in which the deceased never had an interest, not being a debt or right or benefit that is treated as property by virtue of the *Explanations* to clause (*15*) of section 2, shall not be aggregated with any other property, but shall be an estate by itself and the estate duty shall be leviable at the rate or rates applicable in respect of the principal value thereof.

(*2*) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(*3*) Property passing on any death shall not be aggregated more than once nor shall estate duty in respect thereof be levied more than once on the same death.

(*4*) Where an estate includes any property which is exempt from estate duty, the estate duty leviable on the property which is not so exempt shall be an amount bearing to the total amount of duty which would have been payable on the whole estate had no part of it been exempted the same proportion as the unexempted value of the property bears to the value of the whole estate.

Explanation.—For the purposes of this sub-section property which is exempt from estate duty means any property which is exempt from estate duty, the estate duty leviable on the property which is not so exempt-not specified in the Schedule.

34. Rates of duty to be according to Central Act.—(*1*) The rates of estate duty shall be according to such scales as may be fixed by an Act of Parliament:

Provided that no such duty shall be levied upon—

(*a*) property which consists of an interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliayasantana law, to the extent to which the principal value of the estate does not exceed rupees fifty thousand;

(*b*) property of any other kind, to the extent to which the principal value of the estate does not exceed rupees seventy-five thousand.

(*2*) Where an estate passing on the death of a person consists partly of property of the nature described in clause (*a*) of the proviso to sub-section (*1*) and partly of the nature described in clause (*b*) of the said proviso, the estate duty payable thereon shall be—

(*i*) the amount which bears to the total amount of estate duty which would have been payable on the estate had it wholly consisted of property of the nature described in clause (*a*) the same proportion as the value of such property bears to the value of the estate, *plus*

(*ii*) the amount which bears to the total amount of estate duty which would have been payable on the estate had it wholly consisted of property of the nature described in clause (*b*) the same proportion as the value of such property bears to the value of the estate.

PART V.—VALUE CHARGEABLE

35. Principal value how to be estimated.—(*1*) The principal value of any property shall be estimated to be the price which, in the opinion of the Controller it would fetch if sold in the open market at the time of the deceased's death.

(*2*) In estimating the principal value under this section the Controller shall fix the price of the property according to the market price at the time of the deceased's death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time:

Provided that where it is proved to the satisfaction of the Controller that the value of the property has depreciated by reason of the death of the deceased, the depreciation shall be taken into account in fixing the price.

36. Valuation of shares in a private company where alienation is restricted.—Where the articles of association of a private company contain restrictive provisions as to the alienation of shares, the value of the shares, if not ascertainable by reference to the value of the total assets of the company, shall be estimated to be what they would fetch if they could be sold in the open market on the terms of the purchaser being entitled to be registered as holder subject to the articles, but the fact that a special buyer would for his own special reasons give a higher price than the price in the open market shall be disregarded.

37. Valuation of interests in expectancy.—Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into

possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then—

(*a*) for the purpose of determining the rate of estate duty in respect of the rest of the estate, the value of the interest shall be its value at the date of the death of the deceased; and

(*b*) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

38. Valuation of benefits from interests ceasing on death.—The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) if the interest extended to the whole income of the property, be the principal value of that property; and

(*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

39. Valuation to be made by the Controller.—Subject to the provisions of this Act, the value of any property for the purpose of estate duty shall be ascertained by the Controller in such manner and by such means as may be prescribed and if he authorises a person to inspect any property and to report the value thereof for the purposes of this Act, that person may enter upon the property and inspect it at such reasonable times as may be prescribed.

40. Costs of valuation.—Where the Controller requires any person to report on the value of any property for the purposes of this Act, the reasonable costs of such valuation shall be defrayed by the Controller.

41. Controller may accept and certify valuation when convenient.—The Controller on application from a person accountable for the duty on any property forming part of an estate shall, where he considers that it can conveniently be done, certify the amount of the valuation accepted by him for any class or description of property forming part of such estate.

PART VI.—Deductions

42. Reasonable funeral expenses and, with some exceptions, debts and incumbrances to be allowed for in determining chargeable value of estate.—In determining the value of an estate for the purpose of estate duty, allowance shall be made for * funeral expenses (not exceeding rupees one thousand) and for debts and incumbrances; but an allowance shall not be made—

(*a*) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless, subject to the provisions of section 26, such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, or

(*b*) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, or,

(*c*) more than once for the same debt or incumbrance charged upon different portions of the estate, or

(*d*) for debts incurred by or on behalf of the deceased by way of dower, to the extent to which such debts are in excess of rupees five thousand,

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the property liable thereto.

Explanation.—For the purposes of this section, "funeral expenses" include all expenses which may have to be incurred in connection with the *sraddha* ceremonies of the deceased for a period of one year from his death.

43. Limitations on debts deductible.—Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise of any interest in expectancy in any property passing or deemed to pass on the death of the deceased and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of estate duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance:

Provided that—

(*a*) if part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only; and

(*b*) if a person whose interest in expectancy in the property so purchased, acquired or extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

44. Further limitations.—(*1*) Any allowance which, but for this provision, would be made under section 42 for a debt incurred by the deceased as mentioned in clause (*a*) of that section, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefor which consisted of—

(*a*) property derived from the deceased; or

(*b*) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased:

Provided that if, where the whole or a part of the consideration given consisted of such consideration as is mentioned in clause (*b*) of this sub-section, it is proved to the satisfaction of the Controller that the value of the consideration given, or of that part thereof, as the case may be, exceeded

that which could have been rendered available by application of all the property derived from the deceased, other than such (if any) of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the proviso to sub-section (*1*) of section 16 in relation to the purchase or provision of an annuity or other interest, no abatement shall be made in respect of the excess.

(*2*) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which sub-section (*1*) would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that sub-section has effect on his death, shall, unless so paid or applied two years before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall, notwithstanding anything in section 24, be payable in respect thereof accordingly.

(*3*) The provisions of sub-section (*2*) of section 16 shall have effect for the purpose of this section as they have effect for the purpose of that section.

45. Debts to persons resident in foreign country not to be deducted in first instance except from duty-paid property in that county.—An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the territories to which this Act extends (unless contracted to be paid in the said territories or charged on properties situate within the said territories), except out of the value of any property of the deceased situate out of the said territories in respect of which estate duty is paid; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Controller that the property of the deceased situate in the foreign country in which the person to whom such debts are due resides is insufficient for their payment.

46. Cost of realising or administering foreign property may be allowed for within certain limits.—Where the Controller is satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the territories to which this Act extends, he may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

47. Allowance for duty paid in a non-reciprocating country.—Where any property passing on the death of the deceased is situate in a non-reciprocating country and the Controller is satisfied that by reason of such death any duty is payable in that country in respect of that property, he may, subject to such rules as may be made by the Board in this behalf, make an allowance of the whole or any part of the amount of that duty from the value of the property.

Explanation.—In this section, the expression "non-reciprocating country" means any country other than India which has not been declared to be a reciprocating country for the purposes of this Act.

48. Relief from estate duty where court-fees have been paid for obtaining representation to estate of deceased.—Where any fees have been paid under any law relating to court-fees in force in any State other than the

State of Jammu and Kashmir for obtaining probate, letters of administration or a succession certificate in respect of any property on which estate duty is leviable under this Act, the amount of the estate duty payable shall be reduced by an amount which is equal to the court-fees so paid:

Provided that the total amount of such reduction shall in no case exceed one-sixth of the estate duty payable.

PART VII.—Collection of the Duty

49. Method of collection of duty.—Estate duty may be collected by such means and in such manner as the Board may prescribe.

50. Payment of duty may be accepted in prescribed Government securities.—The Board may prescribe that Government securities shall be accepted in payment of estate duty on such terms as it thinks fit.

51. Persons accountable, and their duties and liabilities.—(*1*) Where any property passes on the death of the deceased—

(*a*) every legal representative to whom such property so passes for any beneficial interest in possession or in whom any interest in the property so passing is at any time vested,

(*b*) every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested, and

(*c*) every person in whom any interest in the property so passing is vested in possession by alienation or other derivative title,

shall be accountable for the whole of the estate duty on the property passing on the death but shall not be liable for any duty in excess of the assets of the deceased which he actually received or which, but for his own neglect or default, he might have received:

Provided that nothing in this section shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an heir-at-law proves to the satisfaction of the Controller that some other person is in adverse possession of any assets of the deceased, the heir-at-law shall not be accountable for the portion of the estate duty payable in respect of such assets:

Provided that he shall become so accountable if, and to the extent that, he subsequently recovers possession of such assets.

(*3*) Every person accountable for estate duty under the provisions of this section shall, within six months of the death of the deceased or such later time as the Controller may allow, deliver to the Controller and verify to the best of his knowledge and belief, an account of all the property in respect of which estate duty is payable.

(*4*) Where the person accountable knows of any property which he has not included in his account because he does not know its amount or value, he may state that such property exists, but he does not know the amount or value thereof and that he undertakes, as soon as the amount and value are ascertained to bring a supplementary account thereof and to pay both the duty for which he may be liable in respect of such property and any

further duty payable by reason thereof for which he may be liable in respect of the property mentioned in the original account.

(*5*) Where two or more persons are accountable, whether in the same capacity or in different capacities, for estate duty in respect of any property passing on the death of the deceased, they shall be liable jointly and severally for the whole of the estate duty on the property so passing.

52. Persons accountable may include trustees in certain cases.—(*1*) Where an interest limited to cease on a death within the meaning of section 11 after becoming an interest in possession is disposed of or determines wholly or partly, then, whatever the nature of the property in which the interest subsisted, the following persons shall be accountable for any estate duty payable on the death by virtue of that section (in addition to any persons accountable therefor apart from this section), that is to say—

(*a*) if the settlement under which the interest subsisted is in existence at the death, the trustees for the time being of that settlement; and

(*b*) if it is not, the persons who were the last trustees of that settlement.

(*2*) Where—

(*a*) the trustees of a settlement may become accountable for estate duty payable by virtue of section 11 in respect of any property; and

(*b*) it is intended that the property or any part thereof shall cease to be comprised in the settlement;

then if the trustees obtain from the Controller a certificate of the amount which in the opinion of the Controller may properly be treated as the prospective amount of the duty, and give the Controller all the information and evidence required by the Controller in connection with the application for the certificate, no person shall be accountable as trustee of the settlement for the duty to which the certificate relates to an amount in excess of the amount certified.

(*3*) It is hereby declared that a person who may become accountable as trustee of a settlement for estate duty payable by virtue of section 11 on property which is or has been comprised in the settlement has a lien for the prospective amount of the duty and the costs in respect thereof on any property in his hands which is so comprised.

Explanation.—References in this section to the prospective amount of any duty are to be taken as referring to the prospective amount of the duty on the assumption that it will become chargeable.

53. Every person believed to be in possession to deliver statement of particulars of property as required by Controller.—Every person accountable for estate duty, every company to which, in the opinion of the Controller, a transfer of property has been made by the deceased as mentioned in section 17, every person who is or was at any time an officer or auditor of such a company, and every person whom the Controller believes to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate shall, if required by the Controller, deliver to him and verify, to the best of his knowledge and belief, a statement of

such particulars together with such accounts, documents, evidence or information as the Controller may require relating to any property which he has reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased.

54. Penalty for default.—Any person who without reasonable cause has failed to comply with the provisions of section 51 or section 53 or has failed to comply with the said provisions within the time allowed, shall be liable to pay a penalty of one thousand rupees or a sum equal to double the amount of estate duty, if any, remaining unpaid for which he is accountable, according as the Controller may direct:

Provided that the Controller may reduce the penalty in any particular case.

55. Executor to specify all chargeable property with affidavit of valuation.—In all cases in which a grant of representation is applied for within six months of the death of the deceased—

(*a*) the executor of the deceased shall, to the best of his knowledge and belief, specify in an appropriate account annexed to the affidavit of valuation filed in court under section 19-I of the Court-fees Act, 1870 (VII of 1870), all the property in respect of which estate duty is payable upon the death of the deceased and shall deliver a copy of the affidavit with the account to the Controller, and

(*b*) no order entitling the applicant to the grant of representation shall be made upon his application until he has delivered the account prescribed in clause (*a*) and has produced a certificate from the Controller under section 58 or section 65 that the estate duty payable in respect of the property included in the account has been or will be paid, or that none is due, as the case may be.

56. Estate duty when due and how and when to be collected.—(*1*) Estate duty shall be due from the date of the death of the deceased and shall be collected upon the account delivered under section 51 or clause (*a*) of section 55 or the account prepared under sub-section (*2*) of section 59.

(*2*) When any estate duty, penalty, interest or any other sum chargeable under this Act has been determined in consequence of any order passed under or in pursuance of this Act, the Controller shall serve on the person accountable a notice of demand in the prescribed form specifying the sum so payable and the time within which and the place at which it is payable.

57. Limitation for commencing proceedings for levy of estate duty.—No proceeding for the levy of any estate duty under this Act shall be commenced after the expiration of twelve years from the date of death of the deceased in respect of whose property estate duty became leviable.

58. Duty to be paid or security for payment furnished on delivery of account and certificate to be granted thereupon.—Upon delivery of the account under section 51 or clause (*a*) of section 55, the person delivering it shall pay to the Controller, or furnish security to the satisfaction of the Controller for the payment of, the estate duty, if any, payable in respect of the property included in the account, and the Controller shall thereupon grant him a certificate that such duty has been or will be paid, or that none is due, as the case may be.

59. Controller's powers in respect of valuations.—(*1*) If the Controller is of opinion that the person delivering the account has under-estimated the value of the property in respect of which estate duty is payable (whether by placing too low a value on the property included in the account or by omitting to include therein property that ought to have been included), the Controller may inquire into the matter in such manner and by such means as he thinks fit and, if still of opinion that the value of the property has been under-estimated, may require him to amend the valuation, and if that person does not amend the valuation to the satisfaction of the Controller, the Controller may determine the valuation on the basis of which estate duty is payable after giving the person accountable an opportunity of being heard.

(*2*) In any case where no account has been delivered as required by section 51 or clause (*a*) of section 55, the Controller may cause an account of the property passing on the death of the deceased to be prepared in such manner and by such means as he thinks fit and may call upon any person who in his opinion is accountable for the payment of estate duty in respect of the property to accept such account, and if that person does not accept the account or his liability, the Controller may determine the estate duty payable by that person.

60. Rectification of mistakes relating to valuation for estate duty.—(*1*) If, after the determination of the estate duty payable in respect of any estate, it appears to the Controller that, by reason of any mistake apparent from the record or of any mistake in the valuation of any property in any case other than a case in which the valuation has been the subject matter of an appeal under this Act or of the omission of any property, the estate duty paid thereon is either in excess of or less than the actual duty payable, he may, either on his own motion or on the application of the person accountable and after obtaining the previous approval of the Board, at any time within three years from the date on which the estate duty was first determined—

(*a*) refund the excess duty paid, or, as the case may be,

(*b*) determine the additional duty payable on the property:

Provided that where the person accountable had fraudulently underestimated the value of any property or omitted any property, the period shall be six years:

Provided further that no order shall be made under this sub-section unless the person accountable has been given an opportunity of being heard.

(*2*) Nothing contained in sub-section (*1*) shall render any person accountable to whom a certificate that the estate duty has been paid is granted liable for any additional duty in excess of the assets of the deceased which are still in his possession, unless the person accountable had fraudulently attempted to evade any part of the estate duty in the first instance.

61. Appeal against determination by Controller.—(*1*) Any person objecting to the valuation made or the estate duty determined by the Controller or denying his liability to account for the duty payable in respect of any property or objecting to any penalty levied by the Controller under section 54, may, within ninety days of the receipt of the notice of demand under section 56, appeal to the Board in the prescribed form and verified in the prescribed manner.

(*2*) The Board may admit an appeal after the expiry of ninety days referred to in sub-section (*1*) if it is satisfied that there was sufficient cause for not presenting it within that period.

(*3*) The Board may, in disposing of any appeal, hold or cause to be held such further inquiry as it thinks fit, and after giving the appellant an opportunity of being heard, pass, subject to the provisions of sub-section (*4*) such orders thereon as it thinks fit and shall send a copy of such orders to the appellant and the Controller.

(*4*) Where the dispute pertains to any valuation of property, the Board may, and if the appellant so requires, it shall, refer the question of disputed value to the arbitration of two valuers, one of whom shall be nominated by the Board and the other by the appellant, and the costs of any such arbitration shall be borne by the Board or the appellant, as the case may be, at whose instance the matter was referred to the valuers:

Provided that where the appellant has been wholly or partially successful in any reference made at his instance, the extent to which costs should be borne by the appellant shall be at the discretion of the Board:

Provided further that if there is a difference of opinion between the two valuers, the matter shall be referred to a third valuer nominated by agreement, or failing agreement by the Central Government, and his decision on the question of valuation shall be final.

(*5*) Notwithstanding that an appeal has been filed before the Board, so much of the estate duty as is not in dispute shall be payable by the appellant.

62. Statement of case by the Board to High Court.—(*1*) Within ninety days of the date upon which he is served with an order under sub-section (*3*) of section 61, the person accountable may present an application to the Board in the prescribed form, accompanied by a fee of five hundred rupees, requiring the Board to refer to the High Court any question of law arising out of such order, and the Board shall, if in its opinion a question of law arises out of such order, state the case for the opinion of the High Court:

Provided that the Board may admit such an application after the expiry of ninety days if it is satisfied that there was sufficient cause for not presenting it within the said period.

(*2*) If, on an application made under sub-section (*1*), the Board—

(*a*) refuses to state a case on the ground that no question of law arises, or

(*b*) rejects it on the ground that it is time-barred, the person accountable may, within three months from the date on which he is served with a notice of refusal or rejection, as the case may be, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Board, require the Board to state the case to the High Court and on receipt of such requisition the Board shall state the case:

Provided that if, in any case where it has been required by a person accountable to state a case, the Board refuses to do so on the ground that no question of law arises, such person may within thirty days from the

date on which he receives notice of the refusal to state the case, withdraw his application and if he does so the fee paid by him under sub-section (*1*) shall be refunded.

(*3*) Section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to an application to the High Court under sub-section (*2*).

(*4*) If, on an application made under sub-section (*1*), the Board is of opinion that either on account of the importance of any question of law involved in the case or on account of a conflict in the decisions of different High Courts in respect of any particular question of law arising therefrom, it is expedient that a case should be stated direct to the Supreme Court, the Board may state the case direct to the Supreme Court.

(*5*) The case shall set forth the facts, the determination of the Board and the questions of law which arise out of the case.

(*6*) If the High Court or the Supreme Court is not satisfied that the case as stated is sufficient to enable it to determine the questions of law raised thereby, the Court may require the Board to make such additions thereto, or alterations therein, as it may direct in this behalf.

(*7*) The High Court or the Supreme Court upon hearing any such case shall decide the question of law raised therein and in doing so may, if it thinks fit, alter the form of the question of law and shall deliver its judgment thereon containing the ground on which such decision is founded and shall send a copy of such judgment, under the seal of the Court and the signature of the Registrar, to the Board which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(*8*) The costs of any reference to the High Court or to the Supreme Court shall be in the discretion of the Court.

(*9*) Notwithstanding that a reference has been made under this section to the High Court or to the Supreme Court, estate duty shall be payable in accordance with the determination made by the Board.

(*10*) For the purposes of this section "High Court" means the High Court to which, or to a court subordinate to which, an application for grant of representation has been made, or where no such application has been made, the High Court which would have jurisdiction to entertain such an application:

Provided that in the case of Part C States, "High Court" means—

(*a*) in relation to Ajmer and Vindhya Pradesh, the High Court at Allahabad,

(*b*) in relation to Bhopal, the High Court at Nagpur,

(*c*) in relation to Bilaspur, Delhi and Himachal Pradesh, the High Court of Punjab,

(*d*) in relation to Coorg, the High Court of Mysore,

(*e*) in relation to Kutch, the High Court at Bombay,

(*f*) in relation to Manipur and Tripura, the High Court of Assam, and

(*g*) in relation to the Andaman and Nicobar Islands, the High Court at Calcutta.

63. Case to be heard by Benches of High Courts and appeal to lie in certain cases to the Supreme Court.—(*1*) When a case has been stated to the High Court under section 62, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges:

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

(*2*) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a case stated under section 62 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

(*3*) The provisions of the Code of Civil Procedure, 1908 (Act V of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (*7*) of section 62:

Provided further that the High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution to any court subordinate to the High Court.

(*4*) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of the Supreme Court in the manner provided in sub-section (*7*) of section 62.

64. Grant of representation not to be delayed on reference to High Court.—Where any grant of representation has been applied for, it shall not be delayed by reason of any reference to a High Court under section 62.

65. Certificate of payment of duty, and penalty for non-payment.—(*1*) Where the valuation is amended by the person accountable upon the Controller's requisition under sub-section (*1*) of section 59 or is enhanced by the High Court upon the Board's reference under section 62, and in any case where the original valuation has been discovered to be too low, such person shall, within two months of the amendment or enhancement or discovery, pay the deficit duty which is payable in respect of the property upon the amended or enhanced or full valuation and the Controller shall thereupon grant him a certificate accordingly.

(*2*) Where the valuation is reduced by the High Court on the Board's reference under section 62, the Controller shall refund to the person accountable any excess duty paid by him within two months from the date of receipt by him of the order and shall grant to him a certificate that the full duty payable in respect of the property has been paid.

(*3*) In any case where no account has been delivered as required by section 51 or clause (*a*) of section 55 the person who is called upon to accept the account prepared by the Controller under sub-section (*2*) of section 59 shall, within two months of his acceptance or, as the case may be, of the final disposal of the reference made under sub-section (*1*) of section 62, pay the full duty payable in respect of the property and the Controller shall thereupon grant him a certificate accordingly.

(*4*) If the person accountable does not pay the amount of duty due from him under sub-section (*1*) or sub-section (*3*) within the period specified therein, he shall be liable to a penalty of one thousand rupees or a sum equal to twice the amount due according as the Controller may elect:

Provided that the Controller may in any particular case reduce the penalty.

(*5*) Where a person accountable for the estate duty in respect of any property passing on a death applies to the Controller at any time and delivers and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Controller may determine the estate duty payable in respect of the property and on payment of that duty, the Controller shall give him a certificate accordingly.

66. Commutation of duty in respect of interest in expectancy.—The Controller in his discretion may, upon application by a person entitled to an interest in expectancy, commute the estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and, for determining that sum, shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent.; and on the receipt of such sum the Controller shall give a certificate accordingly.

67. Assessment in complicated cases.—Where by reason of the number of deaths upon which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of estate duty payable in respect of any property or any interest therein or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Board, on the application of any person accountable for the duty and upon his giving to the Board all the information in his power respecting the amount of the property and the several interests therein and other circumstances of the case, may by way of composition for all or any of the duties payable in respect of the property or interest and the various interests therein or any of them, assess such sum on the value of the property or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed in full payment of all claims for estate duty in respect of such property or interest, and shall give a certificate accordingly.

68. Controller may allow postponement of payment on terms.—(*1*) Where the Controller is satisfied that the estate duty leviable in respect of any 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.

(*2*) Notwithstanding anything contained in sub-section (*1*), estate duty in respect of immovable property may at the option of the person accountable be paid in eight equal yearly instalments or sixteen equal half-yearly instalments with interest at the rate of four per cent. per annum or any higher interest yielded by the property from the date on which the first instalment is payable and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid with such interest to the date of payment may be paid at any time and in case where the property is sold shall be paid on the completion of the sale and if not so paid shall be recovered in the manner specified in section 71.

69. Board may remit duty and interest outstanding after twenty years from death.—If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the Board may, if it thinks fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

70. Forms.—All affidavits, accounts, certificates, statements and forms used for the purposes of this Part of this Act shall be in such form and contain such particulars as may be prescribed by the Board and, if so required by the Board, shall be in duplicate and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed by the Board and any person who wilfully fails to comply with the provisions of this section shall be liable to the penalty mentioned in section 54.

71. Recovery of duty and penalties.—Any estate duty or deficit duty and any interest or penalty payable under this Act may, on the certificate of the Controller, be recovered from the person liable thereto as if it were an arrear of land revenue by any Collector in any State.

PART VIII.—Charge of Estate Duty on Property and Facilities for raising it

72. Estate duty a first charge on property liable thereto.—(*1*) Subject to the provisions of section 19, the estate duty payable in respect of property, movable or immovable, passing on the death of the deceased, shall be a first charge on the immovable property so passing (including agricultural land) in whomsoever it may vest on his death after the debts and incumbrances allowable under Part VI of this Act; and any private transfer or delivery of such property shall be void against any claim in respect of such estate duty.

(*2*) A rateable part of the estate duty on an estate, in proportion to the value of any beneficial interest in possession in movable property which passes to any person (other than the legal representative of the deceased) on the death of the deceased shall be a first charge on such interest:

Provided that the property shall not be so chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(*3*) The Board may release the whole or any part of any property, whether movable or immovable, from charge under this section in such circumstances and on such conditions as it thinks fit.

73. Discharge from estate duty in certain cases.—A certificate granted by the Controller under section 65, or by the Board under section 67, shall discharge the property included therein and the grantee so far as regards that property from any further claim for estate duty, but shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts and shall not affect the duty payable in respect of any property afterwards shown to have passed on the death nor any further duty payable by reason thereof in respect of the property included in the certificate:

Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a *bona fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

74. Person accountable to be repaid by trustees and owners in certain cases.—If a person accountable under section 51 pays any part of the estate duty in respect of any property not passing to him, it shall, where occasion requires, be repaid to him by the trustees or owners of the property.

75 Facilities for paying duty or raising amount already paid.—(*1*) A person authorised or required to pay estate duty in respect of any property shall, for the purposes of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses property paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof:

Provided that any sum payable under any such sale, mortgage or terminable charge may be paid (to the extent to which such sum or part thereof represents the estate duty payable), not to the person raising the sum but to the Controller at the option of the person from whom the sum is being raised.

(*2*) A person having an interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge, as if the estate duty in respect of that property had been raised by means of a mortgage to him.

(*3*) Any money arising from the sale of property comprised in a settlement or held upon trust to lay out upon the trusts of a settlement may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts.

PART IX.—Miscellaneous

73. Jurisdiction of courts barred save as expressly provided.—Save as provided in this Act, nothing done or in good faith purporting to be done, by any estate duty authority under this Act shall be called in question in any court.

77. Disclosure of information by a public servant.—The provisions of section 54 of the Indian Income-tax Act, 1922 (XI of 1922), shall apply

to all accounts, statements, documents, evidence or affidavits, given, produced or obtained in connection with or in the course of the proceedings under this Act:

Provided that nothing in the said section 54 shall apply to the disclosure of any such particulars to any person acting in the execution of this Act or of the Indian Income-tax Act, 1922 (XI of 1922), where it is necessary or desirable to disclose the same to him for the purposes of either this Act or the said Act.

78. Arrangements with States to supply information.—The Central Government may make arrangements with the Government of any State for exchange of such information as may be necessary for the purposes of levying or realising any estate duty under this Act or under any other law for the time being in force in that State.

79. Service of Notices.—Any notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (Act V of 1908).

80. Company to furnish particulars of deceased members to the Controller.—(*1*) Where a company incorporated outside India carries on business in the territories to which this Act extends and has been treated for the purposes of the Indian Income-tax Act, 1922 (XI of 1922), as resident for two out of the three completed assessments immediately preceding, such company shall, within three months of the receipt of intimation of the death of a member dying after the commencement of this Act, furnish to the Controller such particulars as may be prescribed in respect of the shares of the deceased member in the company, and shall be liable to pay estate duty at such scale as may be fixed by the Act of Parliament in pursuance of section 34, on the principal value of the shares held by the deceased in the company except in cases where the deceased member was a person domiciled in India and the person accountable has obtained a certificate from the Controller showing that either the estate duty in respect thereof has been paid or will be paid or that none is due, as the case may be.

(*2*) It shall not be lawful for a company formed and registered under the Indian Companies Act, 1913 (VII of 1913), to register the transfer of any shares standing in the name of a deceased member of the company who dies after the commencement of this Act unless there is produced before it a certificate from the Controller that either the estate duty in respect thereof has been paid or will be paid or that none is due, as the case may be.

(*3*) Any company which fails to comply with the provisions of sub-section (*1*) or sub-section (*2*) shall be liable to a penalty of one thousand rupees or a sum equal to double the amount of the estate duty payable according as the Controller may direct:

Provided that the Controller may reduce the penalty in any particular case.

81. Rule-making powers of the Board.—(*1*) Subject to the condition of previous publication, the Board may make rules not inconsistent with this Act prescribing all matters which by this Act are required or permitted

to be prescribed, or which are necessary or convenient to be prescribed for carrying out the purposes of or giving effect to this Act.

(*z*) All rules made under this Act shall be laid before both Houses of Parliament as soon as may be after they are made.

THE SCHEDULE

(*See* section 5.)

States in which estate duty is leviable on agricultural land.

Bombay.

Madhya Pradesh.

Orissa.

Uttar Pradesh.

Hyderabad.

Rajasthan.

Saurashtra.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill to provide for the levy and collection of an estate duty.

(As amended by the Select Committee)

GI PD—LA D—198PS—26-6-53—500

HOUSE OF THE PEOPLE

THE INDUSTRIES (DEVELOPMENT AND REGULATION) AMENDMENT BILL, 1953

(Report of the Select Committee)

सत्यमेव जयते

PARLIAMENT SECRETARIAT
NEW DELHI
April, 1953

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THE INDUSTRIES (DEVELOPMENT AND REGULATION) AMENDMENT BILL, 1953.

MEMBERS OF THE SELECT COMMITTEE

Shri N. V. Gadgil—*Chairman.*

Prof. Diwan Chand Sharma.

Shri Balwant Sinha Mehta.

Shri Govind Hari Deshpande.

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 Radhelal Vyas.

Shri Satyendra Narayan Sinha.

Shri K. G. Deshmukh.

Shrimati Tarkeshwari Sinha.

Shri Raghavendrarao Srinivasrao Diwan.

Shri Gajendra Prasad Sinha.

Shri G. R. Damodaran.

Shri C. R. Basappa.

Shri Ranbir Singh Chaudhuri.

Shri Tribhuan Narayan Singh.

Shri Shri Chand Singhal.

Shri Baij Nath Kureel.

Shri Chaturbhuj V. Jasani.

Shri Vishwambhar Dayal Tripathi.

Shri Bahadur Singh.

Shri Durga Charan Banerjee.

Shri Mangalagiri Nanadas.

Shri Kamal Kumar Basu.

Shri G. D. Somani.

Dr. Indubhai B. Amin.

Shri Kandala Subrahmanyam.
Shri Choithram P. Gidwani.
Shri Tridib Kumar Chaudhuri.
Shri B. Rajagopala Rao.
Shrimati Anasuyabai Kale.
Shri Paidi Lakshmayya.
Shri T. T. Krishnamachari.

Report of the Select Committee

The Select Committee to which the *Bill to amend the Industries (Development and Regulation) Act, 1951, was referred, have considered the Bill and the evidence tendered by certain representatives of industries and now submit this their Report, with the Bill as amended by the Committee annexed thereto.

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

Clause 4 (new).—The omission of clause (b) of sub-section (4) of section 5 is now necessary because the main purpose of the amendments proposed in the Bill is essentially to facilitate quick action by Government whenever necessary. The omission of section 17 and the insertion of section 18A under which the management of an industrial undertaking may be taken over whether or not any directions have been issued to the undertaking under section 16 are all intended to serve the same end.

Clause 7.—The insertion of the words 'not being the Central Government' is intended to make it clear that the provisions of this section shall not apply to an undertaking owned by the Central Government. The words 'by the inclusion of such new articles' are being omitted because the manner in which a licence or permission may be amended may be prescribed by rules.

Clause 8.—This clause has been redrafted because the existing clause does not make it clear that the provisions of section 12 shall apply to licences which are amended under section 11A.

Clause 9.—The amendments made are clarificatory only.

Clause 13.—(a) [Proposed section 18A].—The Committee feel that in certain cases it may be necessary that an order under which the management of an undertaking is taken over should continue after the expiry of the period of five years. A proviso has accordingly been added to sub-section (2) of section 18A which empowers the Government to extend such period beyond 5 years but every order of extension is to be laid before both Houses of Parliament.

(b) [Sub-section (4) of proposed section 18B].—The amendment makes it clear that any directions issued by the Central Government shall override the memorandum and articles of association of the industrial undertaking.

(c) [Sub-section (2)(d) and sub-section (3) of the proposed section 18G].—The amendments made are intended to ensure that a reasonable price will be fixed for articles in respect of which an order is made under clause (d) of sub-section (2) of section 18G.

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*The Bill was published in Part II, Section 2 of the *Gazette of India Extraordinary*, dated the 10th April, 1953.

Clause 15.—The changes made are partly clarificatory and partly consequential.

Clause 18 (*new*).—The amendment made is consequential only.

Clause 19.—In Item 10 of the First Schedule textiles made wholly or partly from staple fibre have been added. Similarly after Item 39 relating to soap, a new item, namely, 'other toilet requisites' has been added. The rest of the amendments are clarificatory only.

2. The Select Committee recommend that the Bill be passed as now amended.

N. V. GADGIL,
Chairman of the Select Committee.

NEW DELHI;
The 29th April, 1953.

MINUTES OF DISSENT

I

While I am not opposed to the principle of the Bill, I however strongly feel that longer opportunity should have been given to the industrial organisations concerned to represent genuine difficulties and consequent adverse repercussions which some of the drastic amendments proposed may have on the industrial development of the country.

2. In my opinion the provisions regarding the definitions of the expression 'new article' *vide* clause 2—sub-clause (ii) and also the provisions under clause 8 which seeks to amend the existing section 13 regarding 'any substantial expansion of an industrial undertaking' require further clarification so that normal working of the industries may not be interfered with.

3. I would specially like to draw attention to the introduction of a new chapter III-A, which comprises sections 18A to 18F and includes provisions concerning 'Direct management or control of industrial undertakings by Central Government in certain cases'. These Sections give extraordinary powers to the Government. Section 18A includes a provision under which Government can take over the management of an industrial undertaking in respect of which an investigation has been made, without first issuing directions to it and waiting to see whether or not they are obeyed. I feel these provisions are unnecessarily drastic. I suggest therefore that some reasonable safeguards should be inserted in this chapter to ensure that at least the industrial unit concerned gets some opportunity to explain the charges that may have been found out in the course of investigation. Moreover the innocent shareholders should not be deprived of some representation in the new Board of Management which may be set up to take up the management.

4. The new sections relating to penalties are more elaborate and unduly stringent and require further review so as to avoid unnecessary harassment to the innocent.

NEW DELHI, G. D. SOMANI.

The 29th April, 1953.

II

The Government of the day in our country is committed to the working out of a Five Year Plan under which certain sphere and category has been assigned to the State for development which is generally

known as public and the rest of the industrial sphere is left for private enterprise to exploit and work out. However the Government realises that in the present context the laiss'ez-faire economics has no place and more specially when our economy is wedded to a plan. The Five Year Plan therefore intends to control the industries in private sector by regulation. As a result whereof the Industries (Development and Regulation) Act 1951 was enacted the principal object whereof is to enable the Government to implement its policy for the development and regulation of the industries in private sector with the object of fitting them in the overall industrial policy as enunciated in the Plan and the Government's policy resolution of April 1948. The position has been accepted by the private industrialists, in their numerous pronouncements which some of them also maintained when they represented their case before us.

2. In spite of our strong criticism of the Five Year Plan and wide divergence of opinion on many aspects of the Plan we are strongly of opinion that in the context of our complex social problem and also of the state of our industrial development it is absolutely necessary that the industries in the private sector must be controlled and regulated in a manner wherein the social and national interest of the industry should be paramount to the selfish profit-making motive of the industrialist which we regret to say often find its expression in a ruthless and naked form. We participated in the deliberation of the Select Committee to see that provisions are made to translate into action in limited objective of Bill as enunciated by the Government whose proverbial weakness for the big business has made common man sceptical about their intentions.

3. It is true that enough provisions are found in the original Act which are being sought to be improved upon for control and regulation of industry in the interest of the nation. Now it is the duty of the Government to set an efficient administrative machinery to work the law in a manner which inspires the confidence and support of all concerned and more specially the common man. The representatives of the industry also accepted the necessity and the urgency of such legislation in the Statute Book in spite of all the criticism they made which on ultimate analysis was found to veer round the administering of the Act. It is generally felt that bureaucracy however experienced they may be cannot possibly rise equal to the task that they may be called upon to perform. If the Government intends to work this Act properly it must have administrative unit less rigid and more receptive to the demands of the common people and the industry in the background of the national interest. We would therefore suggest that it is absolutely necessary and reasonable to associate well-known economists and other experts of unimpeachable character who has

no interest in such or similar industries to associate with the administrative machinery meant for working out the provision of this Act. We are also of opinion that interest of labour and the consumers should be represented. It must not be felt to the hard boiled bureaucrats to man the administrative machinery. We feel that if our above suggestions are accepted much of the criticism will die down and it will also inspire the confidence of the common man and prove the bonafides of the Government beyond doubts.

4. We further suggest that all notifications made under this Act and more specially those relating to the handing back of the taken over industry and the exemption from registration under this Act should be laid on the Table of the House.

5. We are glad to record that there were some improvements to the provisions of the Bill in the Select Committee though we would have wished further improvement.

6. Subject to the above suggestion we accept the principles of the Bill and the provisions thereunder except on those wherein we differed and which we state hereunder.

7. *Section* 18*A*(2).—In the 'Explanation' it is mentioned that the Government by taking over an industry may hand it over to some managing agency firm to manage it on such terms and conditions as they think fit. It is true in laying down conditions the Government may try to put a check towards further mal-practices of the managing agent. However we are constrained to say that we cannot accept the explanation of the Government. The managing agency system has been criticised for long and it has usually been accepted that it has worked as a bane towards our industrial advance. Even the recent Company Law Enquiry Committee which was predominated by the representatives of the big business had to express in no unspeakable terms its criticism of the system though it recommended its continuation for a limited period with a drastic curtailment of its power. We feel that when such systems are not found in highly industrialised country our Government should not actively support such systems and favour its continuation. We are strongly of opinion that there cannot be any occasion when any industry however big, important and complicated cannot be run by any body or group of person other than the managing agency. It is quite well-known and accepted that employers of the different class and categories run an institution themselves and often with the help of experts and technical men. We therefore suggest that the Government as an authority in charge of any industry should ever appoint a managing agent to run it. We, therefore, want the deletion of the 'explanation' to the sub-section.

8. *Section* 18*F*.—Here on cancelling an order under section 18A (taking over) it is provided that the industry should be handed to those under whose control and possession it was at the time of taking

over. It means that if a company or an industrial unit is taken over from a managing agent who was running it then on the ground of mismanagement and neglect it has to be given over to as provided in this clause read with definition 'owner' in section 3 of the parent Act (Act LXV of 1951) though such managing agents are under the eye of the Law mere trustee on behalf of the shareholders who are the actual owners. We have known of instances where the managing agent having control over the relatively small proportion of shareholders still maintain their greedy grip of the company much to the detriment of the interest of the shareholders. Therefore we suggest that in the case of all firms and the companies the Government before cancelling the order of control and possession and actually handing it over to its past manager should call a meeting of the shareholders to ascertain their point of view. This is so necessary because under the existing provisions of law there is very little power to take action against the director or the managing agent for whose fault and mismanagement the unit had to be taken. Therefore we feel that the Government has duty to the shareholders who are really the owner of the unit.

9. In conclusion we hope the Bill would have an easy passage and the Government should immediately set up such a machinery efficient and inspiring and equal to the task who would be capable of administering the law in its true form and spirit with a view to keep the private sector of our industry on the right track and not acting in a way inimical to the interest of this society and the nation which we regret to say many of them are prone to in their narrow selfish interest.

NEW DELHI;
The 29th April, 1953.

K. K. BASU.
TRIDIB KUMAR CHAUDHURI.
M. N. DAS.

III

I fully agree with the above minute of dissent by Shri K. K. Basu and others regarding Sections 18A & 18F.

NEW DELHI,
The 29th April, 1953.

DURGA CHARAN BANERJEE.

IV

Amendment to section 3, Act LXV of 1951.

Clause (*dd*).—The expression "new article" should not include those articles which the industry has to manufacture in the normal course of bus ness. For instance in a chemical and pharmaceutical concern hundreds of preparations are manufactured. With the advancement of science and progress in scientific researches the compositions of some preparations have to be revised and new preparations have to be invented and put in the market. The change in the composition of any preparation and/or the manufacture of a new preparation fall ng under the same line of manufacture *i.e.* "pharmaceutical and drugs" should not be considered as a "new article" so long as the process for its manufacture has been established in that factory without the help of a foreign patent. For further clarification I give an instance. If cement is proposed to be manufactured in a pharmaceutical concern it should certainly be called a new article. But the manufacture of a drug in a drugs manufacturing concern should not be called a "new article". Similarly mere change in the trade mark name of the existing preparation or the manufacture of a new preparation under a new trade name should not be construed as a "new article". The expression "new article" should be made clear in the light of the above remarks, otherwise it will create a lot of difficulties for the pharmaceutical and drug industry and such other industries and will retard their development.

2. Amendment of section 10, Act LXV of 1951.

Sub-section (*I*).—The time limit of six months as fixed in the principal Act should be retained because it will ensure efficiency of the Government Department concerned. If it is the experience of the Government that the period of six months is not enough, steps should be taken to improve efficiency.

3. Insertion of new section 11A in Act LXV of 1951.

In case of industrial undertakings, which have already been registered and licensed permission for the manufacture of a new article is unnecessary provided that such an article falls within the category or class of articles normally manufactured at the undertaking.

4. Substitution of new section for section 13 in Act LXV of 1951.

The reasons for refusing grant of a licence should be communicated to the owner of the industrial undertaking in writing. The explanation for "substantial expansion" is too general and vague. It should be made more precise.

5. CHAPTER IIIA.—Direct management or control of Industrial Undertakings by Central Government in certain cases.

Section 18*A*.—Before taking over management of the whole or any part of the undertaking or before making investigations the Government should have definite proof as to the fact that the undertaking has failed to comply with the directions issued by the Central Government or is managed in a manner detrimental to the scheduled industry or to public interest. During the period of management or control of the whole or part of any undertaking Government should assume the full financial liability. The Government should also make provision in respect of those undertakings, which could not be run properly due to the reasons beyond the control of the management or the owner of an undertaking.

6. Substitution of new section for section 23 in Act LXV of 1951.

The decision of the Government with regard to the expressions "substantial expansion" and "new article" should not be final. Provision should be made for appealing before a board of arbitration against the decision of the Government.

7. Substitution of new sections for sections 25, 26, 27, 28 and 29 in Act LXV of 1951.

Section 29-*C*.—This section gives a free hand to a Government officer and makes him immune from legal action arising out of his wrongful actions. This may not be fair to the undertaking and therefore the law should apply to Government or any officer appointed by it.

I. B. AMIN.

NEW DELHI,
The 29th April, 1953.

BILL No. 33A of 1953

THE INDUSTRIES (DEVELOPMENT AND REGULATION) AMENDMENT BILL 1953

[As amended by the Select Committee]

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

A

BILL

to amend the Industries (Development and Regulation) Act, 1951.

Be it enacted by Parliament as follows:—

1. Short title and commencement.—(*1*) This Act may be called the Industries (Development and Regulation) Amendment Act, 1953.

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

2. Amendment of section 3, Act LXV of 1951.—In section 3 of the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as the principal Act),—

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

"(*bb*) 'existing industrial undertaking' means—

(*a*) in the case of an industrial undertaking pertaining to any of the industries specified in the First Schedule as originally enacted, an industrial undertaking which was in existence on the commencement of this Act or for the establishment of which effective steps had been taken before such commencement, and

(*b*) in the case of an industrial undertaking pertaining to any of the industries added to the First Schedule by an amendment thereof, an industrial undertaking which is in existence on the coming into force of such amendment or for the establishment of which effective steps had been taken before the coming into force of such amendment;";

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

"(*dd*) 'new article', in relation to an industrial undertaking which is registered or in respect of which a licence or permission has been issued under this Act, means—

(*a*) any article which falls under an item in the First Schedule other than the Item under which articles ordinarily manufactured or produced in the industrial undertaking at the date of registration or issue of the licence or permission, as the case may be, fall;

(*b*) any article which bears a mark as defined in the Trade Marks Act, 1940 (V of 1940), or which is the subject of a patent, if at the date of registration or issue of the licence or permission, as the case may be, the industrial undertaking was not manufacturing or producing such article bearing that mark or which is the subject of that patent.".

3. Omission of section 4, Act LXV of 1951.—Section 4 of the principal Act shall be omitted.

4. Amendment of section 5, Act LXV of 1951.—In sub-section (*4*) of section 5 of the principal Act, clause (*b*) shall be omitted.

5. Amendment of section 10, Act LXV of 1951.—In section 10 of the principal Act,—

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

"(*1*) The owner of every existing industrial undertaking, not being the Central Government, shall, within such period as the Central Government may, by notification in the Official Gazette, fix in this behalf with respect to industrial undertakings generally or with respect to any class of them, register the undertaking in the prescribed manner.";

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

"(*3*) Where an industrial undertaking is registered under this section, there shall be issued to the owner of the undertaking or the Central Government, as the case may be, a certificate of registration containing such particulars as may be prescribed.".

6. Insertion of new section 10A in Act LXV of 1951.—After section 10 of the principal Act, the following section shall be inserted, namely:—

"10A. *Revocation of registration in certain cases.*—If the Central Government is satisfied that the registration of any industrial undertaking has been obtained by misrepresentation as to an essential fact or that any industrial undertaking has ceased to be registrable under this Act by reason of any exemption granted under this Act becoming applicable thereto or that for any other reason the registration has become useless or ineffective and therefore requires to be revoked, the Central Government may revoke the registration.".

7. Insertion of new section 11A in Act LXV of 1951—After section 11 of the principal Act, the following section shall be inserted, namely:—

"11A. *Licence for producing or manufacturing new articles.*—The owner of an industrial undertaking not being the Central Government which is registered under seciton 10 or in respect of which a licence or permission has been issued under section 11 shall not produce or manufacture any new article unless—

(*a*) in the case of an industrial undertaking registered under section 10, he has obtained a licence for producing or manufacturing such new article; and

(*b*) in the case of an industrial undertaking in respect of which a licence or permission has been issued under section 11, he has had the existing licence or permission amended in the prescribed manner.****

8. Amendment of section 12, Act LXV of 1951.—In section 12 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) The provisions of this section shall apply in relation to a licence issued under section 11A or where a licence has been amended under that section, to the amendment thereof, as they apply in relation to a licence issued under section 11."

9. Substitution of new section for section 13 in Act LXV of 1951.—For section 13 of the principal Act, the following section shall be substituted, namely:—

"13. *Further provision for licensing of industrial undertakings in special cases.*—(1) ****** No owner of an industrial undertaking, other than the Central Government, shall—

(*a*) in the case of an industrial undertaking required to be registered under section 10, but which has not been registered within the time fixed for the purpose under that section, carry on the business of that undertaking after the expiry of such period, or

(*b*) in the case of an industrial undertaking the registration in respect of which has been revoked under section 10A on the ground that it had been obtained by misrepresentation as to an essential fact, carry on the business of the undertaking after the revocation, or

(*c*) in the case of an industrial undertaking to which the provisions of this Act did not originally apply but became applicable after the commencement of this Act for any reason, carry on the business of the undertaking after the expiry of three months from the date on which the provisions of this Act became so applicable, or

(*d*) effect any substantial expansion of an industrial undertaking which has been registered, or

(*e*) change the location of the whole or any part of an industrial undertaking which has been registered,

except under, and in accordance with, a licence issued in that behalf by the Central Government, and, in the case of a State Government, except under and in accordance with the previous permission of the Central Government.

(2) The provisions of sub-section (2) of section 11 and of section 12 shall apply, so far as may be, in relation to the issue of licences or permissions to any industrial undertaking referred to in this section as they apply in relation to the issue of licences or permissions to a new industrial undertaking.

Explanation.—For the purposes of this section, 'substantial expansion' means the expansion of an existing industrial undertaking which substantially increases the productive capacity of the undertaking, or which is of such a nature as to amount virtually to a new industrial undertaking, but does not include any such expansion as is normal to the undertaking having regard to its nature and the circumstances relating to such expansion.''.

10. Amendment of section 14, Act LXV of 1951.—In section 14 of the principal Act, for the words and figures 'section 11 or section 13' the words, figures and letter 'section 11, section 11A or section 13' shall be substituted.

11. Amendment of section 15, Act LXV of 1951.—In section 15 of the principal Act, for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest;".

12. Omission of section 17, Act LXV of 1951.—Section 17 of the principal Act shall be omitted.

13. Insertion of Chapters IIIA and IIIB in Act LXV of 1951.—After Chapter III of the principal Act, the following Chapters shall be inserted, namely:—

"CHAPTER IIIA

DIRECT MANAGEMENT OR CONTROL OF INDUSTRIAL UNDERTAKINGS BY CENTRAL GOVERNMENT IN CERTAIN CASES

18A. *Power of Central Government to assume management or control of an industrial undertaking in certain cases.*—(1) If the Central Government is of opinion that—

(*a*) an industrial undertaking to which directions have been issued in pursuance of section 16 has failed to comply with such directions, or

(*b*) an industrial undertaking in respect of which an investigation has been made under section 15 (whether or not any directions have been issued to the undertaking in pursuance of section 16), is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest,

the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of

the undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

(*2*) Any notified order issued under sub-section (*1*) shall have effect for such period not exceeding five years as may be specified in the order:

Provided that the Central Government, if it is of opinion that it is expedient in public interest so to do, may direct that any such notified order shall continue to have effect after the expiry of the period of five years aforesaid for such further period as may be specified in the direction and where any such direction is issued, a copy thereof shall be laid, as soon as may be, before both Houses of Parliament.

Explanation.—The power to authorise a body of persons under this section to take over the management of an industrial undertaking which is a company includes also a power to appoint any individual firm or company to be the managing agent of the industrial undertaking on such terms and conditions as the Central Government may think fit.

18B. *Effect of notified order under section* 18*A*.—(*1*) On the issue of a notified order under section 18A authorising the taking over of the management of an industrial undertaking,—

(*a*) all persons in charge of the management, including persons holding office as managers or directors of the industrial undertaking immediately before the issue of the notified order, shall be deemed to have vacated their offices as such;

(*b*) any contract of management between the industrial undertaking and any managing agent or any director thereof holding office as such immediately before the issue of the notified order shall be deemed to have been terminated;

(*c*) the managing agent, if any, appointed under section 18A shall be deemed to have been duly appointed as the managing agent in pursuance of the Indian Companies Act, 1913 (VII of 1913) and the memorandum and articles of association of the industrial undertaking and the provisions of the said Act and of the memorandum and articles shall, subject to the other provisions contained in this Act, apply accordingly, but no such managing agent shall be removed from office except with the previous consent of the Central Government :

(*d*) the person or body of persons authorised under section 18A to take over the management shall take all such steps as may be necessary to take into his or their custody or control all the property, effects and actionable claims to which the industrial undertaking is or appears to be entitled, and all the property and effects of the industrial undertaking shall be deemed to be in the custody of the person or, as the case may be, the body of persons as from the date of the notified order; and

(*e*) the persons, if any, authorised under section 18A to take over the management of an industrial undertaking which is a company shall be for all purposes the directors of the industrial undertaking duly constituted under the Indian Companies Act,

1913 (VII of 1913) and shall alone be entitled to exercise all the powers of the directors of the industrial undertaking, whether such powers are derived from the said Act or from the memorandum or articles of association of the industrial undertaking or from any other source.

(2) Subject to the other provisions contained in this Act and to the control of the Central Government, the person or body of persons authorised to take over the management of an industrial undertaking, shall take such steps as may be necessary for the purpose of efficiently managing the business of the industrial undertaking and shall exercise such other powers and have such other duties as may be prescribed.

(3) Where any person or body of persons has been authorised to exercise any functions of control in relation to an industrial undertaking, the undertaking shall be carried on pursuant to any directions given by the authorised person in accordance with the provisions of the notified order, and any person having any functions of management in relation to the undertaking or part thereof shall comply with all such directions.

(4) The person or body of persons authorised under section 18 shall, notwithstanding anything contained in the memorandum or articles of association of the Industrial undertaking, exercise his or their functions in accordance with such directions as may be given by the Central Government so, however, that he or they shall not have any power to give any other person any directions under this section inconsistent with the provisions of any Act or instrument determining the functions of the authority carrying on the undertaking except in so far as may be specifically provided by the notified order.

18C. *Contracts in bad faith, etc., may be cancelled or varied.*—Without prejudice to the provisions contained in section 18B, the person or body of persons authorised under section 18A to take over the management of an industrial undertaking may, with the previous approval of the Central Government, make an application to any court having jurisdiction in this behalf for the purpose of cancelling or varying any contract or agreement entered into, at any time before the issue of the notified order under section 18A, between the industrial undertaking and any other person and the court may, if satisfied after due inquiry that such contract or agreement had been entered into in bad faith and is detrimental to the interests of the industrial undertaking, make an order cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) that contract or agreement, and the contract or agreement shall have effect accordingly.

18D. *No right to compensation for termination of office or contract.*—Notwithstanding anything contained in any law for the time being in force, no person who ceases to hold any office by reason of the provisions contained in clause (*a*) of section 18B, or whose contract of management is terminated by reason of the provisions contained in clause (*b*) of that section, shall be entitled to any compensation for the loss of office or for the premature termination of his contract of management:

Provided that nothing contained in this section shall affect the right of any such person to recover from the industrial undertaking moneys recoverable otherwise than by way of such compensation.

18E. *Application of Act VII of* 1913.—(*1*) Where the management of an industrial undertaking, being a company as defined in the Indian Companies Act, 1913 (VII of 1913), is taken over by the Central Government, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such undertaking,—

(*a*) 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 undertaking;

(*b*) no resolution passed at any meeting of the shareholders of such undertaking shall be given effect to unless approved by the Central Government;

(*c*) no proceeding for the winding up of such undertaking or for the appointment of a receiver in respect thereof shall lie in any court except with the consent of the Central Government.

(*2*) Subject to the provisions contained in sub-section (*1*), and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Indian Companies Act, 1913 (VII of 1913), shall continue to apply to such undertaking in the same manner as it applied thereto before the issue of the notified order under section 18A.

18F. *Power of Central Government to cancel notified order under section* 18A.—If at any time it appears to the Central Government on the application of the owner of the industrial undertaking or otherwise that the purpose of the order made under section 18A has been fulfilled or that for any other reason it is not necessary that the order should remain in force, the Central Government may, by notified order, cancel such order and on the cancellation of any such order the management or the control, as the case may be, of the industrial undertaking shall vest in the owner of the undertaking.

CHAPTER III-B

CONTROL OF SUPPLY, DISTRIBUTION, PRICE, ETC., OF CERTAIN ARTICLES

18G. *Power to control supply, distribution, price, etc., of certain articles.*—(*1*) The Central Government, so far as it appears to it to be necessary or expedient for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry, may, notwithstanding anything contained in any other provision of this Act, by notified order, provide for regulating the supply and distribution thereof and trade and commerce therein.

(*2*) Without prejudice to the generality of the powers conferred by sub-section (*1*), a notified order made thereunder may provide—

(*a*) for controlling the prices at which any such article or class thereof may be bought or sold;

(*b*) for regulating by licences, permits or otherwise the distribution, transport, disposal, acquisition, possession, use or consumption of any such article or class thereof;

(*c*) for prohibiting the withholding from sale of any such article or class thereof ordinarily kept for sale;

(*d*) for requiring any person holding stock of any such article or class thereof to sell the whole or a specified part of the stock ****to such persons or class of persons and in such circumstances as may be specified in the order;

(*e*) for regulating or prohibiting any class of commercial or financial transactions relating to such article or class thereof which in the opinion of the authority making the order are, or if unregulated are likely to be, detrimental to public interest;

(*f*) for requiring persons engaged in the distribution and trade and commerce in any such article or class thereof to mark the articles exposed or intended for sale with the sale price or to exhibit at some easily accessible place on the premises the price-lists of articles held for sale and also to similarly exhibit on the first day of every month, or at such other time as may be prescribed, a statement of the total quantities of any such articles in stock;

(*g*) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters; and

(*h*) for any incidental or supplementary matters, including, in particular, the grant or issue of licences, permits or other documents and the charging of fees therefor.

(*3*) Where, in pursuance of any order made with reference to clause (*d*) of sub-section (*2*), any person sells the whole or a specified part of the stock of any articles or class thereof, there shall be paid to him the price therefor—

(*a*) where the price can be fixed by agreement, the price so agreed upon;

(*b*) where no such agreement can be reached the price calculated with reference to the controlled price, if any, fixed under this section;

(*c*) where neither clause (*a*) nor clause (*b*) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

(*4*) No order made in exercise of any power conferred by this section shall be called in question in any court.

(*5*) Where an order purports to have been made and signed by an authority in exercise of any power conferred by this section, a court shall, within the meaning of the Indian Evidence Act, 1872 (I of 1872), presume that such order was so made by that authority.

Explanation.—In this section, the expression 'article or class of articles' relatable to any scheduled industry includes any article or class of articles imported into India which is of the same nature or description as the article or class of articles manufactured or produced in the scheduled industry''.

14. Substitution of new section for section 23 in Act LXV of 1951.—For section 23 of the principal Act, the following section shall be substituted, namely:—

"23. *Decision of Central Government final respecting certain matters.*—If, for the purposes of this Act, any question arises as to whether—

(*a*) there has been a substantial expansion of an industrial undertaking, or

(*b*) an industrial undertaking is producing or manufacturing any new article,

the decision of the Central Government thereon shall be final."

15. Amendment of section 24, Act LXV of 1951.—For sub-section (*1*) of section 24 of the principal Act, the following sub-section shall be substituted, namely:—

"(*1*) If any person contravenes or attempts to contravene or abets the contravention of—

(*i*) the provisions of sub-section (*1*) of section 10 or of sub-section (*1*) of section 11 or of section 11A or of sub-section (*1*) of section 13, or

(*ii*) any direction issued under section 16 or sub-section (*3*) of section 18B, or

(*iii*) any order made under section 18G, or

(*iv*) any rule the contravention of which is made punishable under this section,

he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and, in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.".

16. Insertion of new section 24A in Act LXV of 1951.—After section 24 of the principal Act, the following section shall be inserted, namely:—

"24A. *Penalty for false statements.*—If any person,—

(*a*) when required by this Act or by any order under this Act to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false or does not believe to be true; or

(*b*) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any order made under this Act to maintain or furnish;

he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to two thousand rupees, or with both.".

17. Substitution of new sections for sections 25, 26, 27, 28 and 29 in Act LXV of 1951.—For sections 25, 26, 27, 28 and 29 of the principal Act, the following sections shall be substituted, namely:—

"25. *Delegation of powers.*—(*1*) The Central Government may, by notified order, direct that any power exercisable by it under this Act (other than the power given to it by sections 16 and 18A) shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by such officer or authority (including in the said expressions any Development Council, State Government or officer or authority subordinate to the Central Government) as may be specified in the direction.

(*2*) Any power exercisable by a State Government by virtue of a direction under sub-section (*1*) may, unless otherwise provided in such direction, be exercised also by such officer or authority subordinate to that State Government as it may, by notified order, specify in this behalf.

26. *Power to issue directions.*—The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any order or direction made thereunder.

27. *Cognizance of offences.*—No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (Act LXV of 1860).

28. *Burden of proof in certain cases.*—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.

29. *Jurisdiction of courts.*—(*1*) Subject to the provisions of sub-section (*2*), no court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

(*2*) Any magistrate or bench of magistrates empowered, for the time being, to try in a summary way the offences specified in sub-section (*1*) of section 260 of the Code of Criminal Procedure, 1898 (V of 1898), may, on application in this behalf being made by the prosecution, try, in accordance with the provisions contained in sections 262 to 265 of the said Code any offence which consists of a contravention of an order made under section 18G.

29A. *Special provision regarding fines.*—Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (V of 1898), it shall be lawful for any magistrate of the first class and for any presidency magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of any offence under this Act.

29B. *Power to exempt in special cases.*—If the Central Government is of opinion, having regard to the smallness of the number of workers employed or to the amount invested in any industrial undertaking or to the desirability of encouraging small undertakings generally or to the stage of development of any scheduled

industry, that it would not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt, subject to such conditions as it may think fit to impose, any industrial undertaking or class of industrial undertakings or any scheduled industry or class of scheduled industries as it may specify in the notification from the operation of all or any of the provisions of this Act or of any rule or order made thereunder.

29C. *Protection of action taken under the Act.*—(*1*) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

(*2*) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

18. Amendment of section 30, Act LXV of 1951.—In section 30 of the principal Act, in sub-section (*2*), in clause (*i*) for the words and figures 'section 11 or section 13', the words, letter and figures 'section 11, section 11A or section 13' shall be substituted.

19. Amendment of First Schedule, Act LXV of 1951.—In the First Schedule to the principal Act,—

(*a*) (*i*) for item (5), the following items shall be substituted, namely:—

"(5) Mathematical, surveying, and drawing * * * instruments;

(5A) Scientific instruments.";

(*ii*) for item (10), the following item shall be substituted, namely:—

"(10) textiles—

(*a*) made wholly or in part of cotton, including cotton yarn, hosiery and rope,

(*b*) made wholly or in part of jute, including jute yarn, twine and rope,

(*c*) made of wool, including woollen yarn, hosiery, carpets and druggets,

(*d*) made of silk,

(*e*) made of artificial silk, including artificial silk yarn,

(*f*) made wholly or in part of staple fibre.";

(*iii*) for item (11), the following items shall be substituted, namely:—

'(11) Automobiles.

"(11) Automobiles.

(*iv*) for item (13), the following items shall be substituted, namely:—

"(13) Electric lamps.

(13A) Electric fans,";

(*v*) for items (16) and (17), the following items shall be substituted, namely :—

"(16) Machinery used in industries including boilers and steam generating equipment.

(16A) Ball, roller and tapered bearings.

(17) Locomotives.

(17A) Rolling stock.";

(*vi*) to item (20), the following words shall be added at the end, namely :—

"and semi-manufactures thereof";

(*vii*) in item (21), for the words 'and paper board', the words 'paper board and straw board' shall be substituted;

(*viii*) for items (25), (26) and (27), the following items shall be substituted, namely :—

"(25) Leather, leather goods and pickers.

(26) Glue and gelatine";

(27) Vanaspati;

(27A) Vegetable oils.";

(*ix*) in item (30), the words 'and parts thereof' shall be omitted;

(*x*) for items (35) and (36), the following items shall be substituted, namely :—

"(35) Sewing machines.

(35A) Knitting machines.

(36) Small tools.

(36A) Hand tools.";

(*xi*) after item (37), the following items shall be inserted, namely :—

"(38) Dye-stuffs.

(39) Soap.

(40) Other toilet requisites.

(41) Plywood.

(42) Ferro-manganese.";

(*b*) the following "*Explanations*" shall be added at the end, namely :—

"*Explanation 1.*—In item (4), 'Iron and steel' shall include any manufactured product of iron and steel.

Explanation 2.—In items (1), (7), (9), (11), (11A), (13), (13A), (17), (17A), (29), (30), (32), (33), (34), (35), (35A), (36) and (36A), the articles specified therein shall include each of their component parts and accessories also."

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill to amend the Industries (Development and Regulation) Act, 1951.

(As amended by the Select Committee)

GIPD—L—36 M of Law—4-5-53—2,000

HOUSE OF THE PEOPLE

THE AIR CORPORATIONS BILL, 1953

(Report of the Select Committee)

सत्यमेव जयते

PARLIAMENT SECRETARIAT

NEW DELHI

April, 1953.

HOUSE OF THE PEOPLE

CORRIGENDA

TO

the Report of the Select Committee on the Air Corporations Bill, 1953, together with the Bill as amended by the Select Committee.

(A) Report of the S.C.

(1) At page (2), in line 10, for 'Committe' read 'Committee'.

(2) At page (4), in line 18, from bottom, for 'profitble' read 'profitable'.

(3) At page (5), in line 11, from bottom, for 'insistance' read 'insistence'.

(4) At page (6), in line 2, for 'benefitted' read 'benefited'.

(5) At page (6), in line 7, for 'benefitting' read 'benefiting'.

(6) At page (6), in line 15, for 'proprietory' read 'proprietary'.

(7) At page (7), in line 12, for 'Schelule' read 'Schedule'.

(8) At page (11), in line 18, for 'exercised the' read 'exercised to'.

(9). At page (14), in line 25, for 'just be' read 'just to'.

(10) At page (15), after line 28, insert 'R. Seshagiri Rao'.

(11) At page (16), in line 4 from bottom, for 'beig' read 'being'.

(B) Bill as amended.

(12) At page (19), in line 13, for 'authentication or' read 'authentication of'.

NEW DELHI,
The 7th May, 1953.

M.N. KAUL,
S E C R E T A R Y.

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THE AIR CORPORATIONS BILL, 1953

MEMBERS OF THE SELECT COMMITTEE

Pandit Thakur Das Bhargava (Chairman).
Shri N. Somana.
Shri N. P. Nathwani.
Pandit Munishwar Dutt Upadhyay.
Shri Venkatesh Narayan Tivary.
Shri C. D. Pande.
Shri Mathura Prasad Mishra.
Shri Banarsi Prasad Jhunjhunwala.
Shri Satis Chandra Samanta.
Shri Rohini Kumar Chaudhuri.
Shri Ghamandi Lal Bansal.
Sardar Amar Singh Saigal.
Shri Yeshwantrao Martandrao Mukne.
Shri M. Muthukrishnan.
Shri T. N. Viswanatha Reddy.
Shri C. P. Matthen.
Shri H. Siddananjappa.
Shri Pannalal R. Kaushik.
Shri Nityanand Kanungo.
Shri Vaijnath Mahodaya.
Shri V. B. Gandhi.
Shri Shivram Rango Rane.
Shri Jaipal Singh.
Shri K. Ananda Nambiar.
Dr. Shyama Prasad Mookerjee.
Shri Girraj Saran Singh.
Shri Rayasam Seshagiri Rao.
Shri M. S. Gurupadaswamy.
Shri K. A. Damodar Menon.
Sardar Hukam Singh.
Shri S. V. L. Narasimham.
Shri Radha Raman.
Shrimati Vijaya Lakshmi Pandit.
Shrimati Sushama Sen.

Shrimati Renu Chakravartty.
Shri Sarangadhar Das.
Shri Raj Bahadur.
Shri Jagjivan Ram.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the Bill* to provide for the establishment of Air Corporations, to facilitate the acquisition by the Air Corporations of undertakings belonging to certain existing air companies and generally to make further and better provisions for the operation of air transport services was referred, have considered the Bill and the Committe now submit this their Report with the Bill as amended by the Committee annexed thereto.

The question whether there should be one Corporation or two Corporations for the purposes of this measure was discussed at great length in connection with clause 2 and the Select Committee, after carefully examining the various views expressed on the subject, is of opinion that in view of the practical difficulties involved, there should be two Corporations for the first few years at least.

Upon the amendments to the Bill which are not formal or consequential, the Select Committee note as follows:—

Clause 4.—The Bill as drafted lays down no disqualifications for membership of the Corporation but leaves the matter to be regulated by the power given to the Central Government under clause 5. The Select Committee feel that it would be desirable to set out certain disqualifications expressly in clause 4 on the lines of similar provisions in certain United Kingdom Nationalisation laws, and this clause has been amended accordingly.

Clause 5.—The second proviso providing that a member on relinquishing his office on the expiry of the term thereof shall be eligible for re-appointment has been omitted as unnecessary.

Clause 7.—Apart from a drafting change, sub-clause (2) has been amended so as to add to the many matters specified therein one more category of functions which the Corporations may undertake.

Clause 8.—It is not necessary that sub-clause (3) should apply to all employees irrespective of whether they have any voice in the administration of the affairs of either of the Corporations or not, and this sub-clause has been amended so as to apply only to specified employees.

Clause 20.—In the opinion of the Select Committee a provision should be included in this clause whereby the Central Government would be empowered to direct the Corporation concerned to take into its employment any employee of an existing air company who was in the service of that company before the 1st July, 1952, but who was discharged after that date due to victimisation. Further sub-clause (4) should be amended so that both the existing air company and the Corporation concerned are rendered immune from any liability to pay compensation to managing agents, etc., for the premature termination of any contract of management by reason of anything contained in this Bill. Clause 20 has, therefore, been amended accordingly.

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*The Bill was published in Part II, Section 2 of the *Gazette of India* dated the 21st March, 1953.

Clause 22.—The amendment is clarificatory in nature.

Clause 23.—No agreement should be cancelled or varied under this clause unless in addition to the existing air company the other party to the agreement is also made a party to the proceedings before the Tribunal. The Select Committee have, therefore, amended this clause making an express provision in this behalf.

Clause 25.—Apart from a minor drafting change in sub-clause (2), sub-clause (3) has been amended to provide that the amount of compensation (which should be subject to the approval of the Central Government) should be determined by the Corporation concerned and if the other party is not prepared to accept it, he may have the matter referred to the Tribunal.

Clause 26.—The amendment is to get over the difficulty, if any, which may arise if no sitting judge of a High Court is available for the Tribunal.

Clause 28.—The changes are of a drafting nature intended to clarify the position.

Clause 29.—This amendment seeks to ensure that at least one employee of either of the Corporations who has experience in labour matters is appointed to the Air Transport Council.

Clause 36 (new).—In the opinion of the Select Committee, the Corporations should be required to submit to the Central Government annually reports of their activities for the previous year and the reports should also contain a forecast of the activities of the Corporation for the ensuing year and copies of such reports should be placed before Parliament.

Clause 40 (old clause 39).—The power to constitute Advisory Committees should rest with the Central Government and this clause has, therefore, been suitably modified.

Clause 42 (new).—A provision for imposing a penalty on persons wrongfully withholding from the Corporations properties which have vested in them is necessary and the Select Committee have, therefore, included such a provision in the Bill on the lines of section 282A of the Indian Companies Act, 1913.

Clause 43 (old clause 41).—The amendment is to ensure that all the rules made under this measure are laid before Parliament.

Schedule.—In addition to making a few minor amendments, the Select Committee have re-cast the note after paragraph II (c) to provide that stores (other than general stores) and spare parts get the same treatment as, for example, air screws and accessories if they can be made serviceable by incurring expenditure not exceeding a prescribed amount.

2. The Select Committee recommend that the Bill be passed as now amended.

NEW DELHI;
The 30th April, 1953.

THAKUR DAS BHARGAVA,
Chairman of the Select Committee.

Minutes of Dissent

I

I am extremely sorry that I feel constrained and duty bound to write this note.

2. I find myself in a very unfortunate and helpless position at my inability to find a solution of a fairly difficult problem. It is a problem for which every member of the Select Committee has felt great concern and ransacked his brains without success. In this effort of finding a solution the Government representatives who are the Ministers and the representatives of every party in the House have done their best but they have not succeeded in finding a solution which would give satisfaction to persons directly interested.

3. In regard to the question of compensation, many members proposed many amendments but each one was found unsatisfactory. I must frankly say that the proposal which forms the subject matter in the Schedule is equally unsatisfactory as it fails to give satisfaction to all concerned.

4. The assessment of compensation is, in all cases, a complicated matter. Usually speaking, it is difficult for both the parties—the one who is to give and the other who is to receive, to agree to the quantum of compensation. In the present case the parties for whom a uniform formula is sought to be evolved are many in number and it is not strange to find that no formula of uniform applicability is acceptable to all of them. The matter becomes still more complicated when we remember that the different companies with the variety of their circumstances worked under conditions which were flagrantly desperate. These operating companies worked under the control of the Government in so far as the Import & Export of their goods were concerned, their fares and freights were concerned, their schedules of time and routes of operation were concerned. In such a situation as this, it could be clearly understood that the companies were not free agents so as to expand according to their will and enjoy freedom of action and progress but their activities were circumscribed in such a manner as to retard their free growth and regulate their activities in almost a cribbed and cabined fashion. It so appears that if a company got a good route, it would certainly earn much more than a company which was not equally fortunate in getting equally profitble route.

5. It is clear that the Government could not possibly give the same conditions to every company and it cannot be said that the Government is deliberately and directly responsible for the economic disparities of the various companies. It cannot, however, be said that mis-management or inefficient management of the various companies, who find themselves in difficult economic conditions, is a direct cause of their mis-fortunes. Besides the Tata Airlines which was subsequently named as 'Air India' and the I.N.A. which came into existence long before the last war, all the other companies are the result of the post-war boom period. These companies started with high hopes and share-holders expected to reap rich harvest. Those companies which were in the field before had naturally certain advantages which those who came in the field subsequently could not enjoy. The Government contracts for carriage of mails which yielded good income fell to their lot to enjoy. As they were the first to enter into the arena, they naturally got the best routes for operation also. These companies as well as many others enjoyed high reputation of being managed by expert managing agents. In fact none of the companies which are

being acquired seemed to suffer from mis-management or inefficient management. It can, under the circumstances, be broadly stated that most of the companies which are today smarting under loss and are complaining grossly inadequate compensation suffer mainly from the handicaps of insufficient and comparatively un-remunerative routes for which they can hardly be blamed. The Government of the day were anxious to develop this industry and they did their best in helping the industry in all possible ways. They provided aerodromes, trained the air personnel, encouraged the flying clubs, gave some facilities by way of reduction in prices of air fuels and allowed rebates yet on account of excessive expenditure in the preliminary stages of the industry, pioneering efforts and teething troubles, it was but natural that in the first few years of existence, the companies could neither give dividends nor show very satisfactory results. The time had now arrived when perhaps better results were expected, and un-manifested potentialities had begun to sprout into shape.

6. At this juncture nationalisation has come into the field with which some of the companies are not happy but the public in general welcomes it. As a result of the nationalisation all the existing operating lines will be acquired by the Corporations and the country will become the master of the air routes and the means of communications by air. Evidently, the nationalisation is quite necessary for public purposes and the Government of the day has every legal and moral right to acquire all the properties of the air companies existing in the country. According to the provisions of Section 31 of the Constitution, the compensation must be given to the companies and the law authorising the acquisition 'must either fix the amount of compensation or specify the principles on which and the manner in which the compensation is to be determined and given'. The difficult question of the determination of the amount of compensation or of the principle fixing the same has to be solved on a fair and equitable basis. While it is quite necessary that in awarding and fixing the amount of this compensation, one should look to the essential national interest and the fiscus of the country, it is also necessary to ensure that fair compensation is given to those whose properties are being acquired. While it is necessary to safeguard the national economic interest, it is equally necessary to safeguard the interest of the individuals affected by the acquisition and they should not be forced to make more sacrifices than those suffered by the other members of the society. Compensation, in ordinary parlance, denotes the payment of an equivalent amount of money in terms of the rights acquired or losses incurred by the person whose rights are acquired. In fact there is no difficulty whatever nor is there any difference of opinion over the fact that those affected by the acquisition should receive fair compensation. In fact every member of the Select Committee is anxious that the right amount of compensation be paid to persons whose rights are being acquired. It is a matter of congratulation for the Government that its representatives were no less anxious to ensure that fair compensation was given to the shareholders of the companies. The Government could, by insistance upon a particular form of compensation, be enabled easily to pay even half the amount of compensation which it may have to pay if the principles enunciated by it in the Schedule are accepted by Parliament. The Government thus discarded the idea of paying compensation which looked to be grossly unfair or un-consciousable and I cannot help admiring the spirit motivating the mover of the Bill which instead of insisting on insufficient compensation seeks to pay the amount of compensation which appears fair to him on the basis of principles given in the Schedule. The Government was equally anxious that the under-dog *viz*. the ordinary shareholder should be able to benefit by the payment of compensation and so were, generally speaking,

all the members of the Select Committee but with the best of goodwill and anxiety to benefit those who ought to be benefitted, the Select Committee did not succeed in their efforts to implement their desires to the effect that the ordinary shareholder could get a fair amount of compensation. The difficulty arises from our inability to find a proper and equitable basis of compensation. The proposed principle *viz*. cost price of assets minus depreciation while benefitting some of the companies did not equally benefit the others, whereas the basis of the average market value of the shares (in the period, three years precedent to 30th June, 1952 *i.e*. the alleged date on which the idea of nationalisation was first announced) was favourable to some of the companies but did not equally favour others. It may, however, be pointed out that the market value of shares is not a totally sound basis for finding out the real market value. It is equally true that the basis of the market value of assets does not also afford a safe criterion for determining the real market value. The full proprietory rights in the Austinian sense of a concern consist of the entire bundle of rights tangible or intangible, express as well as potential and all these rights are very difficult of exact ascertainment and full appreciation. An undue emphasis on any one of the principles for ascertaining and determining the market value is sure to tip the balance and result in mal-adjustment with the companies whose conditions and assets are so irreconceivably different. It is possible that if the choice of the selection of the contending principles by which market value could be determined were left to the companies according to their interest, a more satisfactory result could be achieved. The principles of uniformity of treatment will not be found violated as the application of the very same principles was available to all and the choice of selection of any of the principles was equally open to all the companies.

7. It appears that out of about 36,000 shareholders of these air companies, 25,000 belong to Bharat Airways. Out of this 25,000, 17,000 persons are alleged to own 5 shares each of Rs. 10/-. If the basis of the principles given in the schedule is accepted, it is said that none of these 25,000 shareholders will get a farthing by way of compensation. This is a state of things which has baffled the members of the Select Committee and they were keenly desirous of evolving any formula or principle by which at least half or substantial portion of the paid up capital could be secured by way of compensation to the shareholders. There are other companies, the shareholders of which, it is alleged, will not get more than 3 per cent. of the paid up capital if the principles given in the schedule are accepted, which, to say the least, is not satisfactory. It is the duty of every Government to bring about conditions in which industries in the country may prosper and the investors do not lose their capital. No Government, can, however, fully ensure such conditions. Anyhow, where mismanagement and inefficiency are not responsible for loss, it is not politic to allow such conditions to prevail. The incentive to invest specially by the poor and middle class people is extinguished. When it is the policy of the Government to encourage thrift and investment of funds in national industries, it is not wise to give a rude shock to the people by manipulation in such a manner that the poor and middle class investor loses all his capital by no fault of his own or the fault of those in whom he confided. At the same time it will neither be fair nor wise to give excessive compensation to those persons who are not entitled to it as it will create a bad precedent and is unjustifiable and amounts to frittering away of the national resources. Thus the solution resolves itself into a fair determination of what is the proper compensation under the circumstances.

8. It has been calculated that if the Government were to purchase the assets of these air companies in the open market in the world, the Government will have to spend not less than Rs. 10 crores. Thus the actual market value according to this calculation of the assets sought to be acquired is not less than Rs. 10 crores. The members of the Select Committee found that the embargo on exports of aircrafts equipment was not been laid in anticipation of nationalisation and it was in existence from a fair number of years and as a result of this embargo no purchasers of these articles were available in India. Some of the companies, however, claim that this embargo should not be allowed to diminish the price and they could get several times the price of equipments in the world markets as compared to the prices proposed to be paid by the Corporations. The Schelule envisages the principle of cost price or purchase price minus depreciation. This cost price, ordinarily speaking, should not be regarded as a good yard-stick for assessing the market value as market value does not become less by a purchaser striking a cheap bargain. It is claimed, however, on the other side that some of the Dakotas and other aircrafts but not the Skymasters were bought by the companies from the disposals and these goods were purchased at very cheap rates by them from the Government itself. There is certainly force in this argument but this argument has no application to the case of Skymasters and other aircrafts which were not bought from the disposals. The Honourable Minister who was pleased to say in his speech in the House that many of the companies were agreeable to the principles of compensation proposed by him in the Schedule and in cases where the companies agreed to these principles, there should be no objection to the acceptance of the principles and the determination of compensation on the basis of those principles so far as these companies are concerned.

9. The principles of compensation given in the Schedule also do not proceed on any well recognised basis. They are arbitrary, rough and ready, divorced from income-tax, depreciation of values, but on the whole they afford a fair and equitable basis which the Government and these companies agree to accept. The basis of the average market value of shares affords satisfaction to some of the companies but it is said that all the shares are not quoted in the market and it is difficult to find out the market value of such shares as are not quoted. In reply it is said that the ordinary shares of these companies are quoted but the value of the preference cumulative shares is not quoted, but these shares are said to be of such a nature as partake of the character of loan and are akin to the liabilities of a concern. These shares possess a preference value specially at the time of distribution of assets and thus they are said to partake the characteristic of charged loans on the assets of a company. If the value of these shares is taken as 100 per cent. and the value of the ordinary shares is taken to be the market value, the ultimate market value of the shares can be determined and can form the basis of compensation.

10. I consider that judged from the fact that world market value of the assets of these air companies is not less than Rs. 10 crores and some of the equipments could fetch a very good market value in the world outside on account of the increase in price of such articles during the last few years, we should take all these considerations into account while considering the market value of the concerns for the purposes of compensation. I further consider that the embargo was not brought into existence in anticipation of the nationalisation scheme but was promulgated many years ago as a measure of national safety and these equipments cannot command a full

value in the markets in India and some of the aircrafts were purchased at very cheap prices from the disposals by those companies, it will not be unfair, if full amount of the world market prices is not regarded as the real market value of the assets. If it will be possible, by not unduly taxing the national exchequer, to pay the paid up value of ordinary shares as well as preference shares and the amount of such proposed payment does not amount to inordinate sum, I should have liked that such a sum was paid as compensation in view of the fact that the Government of the day had controlled the activities of these companies and their present position was, as stated before, not brought about by mismanagement or inefficient management, but in view of the fact, as is stated by the Hon'ble Minister that many of the companies are satisfied with the basis of assessment as given in the Schedule, I would prefer that by agreement the claims of these companies were liquidated on the basis of the principles given in the schedule. But in regard to such companies who are not satisfied by the principles given in the schedule and who prefer an assessment on the basis of market value of the shares quoted in the market and the value of the shares appraised according to their face value, it would be better if they were allowed to take compensation on this basis. I have been given to know that if the Government agrees to give the amount of compensation as 50 per cent. of the capital paid by the ordinary as well as the preference shares all such companies as regard the basis of evaluating the share value as a good one, would be satisfied and will accept the compensation on the basis of 50 per cent. paid up capital.

11. In the matter of compensation when the law enforces the national demand without taking into consideration the consent and the willing surrender by those whose properties and rights are acquired, the law, in case of immoveable properties, allows 15 per cent. of the market value as a solatium for forced acquisition. In the case of running industries also where companies do not willingly agree to acquisition, there is an equity in their favour which could be satisfied by payment of some amount more than what actually the market value is. The potential value of industrial concerns cannot be evaluated by any known test and in my humble judgment if an agreement is brought about by payment of a small extra sum, it should not be grudged as long as the country does not pay more than what is regarded as a reasonable market value.

12. In the end I must express my solicitude for the interest of the ordinary shareholders of such companies as could allow everything to be swallowed by the preference shareholders leaving nothing for the ordinary shareholders and I must request the Government to find out a solution whereby the essential interest of thrift and small investment could be saved and the future incentive of the small investors be salvaged.

13. It has occurred to me that the object can be encompassed in two ways if the Law Department cannot come to the rescue of these ordinary shareholders. The Corporation may be enabled to buy the shares of these shareholders direct from them and reasonable price may be paid to them by negotiations and the balance of the shares and properties of the company be acquired from them in the ordinary way. The second alternative is to arm the Tribunal with powers to do justice to the ordinary shareholders in such a manner as they consider equitable, by the award of fair compensation out of the amounts due to the company or to deal with

ordinary and preference shares separately and give them such compensation as they consider just.

NEW DELHI; THAKUR DAS BHARGAVA.

The 30th April, 1953.

II

We regret we are unable to accept *in toto the* decisions of the Select Committee.

2. We feel that, according to the Five Year Plan which has already been generally accepted by Parliament, there should be only one Corporation with two Divisions, internal and external. The Corporation should consist of a majority of full-time members and its size should be compact.

3. In the first instance at least, there should be a selection Committee for the appointment of officers. There should also be a Committee of independent experts for proper valuation of machinery, parts etc.

4. Compensation according to the schedule is discriminatory and not equitable. The basis of compensation should be altered so as to reduce the total amount to be paid for compensation.

JAIPAL SINGH,

SYAMA PRASAD MOOKERJEE,

NEW DELHI, G. S. SINGH.,

The 30th April, 1953.

III

The bill as it has come out of the anvil of the Select Committee makes no material alteration. It was expected of the Government to come forward with a bill for complete nationalisation of the Aviation Industry in the model of the Railways—not on the business principle alone, but as a public utility service.

2. But the present bill does not hold out that prospect. The nationalisation, which we pressed for in the Select Committee is for the complete management by the Government departments and the annual budget votable by the Parliament. The advantage of such a nationalisation would be to give the people and their representatives an opportunity to go into its working, utility, profit and loss, and the future development of the Industry as a whole, this industry being in fact the second line of defence of our country. In such a case, there would be no opportunity for the private interests to jeopardise the development of the Industry from within for their personal advantages and gains.

This idea was opposed by the Minister and the majority on the plea that by the institution of Corporations under the Government control, the purpose of Nationalisation is fully served and private interests cannot creep in any form. But we apprehend, having regard to the policy of the Government, the corporation will be so constituted as to be manned by the existing operators or their agents and theirs will be the prevailing voice. Our apprehension gains strength by the refusal of the Minister and the majority to bring non-scheduled lines under the management of the Government especially when they are profitable, thereby leaving an opportunity for these men in business to carry on their trade, with their brothers-in-trade sitting in the Corporations.

3. In a private industry, the labour is treated as mere wage earner, having no say in the management. But in a nationalised industry, the labour has an important role to play, if allowed proper scope. The workers being the mainstay for the success of the industry, they ought to have an effective share and responsibility in the management of the industry. Any nationalised institution without an effective voice of labour in the management will reduce itself to any ordinary private commercial institution.

Inspite of our insistence, the majority refused to accept the spirit of our contention, leave alone including a representative of labour in the Corporations.

4. We concretely placed a proposal for having a five man corporation representing one from Communication Ministry, one expert in Civil Aviation to be recruited, one representing labour, and the rest representing the Ministries of Defence and Finance, thus making it a compact and effective organisation directly under the Government.

Some other colleagues also placed another proposal of having an officials majority in the Corporation, which was also refused.

These show that Government are going to hand over the Corporation to the non-official majority, who can only be ex-operators or persons connected with them.

5. The objective of a nationalised Institution is not to run only for profit on business lines as has been the objective in clause 9 of the bill, but its main objective must be to cater to the needs of the public, with maximum efficiency, less fare and freight, which if properly done will also be remunerative. An amendment to focus this aspect in clause 9 was however refused by majority.

6. This industry in spite of huge Government aid by way of petrol rebate and postal subsidy, was on its last legs. The quantum of compensation must reflect this state of the industry for which we suggested fair method and manner of assessing the compensation. The majority refused to accept this aspect by trotting forth the argument of 'justice and fairplay' to the operators, disregarding the consequences, which would have resulted to the Industry, had not the Government come forward to take it over.

This leads us to the only conclusion that the interests of the operators weighs high with the Government.

7. This so-called nationalisation is to help the industry in effecting rationalisation and large-scale retrenchment in the name of centralisation and economy. This also aims at reduction of wages in the name of standardisation. While discussing the propriety of setting up two corporations, the Hon. Minister laid emphasis in his speech on the floor of the House on the fact that International services would not be subjected to any dislocation arising out of the reorganisation of home-lines which might necessitate large scale transfers, reduction in staff etc. The refusal to accept our amendments to safeguard the minimum interest of labour in the 'nationalised industry' further strengthens our apprehensions.

8. In any scheme of nationalisation, the tenure of employee ought to be guaranteed and his emoluments and service conditions should not be adversely affected. The majority were not willing to accept these principles which are the essence of nationalisation. On the other hand, provision has been made for heavy compensation and wide discretion has been given to the Government which as stated by us above shall be exercised the place the Corporations in the hands of the ex-operators and their agents.

9. We cannot reconcile ourselves to the idea of two Corporations and as such we totally disagree with the majority view, which was not based on any justifiable reason. Even the argument of the Hon. Minister to experiment with two corporations and to reconsider the question of one corporation on the basis of experience gained seems to be based on uncertain premises. We are of opinion that one corporation will minimise the evil that will flow from two corporations. Setting up of one corporation besides, others, have distinctive advantages:

(i) The over-head charges will be reduced by at least 50 per cent. or if we accept the Hon. Minister's calculations. it will be to the tune of Rs. 6 lakhs.

(ii) The high earning of external operations can be utilised for the development and improvement of our national lines.

(iii) The technical staff by coming in touch with all types of aircrafts used for external and internal services will gain in efficiency and will be a national asset.

10. We are in complete disagreement with the provisions in the bill regarding the method of determining compensation and the mode of payment.

The quantum of compensation provided in the bill is unduly high and is intended to make good the loss incurred by the companies. That is why Air India's (Tatas) shares have jumped by 200 per cent. because it is they who are getting the best out of the deal. Aircraft and spares which were bought at very cheap prices from disposal stores and have already been written down to Re. 1/- by charging heavy depreciation rates, are now to be compensated at far lower depreciation rates which neither the rate of obsolescence of aircraft nor the actual written down value justifies. There is danger that spares which have been declared redundant and useless will again be paid for at the fantastic rates of

80 per cent. and 90 per cent. of the cost price. We have demanded that: EITHER

(i) buy up the shares at their market value as on the first day of July, 1952; OR

Compensation to be computed at the cost value minus depreciation and reserve funds already provided for by the companies.

(ii) For stores and equipment compensation only for the serviceable and usable stores and equipments with 100 per cent. utility hours should be paid for at 60 per cent. of the cost price and there should be proportionate reduction on the basis of their utility hours.

This would have been fair and would have kept the total compensation within Rs. 3 crores as provided in the 5 year Plan and also would have minimised possible manipulations by the companies. But as is our experience with all the Government plans the amount is going to be now far exceeded and will go to fill the pockets of the big business.

11. We had suggested an amendment to clause 25 by which an expert committee could be set up with representative of organised labour in it, who alone could evaluate the proper usability or otherwise of spares. But this too was turned down by the majority.

12. In our opinion the interest of 3½ per cent. to be paid to the existing companies will be a heavy burden on the Corporation's revenue in view of the fact that the industry is already in a crisis. It is needless on our part to say that not only the interest, but the shares of the share-holders are not protected and we apprehend that the entire compensation amount is going to be misappropriated by a few who are at the helm of affairs of these Companies.

13. While going through the Bill clause by clause, we could see the red thread throughout of measures against the interests of labour. For instance, in clause 20, though a promise is given to consider the cases of employees discharged after 1st July, 1952, the Corporations have been given arbitrary powers to dispense with and alter the service conditions of employees during the course of the reorganisation. After six to nine months of the appointed date, *i.e.*, when the reorganisation is complete, there is likely to be a large scale retrenchment which is implied in the statement of the Minister in the House.

14. In clause 39, the provision made for the labour relations committee without constituting it properly consisting of the elected representatives of the employees and without adequate powers to go into the labour disputes and differences cropping up in day-to-day functioning and by maintaining it only in an advisory capacity, we strongly feel that this is an attempt purposely made to by-pass organised labour. Therefore we suggested a very modest amendment on the basis of the provision made in the British Civil Aviation Act, 1946, but even this was turned down by the majority. At this stage, we demanded at least the deletion of sub-clause (2) of clause 39, but this was also rejected. From this our fear is confirmed that this sub-clause is going to be used against the growth of genuine trade union movement in the industry.

15. We wish to emphasise that even in this halfhearted measure towards nationalisation, the importance of labour should have been realised and at least labour made to feel that in such Government undertakings their interest and well-being would not be jeopardised. But the bill as it comes out of the select committee, belies this expectation. The refusal on the part of the majority to hear the representatives from the organised labour, in spite of their request only confirms our contention that the organised labour is kept out throughout in the process of this so-called nationalisation.

16. In conclusion, we are constrained to state that this one is neither nationalisation nor proper Government management, but is one brought forth more to save certain private interests than the larger interests of the nation. The failure of this 'nationalisation' will reflect on all future attempts at nationalisation and this will be brought forward as an argument by the Government against any such future measure.

17. For the aforesaid reasons, we regret, we cannot agree with the majority report and we hereby submit this note of dissent.

K. ANANDA NAMBIAR.
RENU CHAKRAVARTTY.
S. V. L. NARASIMHAM.

NEW DELHI;
The 30th April, 1953.

IV

We feel that there is no justification for two Corporations. Our Civil Aviation industry has suffered much in the past due to the existence of too many operators resulting in inefficiency, waste and extravagance. We must draw a lesson from this experience. We are of the opinion that the setting up of two Corporations would duplicate overhead charges. Moreover, splitting up of the external and the internal operations under two Corporations would restrict the possibility to enhance the technical skill and efficiency of the personnel working for internal Corporation. The external services are more remunerative and a part of their profits can be made available to develop internal operations, if both are under one organisational set-up. In England there were three Corporations in 1946. But subsequent experience proved the desirability of reducing the number to two. Opinion is slowly gaining ground in U.K. for one Corporation. It must also be borne in mind that the volume of traffic which our air lines—both internal and external—have to handle at present and may have to handle in the foreseeable future, does not warrant the setting up of more than one Corporation. The Air Transport Enquiry Committee appointed by the Government of India recommended the merging of all companies in a single Corporation. The Planning Commission also favoured the idea of a single organisation in charge of internal as well as external operations. It said that "economic operation will be possible only if the existing companies merge into a single unit". It further pointed out that "a single organisation in charge of internal as well as external operations can handle all the existing traffic with a smaller number of aircraft and also save in overheads and in other directions."

2. The representative body of workers of all categories in this industry have unanimously expressed their opinion in favour of one Corporation and as the progress of this undertaking depends in no small measure on their enthusiastic co-operation and support the Government would stand to gain by respecting their viewpoint.

3. In these circumstances we feel that the setting up of two Corporations is unnecessary. A single Corporation with two wings for internal and external services, if need be, is more rational and quite adequate for the purpose.

4. We are of the opinion that non-scheduled air transport services other than flying clubs should also become a monopoly of the state. Though the bill does not preclude the Corporations from undertaking non-scheduled operations; it is necessary, for making nationalisation complete, to have monopoly of non-scheduled services as well.

5. Clause 4 of the bill provides that the Corporations shall consist of not less than five but not more than nine members appointed by the Central Government. We feel that the number should not be unduly large. We can follow the example of Railway Board which consists of only four members. We suggest that the number may be between 3 and 5 and they should be full-time members. It is also our view that one of the members should be a representative of the workers.

6. One of the major points on which we strongly differ from the majority report relates to the basis on which compensation to air companies should be determined. We are of the view that it would be in the interests of the national exchequer and also be just be the share-holders if the shares of the company are compulsorily acquired at their market value as on July, 1952. It was felt by the members of the Select Committee that the interest of the ordinary share-holders should be protected when compensation is paid. The only way to ensure this is by adopting the method we have suggested above. The view that compensating on the basis of the market value of the shares would be hard on the companies is to err on the wrong side of generosity. It is not a question of being hard or otherwise. It is primarily a question of being just to all concerned.

7. One point that has struck us in considering the provisions of the bill is the shyness of the Government to take the employees into their confidence and to give them an adequate share in the management of this national enterprise. Nationalisation should not mean a mere transfer of ownership to the State and a substitution of private capitalism by State capitalism. Unless workers are given their due share in the management of State undertakings, economic democracy cannot develop in this country; and in the absence of economic democracy, nationalisation may not serve the purpose for which it is intended.

SARANGDHAR DAS.
DAMODARA MENON.
M. S. GURUPADASWAMY.

NEW DELHI:
The 30th April, 1953.

V

The principles of determining the compensation payable to the concerned companies as embodied in the Bill are inequitable, cumbersome and unjust.

2. Nationalisation means and involves a just and equal treatment to all concerned. No attempt has been made in the Bill to safeguard the interest of the ordinary share-holders and to ensure their getting a legitimate quota of compensation. A point was raised whether a provision to that effect could be *intra vires*, and the legal opinion was obtained. On a careful consideration of the opinion I am inclined to think that a provision to that effect would not militate against the provisions of the Constitution. We can enact a law which is absolutely essential in the interests of justice, notwithstanding anything contained in any law for the time being in force and notwithstanding any contract to the contrary.

3. The system of determining the compensation is cumbersome. Surely in all cases and on all items agreement may not be possible. Then the Tribunal comes into the picture. Granting that the Tribunal functions effectively and efficiently we have to admit that there is bound to be some delay in deciding the many and varied references. The result will be that the aggrieved companies will be diverted of their undertakings and the payment is subject to a dispute, the procedure involves evidence and production of relevant records as, when and where they are required. It is but essential to think of a rough and ready payment than the one after such a prolonged agony. My suggestion is that lumpsum compensation amounting to one-half of the paid up capital be fixed and the same be enacted to be distributed equally among all share-holders.

This avoids many complications, and protects the ordinary share-holders whose interests should be paramount in our consideration. I commend this suggestion to the House agreeing with the majority view.

NEW DELHI ;

The 30th April, 1953. ....

VI

While appending this Minute of Dissent to the report of the Select Committee on the Air Corporation Bill, 1953, we sincerely hope that the suggestions made by us shall be appreciated and adopted by the House.

The Scheme of compensation proposed in the Bill is not at all satisfactory. Its application in some cases would result in unfairness and injustice. It has been explained to us all by the Minister concerned, that the Market Price of the shares has not been taken as the basis of compensation for the reason that such a course would result in payment of less compensation than what is due to the share-holders of that company but here we find that with the application of the proposed schedule and the method of compensation also, the compensation so paid, will in the case of a few companies, amount to no payment or to a payment of a very meagre amount than the price of the ordinary shares of that company prevailing in the market. In order therefore, to strengthen the very said idea of the Minister that the basis of compensation should not result in payment of less compensation to the share-holders than their share market value, prevailing during the course of two to three years, we should evolve

some provision to safeguard such interests. We, therefore, suggest the House to add in clause 25, a proviso to the following effect:—

"Provided that in no case the compensation so awarded to a company shall be less than a sum, enough to enable the company to pay to all its share-holders at least to the extent of its average market share value prevailing during the last three years."

P. L. R. KAUSHIK.
SUSHAMA SEN.
C. P. MATTHEN.
RADHA RAMAN.

NEW DELHI;
The 30th April, 1953.

VII

The schedule to the bill lays down a set of formulæ for valuation of components of aircraft and stores.

It is not possible to deduce any principle on which the formulæ are based.

The purpose of the bill is to acquire the undertakings of various legal "persons" for a public purpose; and not odd bits of moveable property including junk. We have the precedent of similar acquisition for public purposes when the Reserve Bank of India and the Road Transport undertakings in Bombay were acquired. It is not intelligible why either of the precedents were not followed especially when the Air Transport Enquiry Committee of 1950 presided over by Mr. Justice Rajadhaksha, recommended the second alternative though they did not rule out the first. The Governments of U.K. and Australia are said to have adopted the method recommended by Rajadhaksha Committee.

As a result of the working out of the schedule, it is anticipated that out of the approximate total number of 30,000 share-holders in all the companies which own the undertakings, only 5,000 are likely to get varying amounts as compensation for the value of their shares (on the assumption that the Companies will choose to distribute the entire compensation money equitably amongst the share-holders). 25,000 share-holders *i.e.*, nearly 85 per cent. of the total number of share-holders in Air undertakings would get nothing not even a pie as compensation. Apart from total loss which is being inflicted on this large body of middle class small investors and its resultant hardship on them at the present moment; it can be taken for granted that no prudent person will invest any of his savings in any undertakings to be promoted in future. What will happen to the expectation from the private sector in industrial development as envisaged in the Five Year Plan is apparent.

Whatever be the intentions of the framers of the schedule judging from anticipated results, it is difficult to escape from the conclusion, that a small fraction of share-holders are receiving a favourable treatment as against the very large bulk who are beig left without anything. A simple and intelligible method would be to acquire the shares of the share-holders at an equitable price so that each share-holder would feel that he is being compensated fairly for his investment. It is not difficult to evaluate diff-

erent categories of shares where there are any. There are ample precedents in our country as well as other countries. It is not necessary that full value need be paid for all shares. When any property is acquired by the State for 'public purpose' a citizen has learnt to be satisfied with a reasonable compensation, which is all that is guaranteed under the Constitution. Let not a large number feel that they are being discriminated against.

NEW DELHI ;
The 30th April, 1953.

N. KANUNGO.

Bill No. 22A of 1953.

THE AIR CORPORATIONS BILL, 1953

(AS AMENDED BY THE SELECT COMMITTEE)

(Words side-lined or underlined indicate the amendments suggested by the Committee, as terisks indicate omissions)

A

BILL

to provide for the establishment of Air Corporations, to facilitate the acquisition by the Air Corporations of undertakings belonging to certain existing air companies and generally to make further and better provisions for the operation of air transport services.

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(*1*) This Act may be called the Air Corporations Act, 1953.

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

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

(*i*) "aircraft" means any machine which can derive support in the atmosphere from reactions of the air and includes balloons, whether fixed or free, airships, kites, gliders and flying machines;

(*ii*) "air transport service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or a series of flights;

(*iii*) "associate" in relation to either of the corporations means any subsidiary of the corporation or any person with whom the corporation has made an agreement in accordance with clause (*h*) of sub-section (*2*) of section 7;

(*iv*) "Corporations" means "Indian Airlines" and "Air-India International" established under section 3, and "Corporation" means either of the Corporations;

(*v*) the expression "existing air companies" means the Air India Ltd., the Air Services of India Ltd., the Airways (India) Ltd., the Bharat Airways Ltd., the Deccan Airways Ltd., the Himalayan Aviation Ltd., the Indian National Airways Ltd., the Kalinga Airlines and the Air India International Ltd., and "existing air company" means any of the existing air companies;

(*vi*) "prescribed" means prescribed by rules made under this Act;

(*vii*) "regulations" means regulations made by either of the corporations under section 44;

(*viii*) "scheduled air transport service" means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognisably systematic series, each flight being open to use by members of the public;

(*ix*) "Tribunal" means the Tribunal constituted under section 25.

CHAPTER II

CONSTITUTION AND FUNCTIONS OF THE CORPORATIONS

3. Incorporation of the Corporations.—(*1*) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established two Corporations to be known as "Indian Airlines" and "Air-India International".

(*2*) Each of the Corporations aforesaid shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire and hold property, and may by its name sue and be sued.

4. Constitution of the Corporations.—(*1*) Each of the Corporations shall consist of not less than five but not more than nine members appointed by the Central Government and one of the members shall be appointed by the Central Government to be the Chairman of the Corporation:

Provided that—

(*a*) the same person may be appointed to be the Chairman of both the Corporations or Chairman of one and member of the other;

(*b*) the same persons may be appointed to be members of both the Corporations.

(*2*) Before appointing a person to be a member of either of the Corporations, the Central Government shall satisfy itself that that person will have no such financial or other interest as is likely to affect prejudicially the exercise or performance by him of his functions as a member of the Corporation and the Central Government shall also satisfy itself from time to time with respect to every member of the Corporation that he has no such interest; and any person who is, or whom the Central Government proposes to appoint and who has consented to be a member of the Corporation shall, whenever required by the Central Government so to do, furnish to it such information as the Central Government considers necessary for the performance of its duties under this sub-section.

(*3*) A member of either of the Corporations who is in any way directly or indirectly interested in a contract made or proposed to be made by the Corporation, or in any contract made or proposed to be made by an

associate of the Corporation which is brought up for consideration by the Corporation, shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at a meeting of the Corporation; and the disclosure shall be recorded in the minutes of the Corporation, and the member shall not take any part after the disclosure in any deliberation or decision of the Corporation with respect to that contract.

(*4*) During the temporary absence of the Chairman of either of the Corporations, the Central Government may appoint another person, whether a member of the Corporation or not, to act as the Chairman.

(*5*) Save as otherwise provided in this section, nothing contained in this Act shall be deemed to disqualify the General Manager of either of the Corporations from being appointed to be a member thereof.

5. Conditions of service of members.—(*1*) The Chairman and other members of each of the Corporations shall ordinarily be entitled to hold office for the period specified in the order of appointment, unless the appointment is terminated earlier by the Central Government:

Provided that any member may at any time by notice in writing addressed to the Central Government resign his office.

* * * *

(*2*) Subject to the previous approval of the Central Government, each of the Corporations shall pay to every member thereof in respect of his office as such, such remuneration by way of allowances, fees or otherwise as may be determined by the Corporation, and to the Chairman in respect of his office as such, such remuneration, whether in addition to the remuneration to which he may be entitled in respect of his office as a member or otherwise, as it may similarly determine.

6. Vacancy in Corporation not to invalidate proceedings.—No act or proceeding of either of the Corporations shall be deemed to be invalid by reason merely of any vacancy in, or any defect in the constitution of, the Corporation.

7. Functions of the Corporations.—(*1*) Subject to the rules, if any, made by the Central Government in this behalf, it shall be the function of each of the Corporations to provide safe, efficient, adequate, economical and properly co-ordinated air transport services, whether internal or international or both, and the Corporations shall so exercise their powers as to secure that the air transport services are developed to the best advantage and, in particular, so exercise those powers as to secure that the services are provided at reasonable charges.

(*2*) Without prejudice to the generality of the powers conferred by sub-section (*1*), each of the Corporations shall, in particular, have power—

(*a*) to operate any air transport service, or any flight by aircraft for a commercial or other purpose, and to carry out all forms of aerial work;

(*b*) to provide for the instruction and training in matters connected with aircraft or flight by aircraft of persons employed, or desirous of being employed, either by the Corporation or by any other person;

(*c*) with the previous approval of the Central Government, to promote any organization outside India for the purpose of engaging in any activity of a kind which the Corporation has power to carry on;

(*d*) to acquire, hold or dispose of any property, whether movable or immovable, or any air transport undertaking;

(*e*) to repair, overhaul, reconstruct, assemble or recondition aircraft, vehicles or other machines and parts, accessories and instruments thereof or therefor and also to manufacture such parts, accessories and instruments, whether the aircraft, vehicles or other machines are owned by the Corporation or by any other person;

(*f*) to enter into and perform all such contracts as are calculated to further the efficient performance of its duties and the exercise of its powers under this Act;

(*g*) to perform any functions as agent or contractor in relation to an air transport service operated by any other person;

(*h*) with the previous approval of the Central Government, to enter into agreements with any person engaged in air transportation with a view to enabling such person to provide air transport services on behalf of or in association with the Corporation;

(*i*) with the previous approval of the Central Government, to determine and levy fares and freight rates and other charges for or in respect of the carriage of passengers and goods on air transport services operated by it;

(*j*) to take such steps as are calculated to extend the air transport services provided by the Corporation, whether within or without India, including the development of feeder services and the improvement of the types of aircraft used in air transport services;

(*k*) to take such steps as are calculated to promote the interests of the Corporation or to improve the services the Corporation may provide, including provision of catering, rest-rooms, goods-sheds, warehouses and transport by land or water in connection with any air transport service or any other amenity or facility;

(*l*) to take all such steps as may be necessary or convenient for, or may be incidental to, the exercise of any power, or the discharge of any function or duty conferred or imposed on it by this Act.

(*3*) Nothing contained in this section shall be construed as—

(*a*) authorising the disregard by the Corporation of any law for the time being in force, or

(*b*) authorising any person to institute any proceeding in respect of a duty or liability to which either of the Corporations or its employees would not otherwise be subject.

8. Appointment of officers and other employees of the Corporations.—(*1*) For the purpose of enabling it efficiently to discharge its functions under this Act, each of the Corporations shall appoint a General Manager and, subject to such rules as may be prescribed in this behalf, may also appoint such number of other officers and employees as it may think necessary:

Provided that the appointment of the General Manager and such other categories of officers as may be specified after consultation with the Chairman in such rules shall be subject to the approval of the Central Government.

(*2*) Subject to the provisions of section 20, every person employed by each of the Corporations shall be subject to such conditions of service and shall be entitled to such remuneration and privileges as may be determined by regulations made by the Corporation by which he is employed.

(*3*) Neither the General Manager nor such other employee of either of the Corporations as may be specified in this behalf by the Central Government shall, during his service in the Corporation, be employed in any capacity whatsoever or directly or indirectly have any interest in any air transport undertaking other than an undertaking of either of the Corporations, or in any other undertaking which is interested in any contract with either of the Corporations.

9. Corporations to act on business principles.—In carrying out any of the duties vested in it by this Act, each of the Corporations shall act so far as may be on business principles.

CHAPTER III

Finance, Accounts and Audit

10. Capital of the Corporations.—(*1*) All non-recurring expenditure incurred by the Central Government for, or in connection with, each of the Corporations up to the date of establishment of that Corporation and declared to be capital expenditure by that Government, shall be treated as capital provided by the Central Government to that Corporation.

(*2*) The Central Government may provide any further capital that may be required by either of the Corporations for the carrying on of the business of the Corporation or for any purpose connected therewith on such terms and conditions as the Central Government may determine.

(*3*) Each of the Corporations may, with the consent of the Central Government, or in accordance with the terms of any general authority given to it by the Central Government—

(*a*) borrow money for all or any of the purposes of the Corporation, and

(*b*) secure the payment of any money borrowed by it or any interest thereon by the issue of bonds, debentures, debenture-stock or any mortgage or charge or other security on the undertaking of the Corporation or any part of it or on any of its properties.

11. Vesting of properties in the Corporations.—All properties, assets and funds owned or acquired by the Central Government for the purpose of Indian Airlines or, as the case may be, Air India International before the establishment of those Corporations shall, on such establishment, vest in the Corporation concerned.

12. Funds of the Corporations.—(*1*) Each of the Corporations shall have its own funds and all receipts of the Corporation shall be carried thereto and all payments for the Corporation shall be made therefrom.

(*2*) Each of the Corporations may keep in current account with any scheduled bank as defined in section 2 of the Reserve Bank of India Act, 1934 (II of 1934) or in any other bank approved by the Central Government in this behalf a sum of money not exceeding such amount as may be prescribed, but any moneys in excess of the said sum shall be deposited in the Reserve Bank of India or with the agents of the Reserve Bank of India or invested in such manner as may be approved by the Central Government.

13. Powers of the Corporations in regard to expenditure.—Each of the Corporations shall have power, subject to the provisions of this Act, to spend such sums as it thinks fit on objects or for purposes authorised by this Act and such sum shall be treated as expenditure out of the funds of that Corporation.

14. Corporation to assume obligations of Central Government in respect of certain matters.—All obligations incurred, all contracts entered into and all matters and things engaged to be done by, with, or for the Central Government for any of the purposes of this Act before the establishment of either of the Corporations shall be deemed to have been incurred, entered into or engaged to be done by, with or for Indian Airlines or, as the case may be, Air India International according as the obligations, contracts, matters and things relate to the purposes of the former Corporation or the latter.

15. Accounts and audit.—(*1*) The Corporations shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the profit and loss account and the balance sheet in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India.

(*2*) The accounts of the Corporations shall be audited annually by the Comptroller and Auditor General of India and any expenditure incurred by him in connection with such audit shall be payable by the Corporations to the Comptroller and Auditor General of India.

(*3*) The Comptroller and Auditor General of India and any person appointed by him in connection with the audit of the accounts of the Corporations shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor General has in connection with the audit of Government accounts and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Corporations.

(*4*) The accounts of the Corporations as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before both Houses of Parliament.

CHAPTER IV

Acquisition of undertakings of existing Air Companies

16. Undertakings of existing air companies to vest in the Corporations.—On such date as the Central Government may, by notification in the

Official Gazette, appoint (hereinafter referred to as "the appointed date"), there shall be transferred to and vest in—

(*a*) Indian Airlines, the undertakings of all the existing air companies (other than Air India International Ltd.), and

(*b*) Air India International, the undertaking of the Air India International Ltd.

17. General effect of vesting of undertakings in the Corporations.—(*1*) The undertaking of each of the existing air companies which is transferred to and which vests in either of the Corporations under section 16 shall, subject to the provisions of **** section 22, be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, including lands, works, workshops, aircraft, cash balances, reserve funds, investments and book debts and all other rights and interests arising out of such property as were immediately before the appointed date in the ownership, possession or power of the existing air company in relation to the undertaking, whether within or without India, and all books of account and documents relating thereto, and, subject to the provisions contained in section 22, shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the existing company in relation to the undertaking.

(*2*) Any lands, works, aircraft, assets or other property vesting in the Corporation under sub-section (*1*) shall by force of such vesting be freed and discharged from all trusts, obligations, mortgages, charges, liens and other encumbrances affecting it, and any attachment, injunction or any other order of a court restricting the use of such property in any manner shall be deemed to have been withdrawn.

(*3*) Subject to the other provisions contained in this Act, all contracts and working arrangements which are subsisting immediately before the appointed date and affecting any of the existing air companies shall, in so far as they relate to the undertaking of that company, cease to have effect or be enforceable against that company or any person who was surety or had guaranteed the performance thereof, and shall be of as full force and effect against or in favour of the Corporation in which the undertaking has vested by virtue of this Act and enforceable as fully and effectually as if, instead of the company, the Corporation had been named therein or had been a party thereto.

(*4*) Subject to the other provisions contained in this Act, any proceeding or cause of action pending or existing immediately before the appointed date by or against any of the existing air companies in relation to its undertaking may as from that date be continued and enforced by or against the Corporation in which it has vested by virtue of this Act as it might have been enforced by or against that company if this Act had not been passed, and shall cease to be enforceable by or against that company, its surety or guarantor.

18. Reservation of scheduled air transport services to the Corporations.—(*1*) After the appointed date, it shall not be lawful for any person other than the Corporations or their associates to operate any scheduled air transport service from, to, in or across India:

Provided that nothing in this section shall restrict the right of any person,—

(*a*) for the purpose of any air transport undertaking of which the principal place of business is in any country outside India, to operate an air transport service in accordance with the terms of

any agreement for the time being in force between the Government of India and the Government of that country; or

(*b*) to carry passengers for the sole purpose of instructing them in flying or on duties of aircrews; or

(*c*) to carry passengers or goods for the sole purpose of providing an air ambulance service or a rescue or relief service during any natural calamity; or

(*d*) to carry passengers or goods for the sole purpose of providing joy rides consisting of flights operated from and to the same aerodrome or place without any intermediate landing or for the purpose of aerial survey, fire fighting, crop-dusting, locust control or any other aerial work of a similar nature.

(*2*) Any person who operates a scheduled air transport service in contravention of the provisions of this section shall be liable in respect of each offence to a fine which may extend to one thousand rupees, or to imprisonment which may extend to three months, or to both.

Explanation.—The operation of each flight shall constitute a separate offence for the purposes of this section.

19. Licences to cease to be valid.—With effect from the appointed date, all licences granted under the Indian Aircraft Act, 1934 (XXII of 1934) or under the rules made thereunder for the operation of scheduled air transport services shall cease to be valid.

20. Provisions respecting officers and employees of existing air companies.—(*1*) Every officer or other employee of an existing air company (except a director, managing agent, manager or any other person entitled to manage the whole or a substantial part of the business and affairs of the company under a special agreement) employed by that company prior to the first day of July, 1952, and still in its employment immediately before the appointed date shall, in so far as such officer or other employee is employed in connection with the undertaking which has vested in either of the Corporations by virtue of this Act, become as from the appointed date an officer or other employee, as the case may be, of the Corporation in which the undertaking has vested and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same under the existing air company if its undertaking had not vested in the Corporation and shall continue to do so unless and until his employment in the Corporation is terminated or until his remuneration, terms or conditions are duly altered by the Corporation:

Provided that nothing contained in this section shall apply to any officer or other employee who has, by notice in writing given to the Corporation concerned prior to such date as may be fixed by the Central Government by notification in the Official Gazette, intimated his intention of not becoming an officer or other employee of the Corporation.

(*2*) Notwithstanding anything contained in sub-section (*1*), the Central Government may direct either of the Corporations in which the undertaking of any existing air company has vested to take into its employment any officer or other employee who was employed by the existing air

company prior to the first day of July, 1952, and who has been discharged from service in that company on or after the said date for reasons which, in the opinion of the Central Government, appear to be inadequate for the purpose, and where the Central Government issues any such direction, the provisions of sub-section (*1*) shall apply to such officer or other employee as they apply to any officer or other employee referred to therein.

(*3*) As from the appointed date the trustees of the provident funds and pension funds or pension schemes of each of the existing air companies shall transfer to the Corporation concerned the balances lying to the credit of each of the employees whose services have been transferred to that Corporation by virtue of this Act and also all other balances of the funds or schemes as shall remain after satisfying all demands and liabilities, and thereupon the trustees shall be discharged of the trusts by virtue of this Act.

(*4*) Notwithstanding anything contained in this Act or in the Indian Companies Act, 1913 (VII of 1913) or in any other law for the time being in force or in any agreement entered into by an existing air company or in the articles of association of any such company, no director, managing agent, manager or any other person entitled to manage the whole or a substantial part of the business and affairs of the company shall be entitled to any compensation against any existing air company or against either of the Corporations for the loss of office or for the premature termination of any contract of management entered into by him with any existing air company and where any existing air company has, after the first day of July, 1952, and before the commencement of this Act, paid to any such person as is referred to in this sub-section any sum by way of compensation to which the person receiving such compensation would not have been entitled if this sub-section were in force at the time of such payment, the existing air company shall be entitled to claim refund of any sum so paid.

21. Duty to deliver up possession of property acquired and documents relating thereto.—(*1*) Where any property has vested in either of the Corporations under section 16, every person in whose possession or custody or under whose control the property may be, shall deliver up the property to the Corporation concerned forthwith.

(*2*) Any person who on the appointed date has in his possession or under his control any books, documents or papers relating to any undertaking which has vested in either of the Corporations under this Act and which belong to an existing air company or would have so belonged if its undertaking had not so vested shall be liable to account for the said books, documents and papers to the Corporation in which the undertaking has vested and shall deliver them up to the Corporation or to such person as the Corporation may direct:

Provided that the Corporation shall produce for inspection by such companies or their authorized representatives the books of account and documents as relate to the affairs of the company for any period prior to the appointed date.

(*3*) Without prejudice to the other provisions contained in this section, it shall be lawful for the Corporation and the Central Government to take all necessary steps for securing possession of all properties which have vested in the Corporation under section 16.

22. Duty of existing air companies to supply particulars.—(*1*) Where the undertaking of an existing air company vests in either of the Corporations under this Act, the existing air company shall, within thirty days from the appointed date or within such further time as the Corporation concerned may allow in any case, supply to the Corporation particulars of book debts and investments belonging to and all liabilities and obligations of the company subsisting immediately before the appointed date, and also of all agreements entered into by the existing air company and in force on the appointed date, including agreements, whether express or implied, relating to leave, pension, gratuity and other terms of service of any officer or other employee of the existing air company, under which by virtue of this Act the Corporations have or will or may have liabilities except such agreements as the Corporation may exclude either generally or in any particular case from the operation of this sub-section.

(*2*) If any existing air company fails to supply to the Corporation concerned particulars of such book debts, liabilities and agreements within the time allowed to it for the purpose under sub-section (*1*), nothing contained in this Act shall have effect so as to transfer any such book debts, liabilities and agreements to or to vest the same in the Corporation.

(*3*) Either Corporation may by notice in writing within a period of ninety days after submission of the particulars referred to in sub-section (*1*) intimate to the existing air company submitting the particulars that such of the book debts and investments as are specified in the notice are not included in the properties vesting in the Corporation whereupon the compensation provided by section 25 of this Act and the Schedule thereto shall be reduced by the amount of such excluded book debts and investments but the right of such existing air company to recover and retain such excluded book debts shall remain unaffected by this Act.

23. Right of Corporations to disclaim certain agreements.—(*1*) Where it appears to either of the Corporations that the making of any such agreements as is referred to in section 22 under which the Corporation has or will have or may have liabilities was not reasonably necessary for the purposes of the activities of the existing air company or has not been entered into in good faith, the Corporation may, within six months from the appointed date, apply to the Tribunal for relief from such agreement, and the Tribunal, if satisfied after making such inquiry into the matter as it thinks fit that the agreement was not reasonably necessary for the purposes of the activities of the existing air company or has not been entered into in good faith, may make an order cancelling or varying the agreement on such terms as it may think fit to impose and the agreement shall thereupon have effect accordingly.

(*2*) All the parties to the agreement which is sought to be cancelled or varied under this section shall be made parties to the proceeding.

24. Transactions resulting in dissipation of assets.—(*1*) This section shall apply where any existing air company has, after the first day of July, 1952, and before the appointed date,—

(*a*) made any payment to any person without consideration or for an inadequate consideration;

(*b*) sold or disposed of any of its properties or rights without consideration or for an inadequate consideration;

(*c*) acquired any property or rights for an excessive consideration;

(*d*) entered into or varied any agreement so as to require an excessive consideration to be paid or given by the company;

(*e*) entered into any other transaction of such an onerous nature as to cause a loss to or impose a liability on the company exceeding any benefit accruing to the company; or

(*f*) sold or otherwise transferred any aircraft, equipment, machinery or other property of book value exceeding rupees ten thousand;

and the payment, sale, disposal, acquisition, agreement or variation thereof, or other transaction or transfer, was not reasonably necessary for the purposes of the company or was made with an unreasonable lack of prudence on the part of the company, regard being had in either case to the circumstances at the time.

(*2*) Either of the Corporations may, in the case of any such existing air company as is referred to in sub-section (*1*) the undertaking of which has vested in the Corporation under this Act, at any time within six months from the appointed date, apply for relief to the Tribunal in respect of any transaction to which in the opinion of the Corporation this section applies, and all parties to the transaction shall, unless the Tribunal otherwise directs, be made parties to the application.

(*3*) Where the Tribunal is satisfied that a transaction in respect of which an application is made is a transaction to which this section applies, then, unless the Tribunal is also satisfied that the transaction was a proper transaction made in the ordinary course of business regard being had to the circumstances at the time and was not in any way connected with any provision made by this Act or with any anticipation of the making of any such provision, the Tribunal shall make such order against any of the parties to the application as the Tribunal thinks just having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and all the circumstances of the case.

(*4*) Where an application is made to the Tribunal under this section in respect of any transaction and the application is determined in favour of the Corporation, the Tribunal shall have exclusive jurisdiction to determine any claims outstanding in respect of the transaction.

25. Compensation to be given for compulsory acquisition of undertaking.—(1) Where the undertaking of any of the existing air companies has vested in either of the Corporations under this Act, compensation shall be given by the Corporation to that company in the manner specified in section 27 and the amount of such compensation shall be determined in accordance with the principles specified in the Schedule to this Act.

(*2*) Notwithstanding that separate valuations are calculated under the principles specified in the Schedule in respect of the several matters referred to therein, the amount of compensation to be given shall be deemed to be a single compensation to be given for the undertaking as a whole.

(3) The amount of the compensation to be given in accordance with the aforesaid principles shall be determined by the Corporation and if the amount so determined is approved by the Central Government, it shall be offered to the existing air company in full satisfaction of the compensation payable under this Act, and if the amount so offered is not acceptable to the existing air company, it may within such time as may be prescribed for the purpose have the matter referred to a tribunal constituted for this purpose by the Central Government for decision.

26. Constitution of special tribunal to determine compensation.—(1) The Tribunal to be constituted under section 25 shall consist of three members appointed by the Central Government, one of whom shall be a person who is or has been a Judge of a High Court or has been a Judge of the Supreme Court.

(2) The Tribunal may for the purpose of deciding any matter under this Act choose one or more persons possessing special knowledge of any matter relating to the case under inquiry to assist it in determining any compensation which is to be given under this Act.

(3) The Tribunal shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908) in respect of the following matters:—

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

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits;

(*d*) issuing commissions for the examination of witnesses or documents.

(4) The Tribunal shall by a majority of its number regulate its own procedure and decide any matter within its competence and may review its decision in the event of there being a mistake on the face of the record or correct any arithmetical or clerical error therein but subject thereto the decision of the Tribunal on any matter within its jurisdiction shall be final and shall not be called in question in any court.

27. Mode of giving compensation.—(1) When the amount of compensation to be given under this Act to an existing air company has been determined under section 25, the Corporation shall give to the company one or more bonds of the face value of the amount of compensation so determined less such portion thereof as is payable in cash under this section.

(2) Out of the compensation to be given to each of the existing air companies under this Act, there shall be paid in cash—

(a) ten per cent. of the amount of compensation payable to each of such companies (which percentage shall be uniformly applicable to all existing air companies); or

(b) the amount borrowed by any such company from any bank and outstanding on the 31st day of December, 1952, or on the appointed date, whichever amount is less; or

(c) an amount equal to the cash of any such company, including cash in deposit with a bank, which has vested in the Corporation under this Act;

whichever of the amounts specified in clauses (a), (b) and (c) is the greatest.

(3) The bonds aforesaid shall be issued by the Corporation with the previous approval of the Central Government and shall be negotiable and shall be redeemed at their face value by the Corporation concerned on the demand of the holder within one hundred and eighty days after the expiry of five years from the date of their issue and the redemption of the bonds and payment of all interest thereon shall be guaranteed by the Central Government.

(4) If within the expiry of the said period of one hundred and eighty days, the holder of any bond fails to require payment of its face value from the Corporation concerned, the bond shall cease to be redeemable at the option of the holder:

Provided that in any case the Corporation may by notice require the holder of the bond to accept its face value in cash at any time whether before or after the expiry of the period of five years aforementioned.

(5) The holder of the bond shall be entitled to receive from the Corporation interest on the bond at three-and-a-half per cent. per annum at such intervals as may be prescribed, with effect from the appointed date and until the bond is duly redeemed.

(6) Bonds issued under this section shall, for the purpose of redemption and of computing interest be deemed to have been issued on the appointed date.

(7) Any bond issued under the provisions of this section shall be deemed to be a security in which a trustee may invest trust monies within the meaning of section 20 of the Indian Trusts Act, 1882 (II of 1882).

28. Winding up of existing company whose undertaking has been acquired.—(*1*) The Central Government may, by order in writing, authorise any existing air company the undertaking of which has vested in either of the Corporations, to be wound up voluntarily in accordance with the provisions of the Indian Companies Act, 1913 (VII of 1913) relating to voluntary winding up:

Provided that—

(*a*) the winding up of the company shall commence on the day on which the Central Government authorises the winding up without the passing by the company of any special or other resolution for winding up; and

(*b*) the directors of the existing company shall not be under an obligation to make any such statutory declaration as is required by section 207 of the Indian Companies Act, 1913 (VII of 1913); and

(*c*) the winding up of the company shall be continued by the directors of the existing company in office at the time the Central Government authorises its winding up and they shall be deemed to be joint liquidators for the purpose of the said winding up with power to act by a majority of their number.

(2) For the purposes of winding up the affairs of any existing air company or for any other purpose necessary for enabling it to give effect to the provisions of this Act, the Central Government may, notwithstanding anything contained in this Act, permit the existing air company to

occupy, keep in its custody or utilise, as the case may be, for such period as it may allow any office, books, accounts and other documents and the services of any officers or other employees, which have been transferred to either of the Corporations under this Act, on such terms and conditions as may be agreed between the Corporation in which the undertaking has vested and the existing air company, or failing agreement, as may be determined by the Central Government.

CHAPTER V

Air Transport Council

29. Constitution of Air Transport Council.—As soon as may be after the commencement of this Act, the Central Government may cause to be constituted an Air Transport Council consisting of a Chairman and such other number of members not exceeding eleven as the Central Government may appoint thereto:

Provided that amongst the members to be so appointed there shall at least be one person with experience in financial matters and one person who is an employee of either of the Corporations with experience in labour matters.

30. Functions of the Air Transport Council.—(*1*) It shall be the duty of the Air Transport Council to consider—

(*a*) at the request of either of the Corporations any matter of the kind referred to in section 37; and

(*b*) any matter of importance which may be referred to it by the Director General of Civil Aviation or the Director General of Posts and Telegraphs relating to matters of common interest, between either of the Corporations and the Director General of Civil Aviation, or as the case may be, the Director General of Posts and Telegraphs, including rates for the carriage of postal articles by air, and to make recommendations thereon to the Central Government.

(*2*) At the request of the Central Government, the Air Transport Council shall investigate any matter relating to the fares, freight rates or other charges levied by either Corporation in respect of any service or facility provided by the Corporation and of the adequacy or efficiency of such service or facility and shall make recommendations thereon to the Central Government.

(*3*) The Council shall, if so required by the Central Government, tender advice to that Government in regard to financial and economic analysis, accounting, costing and statistical techniques and financial reporting relating to air transport and, in particular, advise in regard to the matters specified in the proviso to sub-section (*2*) of section 33.

(*4*) The Central Government, after taking any recommendation made by the Air Transport Council under this section into consideration, may issue such directions in the matter as it thinks fit and such directions shall be binding on the Corporation concerned.

31. Staff of the Council.—The Council shall have a Secretary and such other employees as the Central Government may appoint, and the expenditure on the staff and other charges of the Council shall be borne by the Central Government.

32. Proceedings of the Council.—(*1*) The Council shall regulate its own procedure.

(*2*) No proceeding of the Council shall be deemed to be invalid by reason merely of any vacancy in, or any defect in the constitution of, the Council.

CHAPTER VI

Control of Central Government

33. Power of Central Government to give directions.—(*1*) The Central Government may give to either of the Corporations directions as to the exercise and performance by the Corporation of its functions, and the Corporation shall be bound to give effect to any such directions.

(*2*) The Central Government may, if it is of opinion that it is expedient in the national interest so to do, after consultation with the Corporation concerned, direct either of the Corporations—

(*a*) to undertake any air transport service or other activity which the Corporation has power to undertake;

(*b*) to discontinue or make any change in any scheduled air transport service or other activity which it is operating or carrying on;

(*c*) not to undertake any activity which it proposes to do:

Provided that, if, at the direction of the Central Government, the Corporation establishes, alters or continues to maintain an air transport service or other activity and satisfies the Central Government that during the relevant financial year the Corporation has suffered an over-all loss in respect of the operation of all its air transport services and of all its other activities and also that the service or activity so established, altered or continued to be maintained in compliance with the directions of the Central Government as aforesaid has been operated at a loss in any financial year, then the Central Government shall reimburse the Corporation to the extent of the loss relatable to the operation of that particular service or activity.

34. Prior approval of Central Government necessary in certain cases.—Neither Corporation shall, without the previous approval of the Central Government—

(*a*) undertake any capital expenditure for the purchase or acquisition of any immovable property or aircraft or any other thing at a cost exceeding rupees fifteen lakhs;

(*b*) enter into a lease of any immovable property for a period exceeding five years; or

(*c*) in any manner dispose of any property, right or privilege having an original or book value exceeding rupees ten lakhs.

35. Submission of programme of work for each year.—(*1*) Each of the Corporations shall prepare and submit to the Central Government, not less than three months before the commencement of the financial year of the Corporation a statement showing the programme of operation and development of air transport services to be operated by the Corporation and its associates during the forthcoming financial year and its other activities as well as its financial estimates in respect thereof, including any proposed investment of capital and increase in the strength of its total staff.

(*2*) If, during any financial year, either of the Corporations engages or proposes to engage in any air transport service or ancillary activity in addition to those specified in the programme previously submitted under sub-section (*1*) and a substantial alteration of the financial estimates is likely to be involved thereby, the Corporation shall submit to the Central Government for approval a supplementary programme of such service or activity and a supplementary estimate of the expenditure and revenue to be incurred and received by the Corporation in respect thereof during the remainder of that period:

Provided that, to meet any unexpected traffic demand or other special situation, either of the Corporations may undertake any additional service or other ancillary activity not specified in the programme submitted under sub-section (*1*) or sub-section (*2*) and subsequently submit a report on the matter to the Central Government in the prescribed manner.

36. Submission of Annual Reports to Parliament.—(*1*) Each of the Corporations shall, as soon as may be after the end of each financial year, prepare and submit to the Central Government in such form as may be prescribed a report giving an account of its activities during the previous financial year, and the report shall also give an account of the activities, if any, which are likely to be undertaken by the Corporation during the next financial year.

(*2*) The Central Government shall cause every such report to be laid before both Houses of Parliament as soon as may be after it is submitted.

CHAPTER VII

MISCELLANEOUS

37. Corporations to act in mutual consultation.—It shall be the duty of each of the Corporations to enter into consultations with the other in matters of common interest to the two Corporations including, in particular, the operation of scheduled air transport services, the routes on which such services should be operated by each of the Corporations, the frequency of such services, the passenger fares and freight rates to be charged, the measures of economy to be adopted, the provision of any services in regard to overhaul and maintenance of aircraft or any other matter falling within the scope of the functions of either of the Corporations, and, generally, in regard to ensuring the fullest co-operation and co-ordination in respect of all such matters.

38. Transfer of scheduled air transport services or assets from one Corporation to the other.—The Central Government may, for the purpose of improving the air transport services provided by either of the Corporations or for effecting better co-ordination in respect of such services, direct that with effect from such date as may be specified in the direction and subject to such conditions as may be similarly specified,—

(*a*) any scheduled air transport service operated by one Corporation shall no longer be operated by that Corporation but shall be operated by the other Corporation, and

(*b*) any property belonging to one Corporation shall be transferred to the other Corporation.

39. Corporations may delegate their powers.—(*1*) Each of the Corporations may appoint a Committee or Committees consisting of some or any of its members with or without the addition of any officer or employee

of the Corporation and delegate any of the functions and powers of the Corporation to such Committee or Committees and may limit the exercise of such delegated authority to any specified area.

(2) Either of the Corporations may, in relation to any particular matter or class of matters or to any particular area, by general or special order, direct that any of its officers or other employees may also exercise all or any of its powers under this Act (except the powers given to it by this section) to the extent to which the Corporation deems it necessary for the efficient running of its day to day administration.

40. Advisory and Labour Relations Committees.—(1) The Central Government, in consultation with the Corporation concerned, may appoint an Advisory Committee consisting of such number of persons as it may think fit for the purpose of advising the Corporation in respect of such matters as may be referred to it by the Corporation or as may be prescribed.

(2) Each of the Corporations shall constitute in the prescribed manner a Labour Relations Committee consisting of representatives of the Corporation and of its employees, so however that the number of representatives of the employees on the Committee shall not be less than the number of representatives of the Corporation, and it shall be the duty of the Labour Relations Committee to advise the Corporation on matters which relate to the welfare of the employees or which are likely to promote and secure amity and good relations between the two.

41. Meetings of the Corporation.—(1) Meetings of the Corporation shall be held at such times and places and, subject to sub-sections (2) and (3), the proceedings of the Corporation shall be conducted in such manner as may be provided by the regulations.

(2) The Chairman or in his absence any person chosen by the members present from amongst themselves shall preside at the meeting.

(3) At a meeting of the Corporation all questions shall be decided by a majority of votes of the members present, and for this purpose, each member shall have one vote and in the case of equality of votes the Chairman or, in his absence, the person presiding at the meeting shall have a second or casting vote.

42. Penalty for wrongful withholding of property.—If a director, managing agent, manager or other officer or employee of an existing air company who wilfully withholds or fails to deliver to the Corporation as required by sub-section (2) of section 21 any books, documents or papers which may be in his possession or who wrongfully obtains possession of any property of any such company which has vested in either of the Corporations under this Act or having any such property in his possession wrongfully withholds it from the Corporation or wilfully applies it to purposes other than those expressed in, or authorised by, this Act shall, on the complaint of the Corporation concerned, be punishable with fine which may extend to one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied or in default to suffer imprisonment which may extend to one year.

43. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to give effect to the provisions of this Act.

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

(*a*) the terms and conditions of service of the General Managers of the two Corporations; and such other categories of officers as may be specified from time to time under sub-section (*1*) of section 8.

(*b*) the form in which the budget of the two Corporations shall be prepared and submitted to the Central Government; and the form and the manner in which the accounts of the two Corporations shall be maintained and in which any returns or statistics shall be furnished or submitted;

(*c*) the reports which should be submitted by the Corporations and the intervals within which they should be so submitted;

(*d*) the maintenance of books of account;

(*e*) the establishment and maintenance of a fund by each of the Corporations for meeting any liability arising out of any act or omission in respect of which the Corporation may incur any liability to any third party;

(*f*) the provision of depreciation, reserve and other funds;

(*g*) the prohibition of persons who are directly or indirectly interested in any subsisting contract with either of the Corporations from becoming or being employees of the Corporation;

(*h*) the powers which may be exercised by either of the Corporations to facilitate the acquisition of any undertaking;

(*i*) the issue of bonds by either of the Corporations to meet any compensation payable by it under this Act;

(*j*) the training of the employees of either of the Corporations or other persons and the fees which may in its discretion be charged therefor;

(*k*) the term of office and other conditions of service of members of the Air Transport Council constituted under section 29;

(*l*) the prohibition of any interference with any air transport service or with any property of the Corporation or of any interference with or obstruction of any officer or employee of the Corporation in the performance of his duty;

(*m*) the punishment which shall not exceed imprisonment for three months or fine of rupees one thousand but which may consist of both such imprisonment and fine, in respect of any contravention of the provisions of any rules made under this section.

(*3*) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

44. Power of Corporations to make regulations.—(*1*) Each of the Corporations may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with this Act or the rules made thereunder for the administration of the affairs of the Corporation and for carrying out its functions.

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

(*a*) the time and place of the meetings of the Corporation and the procedure to be followed for the transaction of business at such meetings;

(*b*) the terms and conditions of service of officers and other employees of the Corporation other than the General Manager and officers of any other categories referred to in section 43;

(*c*) the issue of passes by the Corporation to its officers and other employees either free of cost or at concessional rates for travel on its air services and the conditions relating thereto;

(*d*) the authentication or orders and decisions of the Corporation and the instruments executed by it;

(*e*) the grant of refund in respect of any unused tickets and the issue of concessional passes;

(*f*) the period after the expiry of which unclaimed goods may be disposed of and the manner of their disposal;

(*g*) the conditions governing the carriage of persons or goods on its services.

THE SCHEDULE

(*See* section 25)

PRINCIPLES FOR DETERMINING COMPENSATION UNDER THIS ACT.

Paragraph I.—The compensation which shall be given by Indian Airlines or Air India International, as the case may be, to any existing air company in respect of the vesting, in accordance with the provisions of this Act, of the undertaking of such company in that Corporation shall be the sum of the amounts computed in accordance with the provisions of paragraph II, *less* the sum of the amounts computed in accordance with the provisions of paragraph III.

Paragraph II.—(*a*) The aggregate written down value of all airframes of aircraft in respect of which there are certificates of airworthiness in force or which can be rendered fit for certificates of airworthiness if the Corporation concerned were to incur expenditure within the normal rates for rendering the airframes airworthy, *plus*—

A sum of Rs. 12,000/- in respect of each airframe of a Dakota aircraft and a sum of Rs. 24,000/- in respect of each airframe of a Viking aircraft in any case where the existing air company had obtained a certificate of airworthiness in respect of it within ninety days immediately preceding the appointed date or if a certificate of airworthiness had not actually been obtained within that period but the existing air company had incurred expenditure within that period for the purpose of rendering that airframe airworthy, the value of the spare parts used for the purpose subject to a maximum of Rs. 12,000/- in the case of each airframe of a Dakota aircraft and Rs. 24,000/- in the case of each airframe of a Viking aircraft.

Note.—In this Schedule, the expression "airframe" includes also the equipment of the aircraft, whether fixed or removable.

(*b*) the aggregate written down value of all such power plants, aero-engines, air screws, spare aero-engines, and spare air screws (all of which are in this Schedule collectively referred to as power plants) as are suitable for use in the airframes mentioned in sub-clause (*a*) and as are of an approved standard or can be rendered fit to be of an approved standard if the Corporation concerned were to incur expenditure within the normal rates for such purposes, *plus* the following, namely:—

(*i*) a sum of Rs. 6,000/- in respect of each engine of a Dakota aircraft and a sum of Rs. 12,000/- in respect of each engine of a Viking aircraft in any case where the existing air company had made it an approved engine within a period of ninety days immediately preceding the appointed date or if the engine had not been made completely fit to be an approved engine within that period but the existing air company had incurred expenditure within the said period for the purpose of making that engine an approved engine, then, the value of the spare parts used for that purpose subject to a maximum of Rs. 6,000/- in the case of each engine of a Dakota aircraft and Rs. 12,000/- in the case of each engine of a Viking aircraft; and

(*ii*) a sum of Rs. 2,000/- in respect of the air screws and accessories of the power plant of a Dakota aircraft and a sum of Rs. 4,000/- in respect of the air screws and accessories of the power plant of a Viking aircraft in any case where the air screws and accessories had been rendered completely fit for the approved standard within a period of ninety days immediately preceding the appointed date or if the same had not been rendered completely fit for that standard within that period but the existing air company had incurred expenditure within that period for the purpose of rendering the same fit for the approved standard, then, the value of the spare parts used for that purpose subject to a maximum of Rs. 2,000/- in the case of air screws and accessories of a Dakota aircraft and Rs. 4,000/- in the case of air screws and accessories of a Viking aircraft.

Note.—In this Schedule, the expression "approved standard" means such condition of efficiency of the power plant as satisfies the requirements laid down in Section E of Schedule III to the Indian Aircraft Rules, 1937.

(*c*) the cost of purchase of all * serviceable general stores and all such other serviceable stores and spare parts (all of which are in this Schedule collectively referred to as stores and spare parts) belonging to the existing air company as are suitable for use in respect of the aircraft or power plants referred to in sub-clauses (*a*) and (*b*), *reduced* in each case by 20 per cent. of such cost of purchase:

Provided that the reduction shall be 10 *per cent.* in the case of stores and spare parts pertaining to Constellation and Skymaster aircraft.

Note.—In this Schedule—

(*a*) stores shall be deemed to be serviceable if they are such as to satisfy the requirements laid down in Section E of Schedule III to the Indian Aircraft Rules, 1937;

(*b*) without prejudice to the clause immediately preceding, stores (other than general stores) and spare parts shall also be deemed to be serviceable if by incurring expenditure of an amount not exceeding half the cost of purchase of such stores and spare parts, they can be rendered suitable for use in respect of the aircraft or power plants.

(*d*) the aggregate actual cost to the existing air company of all lands other than lease-holds;

(*e*) the total amount of the premiums paid by the company in respect of all lease-holds *reduced* in the case of each such premium by an amount which bears to such premium the same proportion as the expired term on the appointed date of the lease in respect of which such premium shall have been paid bears to the total term of the lease;

(*f*) the scrap value of all such aircraft, power plants, propellers and other accessories, spare parts and stores, not falling within any of the preceding sub-clauses, and all properties as have become obsolete on the appointed date, the scrap value for the purposes of this Act being one per cent. of the book value of the relevant item of property;

(*g*) the price paid by the existing air company for any trustee security held by it;

(*h*) the value of any shares held by any existing air company in any other existing air company, the value being calculated on the basis of the valuation of the air transport undertaking of that other company in accordance with the provisions of this Schedule;

(*i*) the market value on the appointed date or the purchase price, whichever is less, of any other investments held by any existing air company in any concern other than another existing air company which, subject to the provisions of section 22, have vested in the Corporation;

(*j*) the amount of cash held by any existing air company on the appointed date whether in deposit with a bank or otherwise;

(*k*) the amount of debts other than bad debts due to any existing air company, to the extent to which they are reasonably considered to be recoverable, *less* the amount of the debts, if any, excluded from the transfer to the Corporation concerned under the provisions of section 22;

(*l*) the aggregate cost of all licence fees paid by the company under clause (*c*) of sub-rule (*1*) of Rule 154 of the Indian Aircraft Rules, 1937, in respect of the licences granted to it for the operation of any scheduled air transport services and held by it on the appointed date and which but for the provisions of section 19 would continue to remain valid *plus* a sum of Rs 100/- for each such licence: provided that the fees paid for each such licence shall be reduced by an amount which bears to such fees the same proportion as the period of the licence which shall have expired on the appointed date bears to the total period of the licence;

(*m*) the aggregate written down value of all tangible assets other than those falling within the preceding clauses;

(*n*) an aggregate amount not exceeding ten thousand rupees as may be agreed upon between the Corporation and the existing air company concerned or, failing agreement, which may be assessed by the Tribunal, in respect of all such assets, intangible or otherwise, as do not fall within any of the preceding sub-clauses and in respect of the loss of any future profits which the existing air company might have earned but for the passing of this Act:

Provided that in assessing any amount under this clause regard shall be had to the following circumstances, namely:—

(*i*) the profits, if any, earned by it annually during the six years immediately preceding the appointed date on which income-tax has been paid,

(*ii*) the subsidies, if any, given to that company by the Central Government during such period, and

(*iii*) the probability or otherwise of the company earning future profits if it were allowed to continue its scheduled air transport services for the remaining period of the licence held by it after having due regard to the fact that the licences held by it did not confer any monopoly upon it in respect of the routes concerned and the fact that no subsidy would have been payable by the Central Government after the 31st day of December, 1952.

Explanation A.—For the purposes of this Schedule, the written down value in respect of each class of assets means the actual cost to the existing air company of such assets respectively, *less* the total depreciation calculated at the rates and in the manner following, namely:—

(*i*) in respect of each airframe, depreciation shall be calculated at 15 per cent. per annum for Constellation and Skymaster aircraft and 18 per cent. per annum for other aircraft from the date on which the aircraft concerned was first used in revenue operations by the company till the 31st day of December, 1952, the rates being applied as follows:—

for the first year, on the actual cost of acquisition;

for the second year, on an amount obtained by reducing from the actual cost of acquisition the amount of depreciation calculated as aforesaid for the first year;

for the third year, on an amount obtained by reducing from the actual cost of acquisition the aggregate amount of depreciation calculated as aforesaid for the preceding two years;

and so on;

(*ii*) in respect of power plants, the depreciation shall be calculated at 20 *per cent.* per annum for Constellation and Skymaster aircraft and at 24 *per cent.* per annum for other aircraft from the date on which the power plant concerned was first used in revenue operations by the Company till the 31st day of December, 1952, the rates being applied as follows:—

for the first year, on the actual cost of acquisition;

for the second year, on an amount obtained by reducing from the actual cost of acquisition the amount of depreciation calculated as aforesaid for the first year;

for the third year, on an amount obtained by reducing from the actual cost of acquisition the aggregate amount of depreciation calculated as aforesaid for the preceding two years;

and so on;

(*iii*) in respect of all tangible assets falling within clause (*m*) of Paragraph II, depreciation shall be calculated at the normal annual rates for which provision is made in the Indian Income-tax Act, 1922 (XI of 1922) and in the manner provided therein, but excluding initial or other special depreciation, from the date such assets were acquired or created by the existing air company until the 31st day of December, 1952:

Provided that in respect of any such asset for which no provision has been made in the Indian Income-tax Act, 1922, the rate of depreciation shall be 10 *per cent.* per annum:

Provided further that in respect of any such asset situate on leasehold land other than land rented * * * from Government, the depreciation shall be either—

(*a*) as provided in the preceding provisions of this clause, or

(*b*) equivalent to an amount which bears the same ratio to the total cost of acquisition or creation of the asset (situate on leasehold land) as the expired portion of the lease on the appointed date bears to the total period of the lease currently running, whichever is greater.

Explanation B.—For the purposes of this Schedule, the actual cost shall include, in the case of airframes, in addition to the cost of purchase or acquisition,—

(*i*) the actual expenditure if any, incurred by the existing air company for reconversion or reconstruction of the airframe in order to render it fit for civil air transport before it was first used in revenue operations by the company, *plus*

(*ii*) the actual expenditure incurred in making the airframe airworthy before its first use in revenue operations.

Explanation C.—In the case of power plants, the actual cost shall include, in addition to the cost of purchase or acquisition, the cost incurred by the company for conversion or reconditioning, repairing or overhauling the power plant, in order to render it fit for the purposes of a certificate under paragraph 4 of Section E of Schedule III to the Indian Aircraft Rules, 1937, before the date of its first use in revenue operations.

Paragraph III.—Subject to the provisions of sections 22 and 23, all such liabilities as have been declared by the existing air company under the provisions of section 22:

Provided that if any liability so declared has been under-stated, the Corporation may recover the additional amount from the company.

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill to provide for the establishment of Air Corporations to facilitate the acquisition by the Air Corporations of undertakings belonging to certain existing air campanies and generally to make further and better provisions for the operation of air transport services

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(As amended by the Select Cammittee.)

GIPD—LAD 12PS—4-5-53—2150

HOUSE OF THE PEOPLE

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1953

(REPORT OF THE SELECT COMMITTEE)

सत्यमेव जयते

PARLIAMENT SECRETARIAT
NEW DELHI
November, 1953.

HOUSE OF THE PEOPLE

CORRIGENDA

TO

THE REPORT OF THE SELECT COMMITTEE ON THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1953.

.....

A. REPORT OF THE SELECT COMMITTEE

(1) In page (vi) in line 8, from bottom for "may be extended" read "may extend".

(2) In page (viii) -

(i) in line 10, from bottom for "prolity" read "probity

(ii) in line 5, from bottom for "same" read "some".

(3) In page (ix) -

(i) in line 22, from bottom for "exiomatic" read "axiomatic".

(ii) in line 12, from bottom for "with" read "within".

(4) In page (xiv) in line 9, for "fields" read "field".

(5) In page (xv) in line 10, for "Bills brought" read "Bill is brought".

(6) In page (xvi) in line 4, from bottom for "sufferage" read "suffrage".

(7) In page (xxii) in line 5, for "on" read "or".

(8) In page (xxvi) -

(i) In line 1, for "side" read "size".

(ii) In line 27, for "not complete" read "not be complete".

B. BILL AS AMENDED

(9) In page 18, in line 36, for "of State" read "of a State".

(10) In page 22, in line 31 -

(i) for "Officers" occurring for the first time read "Officer".

(ii) for "Scrutiny Officers, Returning Officers" read "Scrutiny Officer or a Returning Officer".

NEW DELHI,

The 7th December, 1953.

M. N. KAUL,

SECRETARY.

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THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1953.

Composition of the Select Committee

Pandit Thakur Das Bhargava—*Chairman*
Shri C. C. Biswas,
Shri Mukund Lal Agrawal,
Shri Ram Shanker Lal,
Shri Piare Lall Kureel 'Talib',
Shri Venkatesh Narayan Tivary,
Shri Hari Vinayak Pataskar,
Shri Bhawanji A. Khimji,
Shrimati Jayashri Raiji,
Shrimati Anasuyabai Kale,
Sardar Amar Singh Saigal,
Shri Krishnacharya Joshi,
Shri Nandlal Joshi,
Shri Gajendra Prasad Sinha,
Shri Lalit Narayan Mishra,
Shri Nageshwar Prasad Sinha,
Shri N. Rachiah,
Shri Lokenath Mishra,
Shri K. T. Achuthan,
Shri S. V. Ramaswamy,
Shri Paidi Lakshmayya,
Shri Tek Chand,
Shri Radha Raman,
Shri Bheekha Bhai,
Shri Muhammed Khuda Bukhsh,
Shri Upendranath Barman,
Shri Bali Ram Das,
Sardar Hukam Singh,
Shri N. C. Chatterjee,
Shri Kamal Kumar Basu,
Shri K. S. Raghavachari,
Shri V. P. Nayar,
Dr. A. Krishnaswami,
Pandit Suresh Chandra Mishra,
Shri Frank Anthony,

Dr. Lanka Sundaram,
Shri Dev Kanta Borooah,
Shri Shankar Shantaram More,
Shri U. M. Trivedi,
Shri Jaswantraj Mehta,
Shri Bhawani Singh,
Shri M. R. Krishna,
Shri R. Velayudhan.

Secretariat

Shri N. C. Nandi, Deputy Secretary.
Shri K. G. Bijlani, Under Secretary.

REPORT OF THE SELECT COMMITTEE

The Select Committee to which the *Bill further to amend the Representation of the People Act, 1950 and the Representation of the People Act, 1951, and to make certain consequential amendments in the Government of Part C States Act, 1951, was referred, have considered the Bill, and I now submit this their Report, with the Bill (as amended by the Committee) annexed hereto.

2. The Select Committee was appointed on a motion adopted by the House on the 4th August, 1953. The original date for the presentation of the Report of the Select Committee was the 22nd August, 1953. Later on this was extended to the last day of the first week of the Fifth Session, and later again upto the 1st December, 1953.

3. Upon the principal changes proposed in the Bill the Select Committee observe as follows:—

4. *Clause* 6.—The Select Committee feel that the proposed section 23 should be amended so as to provide for both preparation as well as revision of the electoral roll with reference to the qualifying date, and that a specific provision should be made in the section itself relating to the coming into force of the roll. The Committee further feel that powers should be given to the Election Commission to direct a special revision of the electoral roll of a constituency or a part thereof whenever it thinks necessary to do so. The Select Committee have accordingly revised the proposed section 23.

In the opinion of the Select Committee the proposed section 24 should not only provide for the correction of an existing entry in the electoral roll of a constituency, but should also provide for the transposition of an entry from one place in the electoral roll to another place in the same roll. A new sub-section (2) has accordingly been inserted in section 24.

The Select Committee feel that it would be more convenient to the public if applications for inclusion of names in electoral rolls under the proposed section 25 are allowed to be made to the Chief Electoral Officer of the State instead of to the Election Commission

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*This Bill was published in Part II, Section 2 of the Gazette of India, dated the 5th March, 1953.

in cases where such applications are made after the issue of the writ. The proposed section 25 has been amended accordingly.

5. *Clause* 7.—As the dissolution of the House of the People and of the State Assemblies and as the Parliamentary general elections and Assembly general elections may not take place simultaneously, there may be a transitional period when a Parliamentary constituency might not consist of an integral number of the Assembly Constituencies but a number of Assembly Constituencies plus parts of some other Assembly Constituencies. The proposed section 26 has been amended to make this clear.

6. *Clause* 9.—The Select Committee feel that disqualification as contemplated under this clause should take effect on the expiry of two months from the date on which the Election Commission decides that the return of election expenses had not been lodged within the time and in the manner required by or under this Act. Proposed clause (b) of section 8 has been amended accordingly. The Select Committee also feel that rules should be framed to enable the Election Commission to give notice to the contesting candidates to comply with the "requirements" if the "return" is not properly filled.

7. *Clause* 10 (*New*).—In addition to Returning Officers there will now be Scrutiny Officers. New section 21 has, therefore, been substituted for existing sections 20 and 21.

8. *Clause* 14 (*old clause* 13).—In respect of section 33 of the principal Act the Committee consider that there need not be a 'seconder' to nomination of a candidate. The Committee is also of the opinion that the presentation of nomination paper should be simplified, and it has decided that in sub-section (6) of section 33 of the principal Act the words "or relevant part thereof" should be inserted after the words "electoral roll". The Committee also feel that the provision for an affidavit in the case of nomination of a Scheduled Caste or a Scheduled Tribe candidate should be omitted.

9. *Clause* 17 (*old clauses* 14 *and* 15).—The Committee is of the opinion that in all respects scrutiny of nominations should be finalised before the Elections. For this purpose, the Committee consider that Judicial Officers of at least ten years standing should be the Scrutiny Officers, and that the decisions of these Scrutiny Officers should be appealable to persons nominated by the Chief Justice from amongst the Judges of the High Court of that State, and appointed by the Chief Election Commissioner as "Appellate Authority". It is also considered that this "Appellate Authority" should have the power to issue "certificates" in proper cases so that the matter could be agitated by Election petitions before the Election Tribunals. Accordingly new section 36 has been substituted for the existing section 36, and a new section 36-A substituted for proposed section 36A.

10. *Clause* 21 (*New*).—The Select Committee is of the opinion that the time for which accounts of election expenses should be kept should not be left uncertain as at present but should be made clear beyond doubt. They have, therefore, decided that accounts of election expenses should be kept as from the date of publication of the notification regarding the election. Section 44 has, therefore, been amended suitably.

The Committee also consider that the present 'form' of 'return of election expenses' and rules regarding 'ceiling' require revision.

11. *Clause* 22 (*old clause* 19).—The present section 46 lays down that the notice of appointment of polling agents shall be given in the prescribed manner 'to such Officers as may be prescribed'. This is considered to be causing much difficulty in actual practice. Therefore, in order to simplify the appointment of polling agents, it has been decided to substitute the words "to the returning officer or presiding officer" for the words "in the prescribed manner to such officers as may be prescribed." Section 47 has been suitably amended to enable the candidate or his Election Agent to appoint counting agents even after the commencement of counting the votes.

12. *Clause* 33 (*old clause* 30).—The Committee feel that the Election Commission should have the powers to withdraw and transfer election petitions from Election Tribunals, but the Election Commission should record in writing their reasons for such orders.

13. *Clause* 35 (*old clause* 32).—The Committee feel that in a plural member constituency when the election of one returned candidate is successfully challenged, it should not automatically make void the election of the other successful candidates. Section 100 of Act XLIII of 1951 has, therefore, been suitably amended.

14. *Old Clauses* 34, 37, 39 *and* 40.—The Committee feel that sufficient punishment had already been prescribed for failure to lodge within time a return of election expenses, and they are, therefore, of the opinion that such a failure should not be considered as an illegal practice under section 125. Old clauses 34, 37, 39 and 40 have, therefore, been deleted. It has also been decided that the existing section 143 of the principal Act should be omitted, and that any disqualification for voting incurred by any person under the said section for failure to lodge return of election expenses shall stand removed.

15. *Clause* 41 (*New*).—The Committee feel that the rules framed under the principal Act should be laid on the Table of the House. Accordingly a new sub-section (3) has been inserted in section 169.

16. *Schedule I—entry* 11.—In the provision relating to the qualifying date in the case of every electoral roll, it was decided that "the first day of January" be substituted for "the first day of April" of the year in which the roll was to be prepared.

17. In regard to the question of allotment of symbols to the independent candidates, the Committee feel that the same should be allotted on the date of the scrutiny of nomination papers. The Committee further feel that when there are more than one candidate of a party, there may be some difficulty in the allotment of symbols to them. To obviate this difficulty the Committee have suggested that the Election Commission should frame suitable rules on the matter.

18. The Select Committee is of the opinion that the 'writ' calling an election should in all cases be issued by the Election Commission. It has also been decided that scrutiny of nomination papers by Judicial Officers should be more or less a regular process and not a summary procedure as it is at present. Therefore, section 30 has been suitably amended.

19. The Committee also recommend minor amendments to clauses 2, 5, 12, 18 (old clause 16), 19 (old clause 17), 23 (old clause 20), 29 (old clause 26), 31 (old clause 28) and 34 (old clause 31) of the Bill, and sections 34, 35 and 44 of the principal Act of 1951.

20. The Select Committee recommend that the Bill as now amended be passed by the House.

THAKUR DAS BHARGAVA,
Chairman of the Select Committee.

NEW DELHI;
The 30th November, 1953.

NOTE

When the Representation of the People (Amendment) Bill was sent to the Select Committee some of the Hon. Members had suggested that the provisions relating to the lodging of return of election expenses be done away with. This subject naturally came up for serious discussion before the Committee. This proposal did not however find favour with the Committee and the original proposals in the Bill were kept in tact. The proposals on the Bill in regard to declaration were certainly improvements on the present position, in so far as, the obligation on the candidate and his election agent to appear before a magistrate to solemnly affirm that the return of election expenses was true to the best of the knowledge and belief of the candidate and his election agent and that no expenses except the expenses set forth therein were incurred for the purpose of such candidate, was eliminated. Section 44 of the Representation of the People Act enforces an obligation of keeping separate and regular books of account wherein such particulars of expenditure as may be prescribed to be entered. According to section 7(c) of the Act "a person shall be disqualified for being chosen as and for being a member of the Houses of Parliament or of the Legislative Assembly or Legislative Council of a State if having been nominated as a candidate..... or having as election agent.....has failed to lodge a return of election expenses within the time and manner required by or under this Act unless four years have elapsed from date by which the return ought to have been lodged or the Election Commission has removed the disqualification".

According to rules the return of election expenses is to be filed within 45 days of the publication of the result in the Gazette and within 14 days of such return of election expenses are notified, the election petition is to be filed. The Select Committee have now prescribed the period of 2 months for the election petition to be filed from the date of election.

Under Section 143 of the principal Act an additional penalty of not being allowed to vote for a period of 5 years was attached to the default of not filing the return of election expenses or making a false entry therein. The Select Committee have recommended the omission of this penalty but have agreed to add 135A to the principal Act which was as follows:

> "135A. Making false declaration
>
> If a person makes in, or in connection with, any nomination of a candidate for election or any return of election expenses a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true he shall be punishable with imprisonment for a term which may be extended to one year or with fine or with both."

The Bill proposes to restrict the operation of Chapter VIII relating to election expenses to certain classes of candidates only. In Chapter VII of the rules provision has been made that the Returning Officer shall certify that the return of election expenses has been made and submit a statement to the Election Commission stating the names of all candidates and their agents with a report whether they

nave lodged the return within the time and in the manner prescribed. Thereafter the Election Commission will publish a list of such candidates and after considering the report decide whether any candidate or election agent has failed to lodge the return of election expenses within the time and in the manner required by the Act and the rules and the candidate and the election agent have thereby incurred disqualification under clause (c) of section 7 and under section 143. Under the rules the disqualification could be removed by the Election Commission after such inquiry as he thought fit about the question why default was made.

There is no rule which requires or enables a Returning Officer or the Election Commissioner to scrutinise the accounts or find out whether the entries in the return are correct or wrong. They are only concerned that returns are filed in time and in the manner prescribed by the rules. The accounts, separate or regular or joint and irregular, howsoever kept remain with the candidates and only the returns or excerpts from such accounts entered in the elaborate forms prescribed are filed.

Such returns are open to inspection on payment of nominal fees. At the time of election petition these returns and the accounts if produced can be attached. If any false entry is found it constitutes a minor corrupt practice and an election can be avoided if a corrupt practice has materially affected the result. Thus the only use of these returns and accounts is with reference to the election petition and thus out of the twenty nine thousand or more returns which should have been filed only 320 returns could possibly have been used in the election petitions. If we take away such election petitions as proceeded on the basis of wrong nomination papers the number still become less. Thus in not more than one per cent. cases this return and account could possibly be used.

Now when we remember the undoubted fact that amongst us the habit of keeping accounts is not so well established as in other countries, where literacy is much more, the restriction of keeping separate and regular books of account is felt to be very onerous. If we look at Schedule III of the rules and the ceiling which restricts the expenditure, its forms, it appears that some of them are incapable of being complied with the best of efforts and intentions. It is no wonder therefore that in an excessively large number of cases (in no case, in my humble estimate less than 75 per cent.) the returns do not substantially comply with the requirements of the rules and the law and these returns are notoriously wrong and in many cases false. The requirement of the law that declaration and returns must be lodged with the Returning Officer thus puts too great a strain on the conscience of the members even when they do not lodge deliberately false returns and specially so when such returns and accounts are only useable in only one per cent. of cases. I can well understand the provision about the ceiling as also the obligation of keeping right accounts as they constitute in the opinion of many persons salutary safeguards against excessive expenditure and exercise of corrupt and illegal practices. I can also understand that at the time of the trial of election petition such accounts may be utilised by the petitioner to prove his allegations. I can also fully appreciate the provision of Section 135A which rightly penalise the making of false accounts but what I do not appreciate is that separate and regular

account books (which means three sets at least written day by day) are to be kept by each member and the return is to be lodged and declaration made within a prescribed time and manner by each member. Thousands of members against whom no election petition was made or could be made have been disqualified and subsequently proceedings have been taken for removal of their disqualification. In my humble opinion if the ceiling and the obligation to keep accounts are kept as well as the obligation of production of accounts and returns seven days after the election petition has been filed all the advantages of these safeguards will be fully availed of. I do not like that the petitioner should be enabled to bolster up a case in the election petition on the basis of entries in the returns. It can however be enabled to file within a fortnight or ten days of the return being filed his objections to the accuracy of the returns. It can be argued that these provisions will entail some delay in the disposal of election petition. But in my humble opinion the procedure can very easily be gone into within a short time before the trial of election petition begins which usually does not begin very shortly after the petition is filed.

This compromise between doing away with the provisions entirely and the present position is well worth trying. The proposal combines the ground and salutary effect of the provisions relating to ceiling and keeping true accounts and filing honest returns with the absence of evil concomitant with the obligation of making wrong and false declaration and returns which serve very little purpose. In my humble view the rules and the laws must be such as can be reasonably complied with. If in spirit they are violated and in form they are complied with a situation is created in which self deception is tolerated to a degree which is to say the least is scandalous and in conflict with morality and prolity which the Parliament of India are supposed to practice.

I am submitting the note not by way of dissent upon any fundamental point but as an humble suggestion for the honourable members of the House to consider in connection with the law and practice regarding election expenses. If it is accepted section 7 and same rules will have to be amended.

THAKUR DAS BHARGAVA

NEW DELHI;
The 30th November, 1953

MINUTES OF DISSENT

I

I agree to the report submitted by the Select Committee and endorse the provisions of the Bill as amended by the Select Committee, subject to these minutes of dissent.

2. I do not approve of the provision contained in section 36A, sub-section (11). This provision again tries to perpetuate the evil which was to be remedied by the amendment of the Representation of the People Act 1951. In the Statement of Objects and Reasons attached to the Bill as introduced in the House of the People, on page 20, it was mentioned: "A good deal of harassment and anxiety to the candidates and public inconvenience and expenditure can be avoided if suitable provisions are made for appeals before the holding of the elections against the decisions of Returning Officers accepting or rejecting the nomination papers and making the decisions of the appellate authority final." The present provision, instead of remedying by any finality the evil, seeks to create double hardship, a preliminary election petition with all the uncertainty and expenses attached to it are provided hereby. The provision, as it stands, is objectionable on account of its providing for a hearing of a matter by an Election Tribunal after hearing of the same matter by a High Court Judge. The necessity of making such provision is mostly imaginary. Inasmuch as (a) the objections can be raised only by an opposing candidate, and (b) the objection can only relate to the disqualifications or lack of qualifications, the candidate objecting will certainly be armed with all the evidence beforehand and the candidate meeting the objections will have sufficient time, as now provided, to meet these objections, which will be more or less of documentary and exiomatic type. If, therefore, a provision is made to allow for a subsequent election petition on the same grounds on some excuse as contemplated in this sub-section, it will encourage efforts on the part of candidates to obstruct the progress of the contemplated appeal to put off the evil day or to cause harassment and the efforts of the legislature to remedy the evil, will prove infructuous.

3. I have a further suggestion to make with reference to this clause 36A. Whatever meaning be attached to the word 'Election' as used in the Constitution in article 329(b) all courts have agreed that the decision arrived at about nomination papers after scrutiny of the nomination papers, does come with the purview of 'election' and such election cannot be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature. I, therefore, suggest that to meet any arguments that may arise on the question of the competency of an appeal the word 'appeal' in the heading and the body of the section may be substituted by the words 'preliminary election petition'.

4. Subject to what I have stated above I approve of the report.

U. M. TRIVEDI.

NEW DELHI:
The 30th November, 1953.

II

My note relates to clause 32 of the Bill as recast in clause 35 of the Report.

2. Proviso to sub-section (1) of amended section 100 of the principal Act has been added to rectify the defect that existed before The note to clause 32 in the report portion gives the reason. My contention is that on the very same reasons two other provisos are to be added to sub-section (2) of the amended section.

Thus where a candidate has been declared elected under sub-section (2) of section 54 and the Tribunal declares his election to be void on the ground stated in sub-section 2(a) of section 100 but simultaneously finds that the nomination of another candidate, who was qualified to be chosen to that reserved seat was wrongly rejected, the Tribunal should declare him to be duly elected to that vacant seat.

In fact, but for the wrong finding of the scrutiny officer, such would have been the position. Nobody is wronged if this belated justice is done. To order a fresh election would mean to reopen the general seat also. The administrative machinery will have to be geared up again, at renewed public cost and inconvenience.

3. There is another lacuna. Under the law a reserved seat candidate is entitled to fill the general seat also. So wherever the election to the reserved seat is declared void under sub-section (2) and/or is not filled in under the proviso suggested above, not only the election to the reserved seat but also to the general seat, if held simultaneously, shall be declared void.

This contingency should be clearly expressed in the sub-section and not left to interpretation of other sections of the Act.

UPENDRA NATH BARMAN.

NEW DELHI:
The 30th November, 1953.

III

I subscribe to the Report of the Select Committee subject to the following observations, which are of fundamental importance to the very system of election law, procedure and practice, under universal adult suffrage in India, and which I have ventured to place for the consideration of my colleagues at various sittings of the Select Committee itself. I feel strongly that the House must give due weight to these considerations before passing the Bill into law.

2. Frankly, there is no disposition on the part of the mover of the Bill or even of the Election Commission to conceal the facts that this amending Bill is being brought before the House as an *ad interim* measure, which is only calculated to assist in elections which are likely to take place on a wide scale in Travancore-Cochin and the PEPSU and that a comprehensive amending Bill will be brought in as soon as it can be got ready. In other words, it is clear that a

certain amount of urgency with reference to certain local situations which are likely to arise in this country in the immediate future is at the back of this Bill, and consequently the attention which should have been bestowed upon fundamentals has not, unfortunately, even as I told my colleagues in the Select Committee, been given to them. I am most anxious that nothing should be done even by way of an *ad interim* amending Bill to alter the structure of law and procedure which would once again compel Government to re-revise the law within a short space of time.

3. I regret to say that in order to reckon with certain understandable difficulties, the corpus of the law itself is being tampered with in a manner which is bound to be most dangerous. I will examine this point principally with reference to Clause 17 of the amending Bill as it emerges from the Select Committee.

4. Under the existing Law (section 36 of Act No. XLIII of 1951) election petitions have been filed and contested after the elections were over, leading to one of the following eventualities:

(a) Invalidation of elections;

(b) Unseating of elected candidates;

(c) Vexatious and expensive legal proceedings;

(d) Going through the entire gamut of law from Tribunal to the High Courts and even the Supreme Court; etc.

There is no desire on my part to minimise the reality of the difficulty in regard to these proceedings, whether it be in respect of corrupt practices, or of technical and other points. I agree with the general *intention* of my colleagues to improve the law in such a manner that, as far as possible, legal and quasi-legal processes are not available to contesting candidates and even the electors to upset the declared results of elections. But the remedy now sought is worse than the disease itself.

5. An analysis of the facts relating to the General Elections, for the Parliament, the State Legislatures and the electoral colleges, can be summarised as follows:

No. of persons who were nominated as candidates ..	27,404
No. of persons who acted as election agents, who were not themselves candidates ..	3,187
No. of candidates who incurred disqualifications ..	7,671
No. of election agents who incurred disqualifications ..	848
No. of candidates whose disqualifications have been removed ..	2,411
No. of election agents whose disqualifications have been removed ..	212
No. of elected candidates who incurred disqualifications ..	204
No. of elected candidates who incurred disqualifications and in whose cases the period mentioned in Section 8(1)(b) was extended beyond two months ..	134

There are really staggering figures, and, as I have indicated early, I do not wish to minimise the vexatious character of the right of petition at appropriate levels *after the elections are over*, to seek certain remedies which are available under the existing law today, to the candidates, the election agents and even to the electors.

6. But, the remedy, sought with the assistance of clause 17 of the amending Bill, is dangerous in its practical implications. The basic principle of this clause is that the processes available to candidates, agents, and electors after the elections, are now sought to be made available before the polling day. The intention is laudable, but the results ensuing from this provision would be disastrous and cut across the very fundamental approach of elections in a country like India, where the vast majority of the electorate is illiterate and unaccustomed to the democratic way of life, and is fully swayed by *jat-pat* and other considerations to an extent unheard of anywhere in the world.

7. Under the existing law, within three days after the filing of nominations, there is scrutiny and 24 hours after scrutiny the withdrawals take place, leaving a firm card of candidates, who are to go to the polls exactly within five days after the nomination day. Roughly two months to ten weeks is the average time available for this card of candidates before the polling day, a fact of vital significance especially in respect of parliamentary constituencies (in some cases double member seats) covering vast areas and sometimes three-quarters of a million of voters. Even in the case of Assembly seats—and I have one from my own constituency—as many as nine candidates actually went to the polls for one single seat! Now, under clause 17, the introduction of judicial and quasi-judicial processes seeks fundamentally to alter this position. Between the nomination day and the withdrawal day, there would be two months' time, during which period the vast hordes of people who file their nominations will be before the electorate as potential candidates. It is the experience of every one of us in this House that there are various types of people who file their nominations, and I would like to summarise them as hereunder:

(1) Aspirants who want to test the reactions on a sample basis of the electorate and who hope to get indications of support within 5 days after filing nominations, failing which they withdraw;

(2) Stand-by candidates, particularly for political parties, where there is risk of the scrutiny of the intended candidates going against them; and

(3) Opportunists who file their nominations and strike rich bargains with other candidates withdrawing at the last moment for certain consideration.

N.B.—The case of Independents cuts across the above three categories, and will be taken up separately in this Minute for special treatment.

8. I have indicated earlier that even for Assembly seats, as many as nine people in one case have actually contested the elections. As regards candidates who have filed their nominations, there are

instances in the South where more than a score of people filed their nominations for a single M.L.A. seat, and there are recorded instances where this number reached the fantastic total of two scores for a single seat. I do not think I am taking the assistance of curiosities of electoral experience to make my point, which is a simple and straight-forward one. A large number of candidates will now go before the electorate for as long a period as two whole months separating the nomination day from the withdrawal day, to enable them under the provisions of clause 17 of the amending Bill to go through the judicial processes which precede the polling day and not follow it. I shudder to think of the terrific complications arising out of this avoidable confusion for our unlettered electorate, which will be faced with the unleashed propaganda of the vast majority of these candidates, and which will centre round not only the propaganda slants of candidates for election, but also a veritable maze of confusion about the election symbols. The point to be noted in this regard is that, even apart from this verbal pandemonium of election propaganda, there will be hardly a fortnight between the withdrawal day and the polling day, with the result that the candidates who finally contest the elections will not have time to properly carry on propaganda *vis-a-vis* the actual contestants to the election. Corruption will become universal for the reason that, after being present for two months before the electorate, candidates will make rich bargains for withdrawal, a tendency which came into prominence even within the four-day time limit under the existing law. Further, candidates would be locked up in election petitions and prevented from nursing the electorate, owing to frivolous and cantankerous petitions, which cunning and rich opponents contrive to put in only to incapacitate their rivals. This is to be deplored in the interests of fair and free elections.

9. As regards election symbols, I am glad that my plea has been accepted by the Select Committee, that the symbols must be allotted at any rate to the Independents, even with effect from the nomination day itself, and that in the case of recognised political parties, the intended and dummy candidates will continue to be before the electorate between the nomination day and the withdrawal day, and the symbols being assigned to the candidates of these parties who finally stand for election only after withdrawal day. As regards Independents, the problem is solved, to the extent that all the people who stand for election as independent candidates have their symbols assigned to them, though some of the symbols might be wasted when withdrawals take place on the appointed day. In other words, as far as Independents are concerned, the existing list of symbols may have to be widely extended and quite a good number of what may be termed good symbols may be wasted. But as regards party candidates, particularly duplicate or dummy candidates, the complication would be very definite and important. Anyone knowing party organisations and party squabbles would readily appreciate the point that in several cases the stand-by candidates generally feel that they have the affection and support of the electorate more than the intended candidates. Under the existing law, on the fourth day itself—that is to say without sufficient time to know the reactions of the electorate—there was a number of cases all over the country where the stand-by candidates have revolted against party discipline and chose to contest the intended candidates by obtaining symbols

which were originally available to Independents. Now, under the new procedure for a period of two full months each party which has been obliged to put, for whatever reason, more than one candidate in the field on the nomination day, will have to do the election campaign in favour of both as alternatives. It does not require much reasoning to demonstrate the point that after two months almost every stand-by candidate—and if not almost everyone of them, at least the vast majority of them—would revolt against party discipline and refuse to withdraw from the fields, thus becoming independent candidates. I cannot over-emphasise the point that the very approach to election which has been our experience during the past 50 years would, under the proposals of Clause 17, be destroyed by (a) a multiplicity of candidates between the nomination day and the withdrawal day, and (b) the risk of party discipline being broken by the stand-by candidates. I feel that the House should have ample opportunity for exercising its mind on this particular question, which has been lost sight of in favour of understandable legal and procedural points when the Select Committee dealt with this clause.

10. To further illustrate the dangerous consequences which are certain to follow from this wide gap between the nomination day and withdrawal day, during which all legal and quasi-legal processes are to be exhausted, I would take up the position of Independent candidates. The following table supplied to me on request by the Election Commission is illustrative of this point:

Percentage of Independent Candidates set up during the last General Elections to the total number of candidates.

(1) State Assemblies ... 39%
(2) Parliament ... 28%

Statement showing the total number of Independent Candidates set up and the total number of Independent candidates returned at the elections to the House of the People and Legislative Assemblies in the various States:

	No. set up	% to total	No. returned	% to tota
House of People.	524	28	41	8·4
State Assemblies.	5,893	38·4	326	9 9

I consider that in the light of experience derived in a number of by-elections all over the country since General Elections were over, and more than everything else, in the light of experience gained in respect of the fortunes of political parties which are these days going through numerous mutations. at once ideological, organisational and personal, it is quite in the cards that the tendency would be for more and more Independents to seek the franchise of the people in the coming elections. whether by-elections or general elections. The fact that a plethora of candidates is before the electorates for two long months between the nomination day and the withdrawal day would, I venture to repeat again, completely alter the structural approach to a highly uneducated electorate which is subject, as I have said, to communal and other passions. This should be avoided at all costs.

11. I would like to repeat here that in an attempt to reckon with the difficulties arising out of curious local positions, both technical and procedural, the corpus of law is being tampered with through

the amending Bill. I am dismayed at the fact that most of the provisions of the amending Bill as reported upon by the Select Committee would only become valid in the case of exceptional and difficult situations, and of legal curiosities, but do not in the least assist in the elector, the candidate and the election agent to obtain any rights or reliefs which are denied to them under the existing law. Clause 17 of the amending Bill as emerging from the Select Committee must be dropped if the Government want this Bill passed, and all the considerations I have urged should be borne in mind when the promised consolidated or comprehensive amending Bills brought before Parliament. Or, alternatively,—and this is the lesser evil—the suggestion which cropped up—technical points to be disposed of under the procedure of clause 17, and the corpus of existing law, *i.e.*, right to petition on fundamentals after elections, retained, should be accepted by the House.

12. It is agreed that, on the basis of experience of the General Elections last year and also of subsequent developments, there is the completest possible confidence expressed by the nation in the integrity of the Election Commission. In fact, I am convinced that there is hardly any valid complaint made about the manner in which the Election Commission disposed of thousands of references to it, legal, technical and others. But this does not mean that when Parliament passes a law the rule-making power should be entirely vested in the Election Commission. I am glad that my suggestion for the laying on the table of the House the rules framed from time to time by the Election Commission has been accepted by the Select Committee, but I feel I should record here a very important point for the consideration of the House, *viz.* that without a resolution of the House which must have fifteen days' time from the date of such laying, these rules should not be enforced.

13. I would like to state once again that I would have liked at least draft rules might be made available by the Election Commission or the Law Ministry, before finalising this Report. This was not considered possible because of the extremely complicated character of the provisions of the Bill and the rules to be framed thereunder. My alternative proposal was that draft rules framed by the Election Commission might be made available to the House before it disposes of this amending Bill.

14. In the light of the observations made above, particularly in regard to the fundamental changes sought to be made in the electoral system, law procedure etc., it is less than fair to this House to agree to these proposed amendments without knowing in as precise a manner as is possible—or even in draft—the rules to be framed under the provisions of the Amending Bill. It cannot be beyond the resources of the Election Commission to supply drafts of the proposed rules on the clauses of the amending Bill, as instructed by the Select Committee, before the Bill is disposed of by this House. I am persuaded that since there is going to be sufficient time between now and the date on which the Bill is likely to be taken up by the House, an attempt must be made by the Election Commission to submit to the House through the Law Minister drafts of the rules, which I know will be literally legion, for the reason that almost under every clause of the amending Bill new rules are to be framed or old rules are to be altered or otherwise readjusted.

The provision for laying on the table of the House *at a future date* all the rules to be framed under this Bill cannot, I regret to say, be considered satisfactory, in the light of the fundamental changes sought to be made in the election system.

15. I consider that the minutes of the meetings of the Select Committee must be made available to the House, as also a list of Government amendments to the original Bill, so that the House would know as to what exactly happened in the Select Committee, and I suggest that these be printed along with the Report of the Committee itself. It is also necessary that the tentative time-table shown to the Select Committee by the Chief Election Commissioner, indicating the manner in which the arrangements are made for elections, must also be published in this manner.

LANKA SUNDARAM.

NEW DELHI:
The 30th November, 1953.

IV

This Bill has undoubtedly emerged from the Select Committee much improved. I feel, however, that the Select Committee, for many reasons, technical and otherwise, did not go the whole length to improve the Bill still further. We are practically in the first stages of our democracy the future of which much depends on the election law that shapes and regulates the whole electoral system. The last general elections revealed several defects. of more or less gravity, in our election-machinery and the present Bill has been introduced with the obvious object of removing some of these defects. The Bill as improved by the Select Committee will assuredly help to achieve this object.

I substantially agree with the recommendations of the Select Committee but at the same time I am constrained to write this dissenting minute to briefly indicate some of the proposals which, I think would have still further substantially improved the measure if they were not rejected by the majority of the members.

Clauses 2, 3 & 6.—By clause 2 section 14 of the principal Act is substituted by a new section. Sub-clause (b) of the proposed section gives the definition of "qualifying date". Clauses 3 and 6 have organic connection with this definition. The said definition gives first day of March of the year "in which an electoral roll is prepared or revised" the "qualifying date". I do not accept this definition to be correct.

Article 326 of the Constitution confers an important right on every adult who "is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature". I feel that every person who completes his twenty-first years must be expeditiously "registered as a voter" so as to enable him to exercise his right of sufferage at the following election. Therefore the "qualifying date" and the date on which the preparation or revision of roll is undertaken must not be separated, at the most, by more than thirty days. It is interesting to note that

in the United States if a prospective voter will come of age by election day, most States will allow him to be registered for voting.

Clauses 5 & 10.—Sub-clause (1) of the proposed new section 21 says that "Chief Electoral Officer" for every State shall be "Officer of Govt.". Similarly, the new section 21 as proposed by clause 10 lays down that the Returning Officer shall also be "an officer of Government". I am of the opinion that even non-officials of sufficient standing and renowned for their honesty and impartiality, if available, may be appointed in these offices.

Clause 6.—Section 25, as given in this clause, lays down the procedure for "inclusion of names in the electoral rolls". An application for inclusion of a name is to be made, at any time after the issue of a notification calling upon the Constituency to elect a member or members, to the Chief Electoral Officer and in any other case it is to be made to the Electoral Registration Officer.

I hold the view that this distinction is needless and all such applications should be made to Electoral Registration Officer.

Sub-clause 4 of this section says that appeals against the rejection of such application "shall lie to the Election Commission".

I am of the opinion that this provision, which smacks of too much centralisation, will add unnecessarily to the burden of work of the Election Commission and will be an expensive affair for the appellant and other parties concerned. I think the appeal in such cases should lie to the District Judge who may transfer it to some of his subordinate judges for recording evidence, if necessary, and final hearing. Such a provision will be easy, cheap and expeditious.

Clauses 9, 26, 27, 37 & 39.—All these clauses refer to the Return of Election expenses. I am firmly of the opinion that provision regarding submission of Election Expenses should be entirely done away with. The astute and crafty candidates, having a long purse, spend money like water for getting elected. But at the same time, they cleverly manage to cook up of false accounts, fortified with fraudulent vouchers and thus hoodwink everybody including the Election Commission. On the other hand, the honest and truth-loving candidates, their election agents and other supporters find it extremely difficult to comply with the strict and rigid rules and regulations in this respect. In order to avoid the agony of honest people and the frauds and fabrications of the dishonest these provisions which, though salutary and useful in intentions, are much observed in their breach, should be entirely done away with.

This suggestion should not be constructed to convey that the rich candidates should be allowed to defeat a poor candidate by using silver bullets. I want to emphasise that the corrupt practices of bribery, using vehicles for transporting voters etc. should be made serious offences entailing heavy penalties.

Clause 14.—(i) Sub-clauses (1) and (2) of the new section 33 under this clause lay down the procedure for filing nomination paper. I do not understand why we should have a proposer and seconder for nominating a candidate. The system is a tame imitation of the English system which is itself a produce of their tradition. Some other Western countries have evolved other methods of nominating

candidates. We must simplify the system of filing nomination so as to minimise the possibility of rejection of a nomination paper. The Select Committee has gone some way in this process of simplification. I think we should boldly go still further and hence I suggest the following two additional methods of nomination:

(1) Well-organised Parties are already in the field and recognised both on all India and Statewise basis. Large number of candidates, if not the majority, will be party candidates. The Parties should be allowed to submit the names of their candidates to the Scrutiny Officer concerned and the receipt of such communication should be treated as nomination of the candidates concerned and be given the Party symbol.

(2) A candidate may make a declaration of his intention to stand as a candidate for any constituency and that sole declaration should be accepted as nomination of the candidate.

(ii) In sub-clause 4 the words "disloyalty to the State" occur. Similar expressions also occur in sections 8 and 9 of the principal Act. What is "disloyalty to the State" has not been defined. When a particular Party is in power, views opposed to the Party in power might be construed as "disloyalty to the State" and a man holding such views might come to be dismissed. Such a person, in case he desires to contest any elections, will have to produce a certificate from the Election Commission who will have no other alternative but to accept the verdict of the dismissing authority. I have grounds to fear that these expressions will lead to persecution of persons for holding certain views and opinions unpalatable to a Party in power claiming itself to be the State. I suggest that this expression should be deleted entirely from the Representation of the People Act.

Clause 18.—This clause provides for withdrawal by a candidate and lays down the time limit within which such withdrawal is permitted. I think that this provision needs modification. Under sub-clause (2)(a) a candidate gets only three days after the scrutiny to make a proper assessment of his prospects. This time is rather too short to enable a man to take stock of the situation and thus to find out whether he commands any appreciable support of the electorate or not. Under sub-clause (2)(b) a candidate may get longer time but even this time will have to be spent in agitating the validity otherwise of the acceptance or rejection of the nomination paper before the Appellate Authority. It is common experience that many candidates, after touring the constituency extensively, painfully realise that they have a bleak future at the polls and then decide that they had better withdraw. But their practical retirement from the arena is not recognised by law and therefore the whole show of going to the polls has to be staged involving the waste of money and labour by all parties concerned. I, therefore, suggest that withdrawal should be permitted any time before three days of the date of polling; but a withdrawal, after a prescribed time, though permitted, should not entitle the candidate to claim the deposit.

Clause 32.—This clause amends section 86 of the principal Act dealing with the appointment of Election Tribunal. Sub-clauses (2) and (3) of this section lay down provisions regarding the composition

of the tribunal. It is high time that we substantially modified these provisions. In this respect we shall do well to adopt the U.K. system according to which the jurisdiction relating to election petitions is vested in the Kings Bench Division of the High Court of Justice which has, subject to the Representation of the Peoples Act of 1949, the same powers, jurisdiction and authority in respect of an election petition and all proceedings thereon as it would have if such petition was an ordinary cause within its jurisdiction. Election petitions are tried by two Judges of the Kings Bench Division of the High Court of Justice who are selected from a rota formed for that purpose.

According to section 105 of the Representation of the Peoples Act 1951 "Every order of the Tribunal made under this Act shall be final and conclusive". This provision has proved a fruitful and prolific source of a large number of widely conflicting decisions interpreting the same provision of law in a diametrically opposite manner. I shall not be wrong if I say that there is a universal demand for setting up some appellate authority which will give some uniformity to these judicial pronouncements. If we adopt the U.K. system there will be automatic provision for appeal to the highest tribunal. The Select Committee by new section 36A under clause 17 has already recognised the necessity and provided for an Appellate Authority to sit in judgment over the decisions of the Scrutiny Officers. The necessity for such an Appellate Authority over the Tribunals decisions in election petitions is more urgent and imperative.

Clause 35.—The original section 100 is materially recast by this clause. I was in favour of one more proviso to sub-section 1 of this clause to meet a case as mentioned below.

It may happen that in a particular double-member constituency seats may be contested by several candidates put up by different political parties and also by candidates who are independents. Supposing that two candidates namely candidate A of B Party and candidate C of D Party are declared elected. An election petition is filed in which it is alleged and eventually proved that A—one of the returned candidate has practised group intimidation, bribery or undue influence extensively so as to prevent the elections from being free elections.

Under the provisions recommended by the Select Committee the whole election will be declared void and the returned candidate C of Party D will be unseated though he successfully struggled against the corrupt practices of the returned candidate A and his Party B.

I think in such a case the innocent candidate should not be unseated.

Besides these proposals, I strongly urged some important changes, namely:—

(a) that counting of votes should be commenced immediately after the Polling is over as in United Kingdom and Canada.

(b) that the right of voting is an important right and therefore every voter must be made to exercise that right by making it an obligatory duty.

But I was told that Government intend to bring forward in immediate future a more comprehensive measure regarding our elections when these suggestions can be more appropriately attended to.

S. S. MORE.

NEW DELHI;
The 30th November, 1953.

V

Whereas the expressed object of the Bill had been to make avoidance of elections rare, the results, I fear, are going to be just the opposite. Though improvements have been made under caption "Avoidance due to improper acceptance or rejection of nominations" holes have been made wider on other counts.

The best way of providing sanctity to elections would have been to add to the powers and prestige of the Election Commission while preserving and nurturing its independence and aloofness. Falling shy of this though it be at the recommendation of the Commission itself, we cannot provide halo of sanctity to elections under quible of legal provisions. We seem to forget that the setting up of a separate semi-judicial independent high-status body for the guidance and control of elections is a feature completely in advance of and novel to the constitution of many countries including the United Kingdom, whose copy our Representation of People Act is. Yet having copied with the U.K., Representation of People Act of 1949 we have grieviously failed and derogated on the point of dealing with Election Petitions. Whereas the U.K. Act provides for the direct dealing of Election Petitions through High Court *via* its rota called the Election Court—like the machinery we are now setting up for the hearing of Nomination appeals—We have provided for the setting up of one separate tribunal for the hearing of every single petition. This becomes the root of all evils. This year we shall be shocked under another heading, but shocked we shall be so long as there is no guidance or control of a High Court and the Supreme Court. As the scheme of things presented is, the Act has become simpler for a questioner—a petitioner. Clause 29 does not provide the necessity of making any officer or official a respondent. The meaning becomes that whereas a questioner can challenge any election on grounds of irregularities and lapses of any official, he need not make the official a party. This leaves the returned candidate to rack his brains in proving the bonafide or the innocence of the official and makes his life a hell of any representative of the people. This should not be so. If it were provided that an official must also be made a respondent if election is to be challenged on grounds of lapses or irregularity of that official, the questioner would be more sober and would not challenge any election on frivolous grounds.

Then section 83 has been completely taken out of the purview of new section 85 or 90 *i.e.* of the Election Commission or the Tribunal, as was provided for in old sections 85 and 90 (see clause 34). We wonder what it has been left there for, in the Act.

Clause 35.—Whereas the old section 100 contain a saving proviso in sub-section 3 it has been wiped out by debating its reference in new sub-section (2).

I cannot say whether it is a slip or an intended omission. In order that clause 3 might be operative the proposed clause 2 should read..... Subject to the provisions of sub-section (2A) and of (3), if the Tribunal is of opinion.

In clause 35 (sub-section 2) the words 'materially effected' have not been defined at all. This leaves the whole thing to the caprice of tribunals. This will again prove ruinous.

In short whomsoever the Committee might have been constituted for, it has acted for and on behalf of petitioners, making frivolous setting aside of elections more provable than before.

SURESH CHANDER MISHRA.

NEW DELHI;
The 30th November, 1953.

VI

I beg to differ from the decisions of the Select Committee, on two important subjects, covered by their report. They are:—

(i) New Clause 17 replacing section 36, in Act XLIII of 1951 which relates to scrutiny of Nominations.

(ii) Section 76, relating to return of Election Expenses.

The Select Committee have decided that in all respects, a scrutiny of Nomination should be finalised before the Election. Good; but how do they propose to achieve the end? By what method and machinery?

It is proposed that there should be a Scrutiny Officer other than the Returning Officer; he should be a Judicial Officer of at least ten years standing; over and above him, there will be an Appellate authority,—A Judge of High Court, and then again in certified cases, the matter in issue in the appeal shall not be deemed to have been heard and finally decided by him and may be raised again before an Election Tribunal.

In my opinion, such a craze for finality before the Election, which again is not final and the device to attain the end are extremely uncalled for. They also overlook the disadvantages the objected nomination, if held valid, will be subjected to, and the suspense that will be the lot of all concerned. The method is merely grandiose involving so much expense, both to the candidates and to the State.

Is it not possible to find out any other simpler and more legitimate method to achieve the same end? What, after all is the scope and purpose of the scrutiny, which a Scrutiny Officer is asked to realise? Under clause 17, he may refuse a nomination on any of the following grounds and on no other, namely (a) that the candidate is not qualified to be chosen to fill the seat as either, he is not a citizen of India or is under age or holds an office of profit or is of unsound mind or is

an undischarged insolvent, or (b) that he has otherwise incurred some statutory disqualifications. And statutory disqualifications are incurred by (i) violation of Election Laws; (ii) conviction under some penal law; (iii) failing to lodge the Election expenses; (iv) Having some share on interest in a contract with Government; (v) Being a director or managing agent or holding any office of profit under any corporation in which Government has a share or interest; (vi) dismissal for corruption or disloyalty to the State; (c) that the signature of the candidate or the proposes on the nomination paper is not genuine; or (d) that there has been a failure to comply with any of the provisions relating to presentation of a nomination paper and Deposit.

Thus it is clear that except where a nomination is challenged on the allegation that he or she has a share or interest in a contract with the Government or is a Director or managing Agent or holder of an office of profit under any corporation in which Government has a share or interest, all other questions that may come up at the time of scrutiny are matters of already recorded finality and mere production of such documentary evidence should enable any responsible officer to come to a decisive finding on the questions at issue. The Returning officer may safely be entrusted to arrive at a right and proper decision on them.

The only questions that now remain are (i) whether or not a nominated person holds any office of profit; (ii) whether or not, he or she has a share or interest in a contract with Government; and (iii) whether or not he or she is a Director or a managing Agent or holder of any office of profit under any corporation in which the Government has a share or interest.

However much these matters may be disputed or bear different interpretations, they are all public matters where Governments are concerned. I think some changes in the law itself, should solve all the difficulties involved, and save the candidates from so much trouble and suspense, deserved or not.

Why can't the law definitely provide that in the event of such persons getting nominated, he or she, holding the office of profit shall be deemed to have resigned the office without notice to Government, having any interest in a contract to have been guilty of breach of contract or having been a Director or managing Agent or having held the office of profit to have *ipso facto* forfeited the position and the Government shall forthwith give effect to the consequences thereof; or any elector may agitate the matter before a tribunal. In my opinion this will be more appropriate and expeditious. I therefore differ from the decisions of the Select Committee as embodied in clauses 17 and 18 of the amending Bill as amended by the Select Committee. Questions of disqualification should be left over to be decided by the Tribunal alone and in no case should the election be set aside, thereby or annulling the verdict of the people. The sinner, individual should be punished for his own act and thereby be deprived of his own personal benefits that might have accrued to him out of the office or the contract or the position in the corporation. This is not only fair and expeditious but establishes a principle which is more democratic and just.

2. Clause 26 substitutes a new section for section 76 of Act XLJII of 1951 which provides for return of election expenses. In support of the retention of the provision it is argued that in spite of all avoidance of the demands of the law and the rules framed thereunder, and their very presence on the statute book is a warning against dereliction which, when proved, will entail a penalty provided by the law and however rare the contingency be, even a single case leading to the desired result will on the whole be salutory. But when it is forgotten that the law demands too much from a man involved in the game of present-day elections, and that in a contested case, if success has to be kept in view nobody can conscientiously observe the rules and yet win. Section 76 providing for maximum election expenses has nowhere been a deterrent if circumstances demanded that the limit must be transgressed. As a check on the rich it has also failed, because he who has, goes on spending, whatever be the result.

Therefore unless we need only a mental satisfaction of incorporating an abstract principle of high hopes and slippery righteousness, there is no use in demanding in law something which in the nature of things, is hard to attain. If the law really intends that mere money should not stand in the way of fair elections and that expenses on unlawful matters such as bribery and illegal gratifications should be presented, these ought to be done independent of any action of election expenses which we know is positively unreliable.

The rules already enjoin that on certain accounts and for certain purposes not a pie could be spent. Therefore any such unlawful expense, when proved, will vitiate the election. If still accounts have to be honestly and correctly maintained and expenses must be within the prescribed limit, the Government should keep the accounts and meet the expenses either from the public exchequer or from any amount that the candidate may have to deposit in their favour, respectively. But this is *prima facie* no less an impossibility.

I therefore feel that evils when necessary as bound up with the nature of time and circumstances must be recognised and redressed, if possible, by ways other than a formal return of election expenses, which invite fraud and perjury for no other return. The only honest and honourable course should therefore be to do away with any such provision, instead, conditions should be created so that elections may, indeed, be cheap and fair. This means a radical reform in the structure of our Government, and total transformation of both political and social values. Take one example. Maximum amount of election expenses for a single member Parliamentary Constituency is supposed to be Rs. 25,000. Where is the amount to come from? How many of our people have the means to spend the amount and for what return? A member of the House of the People hardly gets Rs. 25,000 as D.A. or T.A. in course of his 5 years out of which he or she has to meet all the expenses as a member of the House of the People and for his stay in New Delhi. There is hardly any balance left to balance the investment. The line therefore is somewhere else. This line should either be tolerated or removed. A mere return of election expenses is not equal to the task.

And yet there may be a ceiling fixed for election expenses. The ceiling will be there merely as a norm without any legal penalty

attached against a transgression. People alone are there to judge the transgressor.

Subject to their note of dissent, I signed the report.

LOKENATH MISHRA.

NEW DELHI;
The 30th November, 1953.

VII

1. The most important change the amending Bill seeks to affect is the provision for an appeal, *before the date of polling*, against an order accepting or rejecting a nomination paper. Improper rejection of nomination papers has been the cause of a large number of elections being set aside. As many as 71 elected candidates to the House of the People and State Legislative Assemblies and 48 members of the Legislative Councils of Madras and Bihar were unseated for this reason; while 10 elections involving 14 members for improper acceptance and 8 elections involving 10 members on the ground that the returned candidate was disqualified for being chosen as a member were set aside. The select Committee rightly thought that the question of acceptance or rejection of nomination papers should never be the basis for ordering a re-election.

2. But the remedy they have suggested is beset with difficulties and will be unworkable in practice. They have recommended the setting up of "Scrutiny officer" from among Judicial Officers of the respective States, before whom a regular judicial enquiry will be held. Provision is made for an appeal to one or more Judges of the High Court and for urging before the Election Tribunal any matter about which the appellate authority has issued a certificate. The feeling that at the last general election some Returning Officers did not take a strictly non-political and non-personal attitude and the fact that in some States such Officers were not higher than Tehsildars, have played a considerable part in making many members take a purely Judicial view of this matter, forgetting that the conduct of an election is *par excellance* an executive affair.

3. The Central pivot of an election is the Returning Officer. He must be clothed with wide discretionary powers to act with speed and expedition; all matters at his level must be centralised in him and he must be saddled with undivided responsibility compelling him to pay his utmost attention to the minutest detail and carry the election through in accordance with the directions with the Election Commission. The creation of new scrutiny officers will result in splitting up that concentrated responsibility and lead to grave administrative difficulties if not conflict with the Election Commission. Very many questions arise at once. Is it possible to get a suitable number of Judges of the requisite standing? Are they to sit in their Courts and receive the nomination papers? In the case of local Assembly elections are they to go about the taluk centres to receive them; when are they to intimate the returning officers? Where are the notices to be put up? Are the Judicial Officers to suspend their normal work and be itinerating holding enquiries at

several centres in the district? The whole scheme, though well meant, is combursome and unworkable.

4. I would therefore retain the present powers and status of the Returning Officers, *who as magistrates, do have Judicial* training I would leave their powers to take quick executive decisions untouched. But as a check against their possible vagaries I suggest the following:—

(a) An appeal shall lie to the District Judge in matters falling under Section 36(2)(c) (d) (e) of the R.P. Act of 1951. A vast majority of the objections will fall under these categories and it is best they are disposed of in the district itself. It will avoid delay and expense of going to the High Court and also the High Court will not be bothered by these minor matters. There will be no further appeal or revision.

(b) Cases falling under Section 36(2) (a) and (b) are more serious in that they involve not merely an interpretation of this Act but also of the Constitution. Cases falling under these will be few and the High Court can dispose of them in a more satisfactory manner. There will be no further appeal.

(c) The Returning Officer will note in his order the head or heads under which objections are taken, and will briefly state his reasons for accepting or rejecting the objections, so that the aggrieved party may know the forum for appeal. If the appeal lies to the High Court on any one of the objections, then the entire appeal will lie there.

5. I object strongly to the proposal for the issue of any certificate as is envisaged in clause 17(11) of the Bill as it has emerged from the Select Committee. Such a provision will leave a loophole and the very object with which the amending Bill is brought will be defeated. Questions relating to acceptance or non-acceptance of nomination papers must be settled before the polling finally and for ever.

6. It is necessary to define what is meant by "Office of profit". The difficulties that arose over the disqualification of Vindhya Pradesh Assembly Members underlines the urgency for it. A fruitful source of litigation will be avoided if this is done without delay.

7. The scope for election petition will be still further restricted if some time before the elections a list of persons who have contracts with the appropriate Governments and who would be disqualified under section 7(d) of the R.P. Act of 1951 is published in the Official Gazette. It may however be made clear that the list is not exhaustive of persons who will come under its mischief.

8. It is desirable to make the appellate Judicial authority *persona designata*, as Election Judge (of the State concerned) and as district Election Tribunal.

9. The very number of our electors exceeds the population of the U.S.A. The infinitely diverse conditions of communications, climate, language etc. add to the difficulties of conducting elections on such a vast scale. The conduct of the last general election was beyond

reproach, considering the side and novelty of the experiment. The Election Commission has found some difficulties which it wants to avoid. Instead of facilitating it to discharge its onerous responsibilities more speedily the prescribed course will involve friction and delay. I am afraid the suggested remedy is worse than the malady.

10. The other matters are minor ones.

S. V. RAMASWAMY.

NEW DELHI;
The 30th November, 1953.

VIII

This Bill was brought forward by the Government as a result of certain experience derived during the first General Election under the Constitution in our country. We expected that the Government would bring forward a comprehensive legislation based on the experience gained by the Election Commissioner during the last election, whose report, we regret to say, has not yet been finalised and seen the light of the day. However on the assurance of the Government that a comprehensive legislation will be forthcoming soon and in view of the urgency of making certain amendment resultant on the coming general election in some of the States we accepted the Bill and participated in the discussion of the Select Committee. It will be seen that the Bill has been improved to a great extent in the Committee. Therefore we accept generally the report of the Select Committee yet we are constrained to record that on some points we could not see eye to eye with the majority view. The provision in the amended section 23 for conducting election under the old rolls where revision could not complete inspite of the statutory provision without any proper safeguard against such delay seems to us to be dangerous, and there may be occasions where the authority concerned may not act properly and with due diligence to complete such revision within the scheduled time. We also associate ourselves with the views expressed by Shri S. S. More in his minute of dissent appended to this Report. However we hope the Government will bring forward in future a more comprehensive legislation wherein the provisions will be simplified so that the common man can actively take a part in such election without being very much bothered about technical intricacies.

K. K. BASU.
V. P. NAYAR.

NEW DELHI;
The 30th November, 1953.

IX

I regret to have to observe that I am not at all happy at the manner in which the Bill, as it has emerged from the Select Committee, seeks to secure the object in view, *viz.* the desirability of finalising the nominations before the elections actually take place. There is not the least doubt that a good deal of harassment and anxiety to candidates and of public inconvenience and expenditure can be avoided if the contingency, inherent in the present law, of

an election petition on the ground of improper acceptance or rejection of nomination papers, can be ruled out. But, at the same time, it is up to us to see that the remedy we provide is simple and practicable; and that, at any rate, in trying to mitigate the hardships in one direction we do not create somewhat comparable hardships in other directions.

Yet, this is what exactly we have succeeded in doing; and in spite of our best desire not to do so. For one thing, the machinery we have devised and the procedure we have evolved, is rather too cumbersome and elaborate. At present, we have only two Gods to propitiate as it were namely the Returning Officer at the one end and the Election Tribunal at the other. Now we have interposed two more *viz.* the Scrutiny Officer and the so-called appellate authority. This in itself will mean a lot of expenditure and trouble to all concerned. Secondly as a necessary concomitant of the elaborate machinery and procedure, the time-lag between the filing of the nominations and the actual election has had to be almost doubled, which again means more expenditure and trouble. And still, with all this additional expenditure and bother, we cannot claim to have achieved in full the object in view, for obviously we have still left a way open for an agitation of the question of valid or invalid acceptance or rejection of nomination papers before the Election Tribunal, on any of the grounds mentioned in Section 36 sub-clause (2), in all those cases in which the appellate authority might think it fit to issue the certificate now proposed to be prescribed.

I would humbly submit that the very fact of our having had to resort to this device of a certificate, betrays a confession that it is not a practicable proposition to secure a finalisation of nominations before the actual election in all cases. That being so, practical wisdom dictates that we would do well to differentiate cases which can be so finalised from those which cannot be finalised, and to leave the latter class of cases to the exclusive jurisdiction of the Election Tribunals. Thus, it is only the former class of cases which we should try to finalise before the elections; and if we concede this position, then we can certainly achieve the object in view by means of a much simpler and quicker procedure.

In this view of the matter, I would suggest for the earnest consideration of the House the advisability of adopting the English practice, and to lay down that so far as grounds (c) (d) and (e) mentioned in sub-clause (2) of Section 36 are concerned these should certainly be finalised before the election but that so far as grounds (a) and (b) are concerned they should be left to the exclusive jurisdiction of Election Tribunals. After all, the English practice embodies the experience of hundreds of years, and there is no reason why we should not avail ourselves of it if it suits our purpose.

If we follow the English model, then as I have suggested we can adopt a simpler procedure for the class of cases involving grounds (c) (d) and (e). The Returning Officer can then continue to be the Scrutiny Officer as at present, though at the same time we could lay down that Returning Officers should so far as practicable be officers with some sort of judicial training. An appeal against the order of the Returning Officer should then lie to the Appellate Authority; and the decision of this authority should be final. And all this can

be achieved without the need to increase the time-lag between the nomination and the election; and the agony and additional cost to the candidates and the inconvenience to the public which this increased time-lag necessarily involves.

JASWANTRAJ MEHTA.

NEW DELHI;
The 30th November, 1953.

X

The scope of the Bill has been restricted to a limited number of clauses of the parent Act and as such a comprehensive legislation on the electoral laws of the country could not emerge from the Select Committee. I think the same labour would have been enough to shape a model law for election as it is very urgent and essential too, for the proper working of representative government. The government itself have admitted that a model election law would be framed by amending the existing ones. The fact is that most of the amended clauses have some relation or other with the unamended ones, which could not be touched by the Select Committee on mere technical reasons.

Sound and simple electoral laws are essential for parliamentary system of government. The existing electoral laws are full of defects and to a great extent they have done great harm to systematic working of democracy in the various States. Rules regarding preparation of electoral rolls, nomination of candidates, qualifications of candidates, machinery set up for conducting elections and election disputes etc. were not properly framed.

The Present amended Bill, in spite of going through the Select Committee has obviously got many drawbacks. I think, the electoral laws were mostly looked at as a piece of "Judicial law" and the result is that in certain points instead of improving matters complications have arisen.

In clause 2, by substituting a new section to the original Act of 1950, the qualifying date is fixed as, "The first day of March of the year in which an electoral roll is prepared or revised". My contention is that a voter, if he attains 21 years of age on the date of election should be given the right to vote. For such a democratic procedure, electoral laws should be revised at least two times a year. Further, legislation should be made in every State allowing the voter to register such names for voting. I understand such system is in vogue in the U.S.A.

In clause 6, in sub-section 5 of section 25, a fixed fee is levied either for correction or revision of the electoral rolls and also for appeal to the Election Commission. I think, no fee should be levied for any kind of representations regarding the above subject. My firm opinion is that, except for Election petition to the Election Tribunal for disputes regarding the election of candidates, no fee either by way of stamps or cash deposit should be levied.

In clause 10, provision is given for a Returning Officer as well as a Scrutiny Officer. The Scrutiny Officer "shall have for at least ten years held judicial office". I feel that in this matter there has been a deviation from the spirit of election to representative bodies on the basis of Parliamentary democracy. I do not understand the new 'Faith' extended in the judicial officials of ten years standing or even to High Court judges in spite of my respect for the judiciary of the country. If the election procedure regarding electoral rolls and nomination of candidates is simplified to the benefit of the voter, the common man, there will be no need for a Scrutiny Officer at all. I do not think, in any country where such a procedure is prevalent in the scrutiny of nomination papers of candidates contesting elections. A Returning Officer was still recently considered as 'infallible' and was approached by the candidates during the submission of nomination papers with fear and apprehension. I remember I submitted two or three nomination papers before the same Returning Officer for fear of rejection of one or the other. The remedy suggested to escape from the decisions of the Returning Officer will plunge the candidates in litigation. My submission is that the Returning Officer is enough for scrutiny, but his power should be restricted to the material aspect of laws regarding the candidate's qualifications for nomination as a candidate. Anybody who has attained the age of 21 and who is qualified under the provisions laid down in the constitution regarding candidates should be allowed to contest election. If this principle is accepted the Returning Officer, as for nomination is concerned, exercises only a very limited power and no candidate need bear any fear regarding acceptance or rejection of nomination papers.

Clauses 9, 26 and 37 cover rules regarding the return of election expenses. The provision to fix the maximum for election expenses and to submit return of the election expenses are based on a wrong notion. The rules on the return of expenses were observed more in the breach. Return of the election expenses arose out of the fixation of maximum expenses for election as it is obvious that the law is intended to check the influence of money played in the elections. Candidates who spend or have spent more than the maximum can escape by showing a return which would cover the law. On the other hand, on the pretext of not entering the expenditure in the proper form, many candidates had to suffer, though they spent for their elections only the amount allowed under the law. Thus the law will not serve the objective. It has become a barren law. Why could not then do away with the whole laws regarding the submission of return of election expenses and the maximum fixed?

In clause 14, a proposer is suggested for nominating a candidate. It is thoroughly unnecessary to have this provision in nominating a candidate. Another "judicial procedure" is adopted in this case too. The most simple procedure in this connection will be that a candidate who comes forth with a declaration of intending to stand as a candidate for a constituency should be accepted as sole nomination of the candidate. The words "Disloyalty to the State" still find a place in the amended Bill, as it is used in clause 7, section (f) of the 1951 Act. This refers to Government servants served in the Centre or in the State and who were dismissed. I wonder why such different law is made for the dismissed Government servant. As far as I know, there is no "Loyalty" law enacted for persons entering

government job. In the case of others too, there is no such law in existence. Therefore the word "Disloyalty to State" is ambiguous and smells bad of democracy. It is rather strange, why such a word without any legal support behind, either in the constitution or elsewhere is inserted in the clause.

Regarding clause 32, existing arrangements regarding Tribunals need not be changed. It is true that different Tribunals have given different versions of the same electoral laws. But the remedy lies in making faultless laws as far as possible. An appeal to the High Court and then to the Supreme Court is a good procedure. Clause 35 has recast the original section 100. The word "wholly void" is changed into "as a whole to be void". I do not think it is a change at all as both have the same meaning. The difficulty still exists in the case of a double member constituency, if the words "as a whole" exist. For *e.g.* an election dispute arises in a double member constituency with regard to a general seat. The seat of the reserved candidate will also be declared void, if the tribunal finds that the general seat candidate is guilty. Safeguard is given only in the case of a reserved seat candidate who is returned unopposed. The general seat candidate will also have the same difficulty even if a returned reserved candidate is found guilty under the same clause. Individuals or parties contesting in the double member constituency will have to undergo the same trouble. Under these circumstances the word "as a whole" should be removed and the Tribunal should be given the power to unseat one or the other or both as proved guilty.

Besides the proposals above, I am of the view that counting of votes should be commenced immediately after the polling is over.

R. VELAYUDHAN.

NEW DELHI;
The 30th November, 1953.

XI

During the deliberations in the Select Committee, it appeared to us that some of the important issues need not have been tackled until the Government was ready with a comprehensive amending bill.

2. We generally agree with the Minute of Dissent of Shri S. S. More. On one point we entertain strong views and we endorse the observations made on this matter in the House by Shri Purushottam Das Tandon. The provisions regarding Returns of Election Expenses impose almost impossible burdens on the candidates and their election agents. The Forms of Returns are confusing and it is easy for resourceful or crafty people to secure compliance with the provisions of law by engaging competent men who can prepare accounts. But the same provisions constitute a trap for ordinary people who have neither the resources to engage actuarial assistance or to secure the services of competent men who can keep or prepare necessary accounts. Those who have experience of Election Cases will admit that it is next to impossible in many cases to specify all expenditure incurred and payments made by any person on behalf of the candidate or in the interest of the candidate in connection with the

election, as is required by the Form specified in Part K of the Return of Election Expenses. Parliament should not pass any legislation which will compel candidates or members to pledge their oaths to incomplete or incorrect returns of election expenses. If a ceiling of election expenses is insisted on that can be specified. But there is no necessity to fix the maximum number of agents or clerks or messengers.

3. It is certainly desirable to secure finality with regard to nominations before the election actually takes place. Experience has demonstrated that a number of elections has been set aside by Election Tribunals on the ground of improper rejection of nomination papers. Yet we feel that the recommendations of the Select Committee and specially the power to issue certificates given to the 'Appellate Authority' will make the procedure more cumbrous and may lead to harassment and delay. If finality is to be achieved at the earliest stage, then there is hardly any point in allowing the matter to be agitated by election petitions before Election Tribunals after the election.

N. C. CHATTERJEE.
A. KRISHNASWAMI.

NEW DELHI;
The 30th November, 1953.

Bill No. 13 of 1953.

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1953

(As amended by the Select Committee)

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

A

BILL

further to amend the Representation of the People Act, 1950, *and the Representation of the People Act*, 1951, *and to make certain consequential amendments in the Government of Part C States Act*, 1951.

Be it enacted by Parliament as follows:—

Part I.—Preliminary

1. Short title and commencement.—(*1*) This Act may be called the Representation of the People (Amendment) Act, 1953.

(*2*) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

Part II.—Amendments of the Representation of the People Act, 1950

2. Substitution of new section for section 14 in Act XLIII of 1950.—For section 14 of the Representation of the People Act, 1950 (hereafter in this Part referred to as the principal Act), the following section shall be substituted, namely:—

'14. *Definitions.*—In this Part, unless the context otherwise requires,—

(*a*) "constituency" means an Assembly constituency or a Council of States constituency;

(*b*) "qualifying date", in relation to the preparation or revision of every electoral roll under this Part, means the first day of March of the year in which it is so prepared or revised.'.

3. Substitution of new section for section 19 in Act XLIII of 1950.—For section 19 of the principal Act, the following section shall be substituted, namely:—

"19. *Conditions of registration.*—Subject to the foregoing provisions of this Part, every person who, on the qualifying date—

(*a*) is not less than 21 years of age, and

(*b*) is ordinarily resident in a constituency,

shall be entitled to be registered in the electoral roll for that constituency.".

4. Amendment of section 20, Act XLIII of 1950.—In section 20 of the principal Act, for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) A member of the Armed Forces of the Union shall be deemed to be ordinarily resident on any date in the constituency in which, but for his service in the Armed Forces, he would have been ordinarily resident on that date.".

5. Substitution of new section for section 21 in Act XLIII of 1950.—For section 21 of the principal Act, the following section shall be substituted, namely:—

"21. *Chief Electoral Officers.*—(*1*) There shall be for each State a Chief Electoral Officer who shall be such officer of Government as the Election Commission may, in consultation with that Government, designate or nominate in this behalf.

(*2*) Subject to the superintendence, direction and control of the Election Commission, the Chief Electoral Officer shall supervise the preparation and revision of all electoral rolls in the State under this Act.".

6. Substitution of new sections for sections 23, 24 and 25 in Act XLIII of 1950.—(*1*) For sections 23, 24 and 25 of the principal Act, the following sections shall be substituted, namely:—

"23. *Preparation and revision of electoral rolls.*—(*1*) The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.

(*2*) The said electoral roll shall thereafter be revised in every subsequent year in the prescribed manner by reference to the qualifying date:

Provided that if for any reason the electoral roll is not revised in any year, the validity or continued operation of the electoral roll shall not thereby be affected.

(*3*) Notwithstanding anything contained in sub-section (*2*), the Election Commission may at any time, for reasons to be recorded in writing, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit:

Provided that, subject to the other provisions of this Act, the electoral roll for the constituency, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

24. *Correction of entries in electoral rolls.*—(*1*) The Electoral Registration Officer for a constituency, on application made to him for the correction of an existing entry in the electoral roll of the constituency, shall, if he is satisfied after such enquiry as he thinks fit, that the entry relates to the applicant and is erroneous or defective in any particular, amend the entry accordingly.

(2) Any person whose name is entered in the electoral roll of a Constituency may apply to the Electoral Registration Officer for transposing the entry to another place in the same electoral roll, and if the Electoral Registration Officer, after making such enquiry as he thinks fit, is satisfied that the applicant is entitled to have his name shown in that other place, he shall amend the electoral roll accordingly.

25. *Inclusion of names in electoral rolls.*—(*1*) Any person whose name is not included in the electoral roll of a constituency may apply in the manner hereinafter provided for the inclusion of his name in that roll.

(2) Where an application under sub-section (*1*) is made at any time after the issue of a notification calling upon the constituency to elect a member or members and before the completion of that election, it shall be made to the Chief Electoral Officer; and in any other case, it shall be made to the Electoral Registration Officer of the constituency.

(3) The Chief Electoral Officer or, as the case may be, the Electoral Registration Officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein:

Provided that if the applicant is registered in the electoral roll of any other constituency in the same State, the Chief Electoral Officer or, as the case may be, the Electoral Registration Officer, shall inform the Electoral Registration Officer of that constituency, and that Officer shall, on receipt of the information, strike off the applicant's name from that electoral roll.

(4) Where an application made under this section, is rejected, an appeal shall lie to the Election Commission within such time and in such manner as may be prescribed.

(5) Every application and appeal under this section shall be accompanied by the prescribed fee which shall in no case be refunded.".

(2) For the avoidance of doubt it is hereby declared that sub-rule (2) of rule 20 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, shall be deemed to have always been as valid as if its provisions had been enacted in, and had formed part of, section 25 of the principal Act.

7. Insertion of new section 26 in Part III, and omission of existing section 26 in Part IV in Act XLIII of 1950.—(*1*) In Part III of the principal Act, the following section shall be inserted at the end, namely:—

"26. *Electoral rolls for Parliamentary Constituencies.*—(*1*) The electoral roll for every Parliamentary constituency other than the Parliamentary constituency of the State of Bilaspur shall consist of the electoral rolls of so much of all the Assembly constituencies or, as the case may be, Council of States constituencies as are comprised within that Parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such Parliamentary constituency.

(2) The provisions of sections 14 to 25 (excluding the definition of "constituency" in section 14) shall apply in relation to the Parliamentary constituency of the State of Bilaspur as they apply in relation to Assembly constituencies.".

(2) Section 26 in Part IV of the principal Act shall be omitted.

8. Insertion of new section 28A in Act XLIII of 1950.—After section 28 of the principal Act, the following section shall be inserted, namely:—

"28A. *Staff of local authorities to be available.*—Every local authority in a State shall, when so requested by the Election Commission or the Chief Electoral Officer of the State, make available to any Electoral Registration Officer such staff as may be necessary for the performance of any duties in connection with the preparation and revision of electoral rolls.".

PART III.—AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

9. Amendment of section 8, Act XLIII of 1951.—In sub-section (*1*) of section 8 of the Representation of the People Act, 1951 (hereafter in this Part referred to as the principal Act), for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) a disqualification under clause (*c*) of that section shall take effect on the expiration of two months from the date on which the Election Commission decides that the return of election expenses has not been lodged within the time and in the manner required by or under this Act;".

10. Substitution of new sections for sections 20 and 21 in Act XLIII of 1951.—For sections 20 and 21 of the principal Act, the following sections shall be substituted, namely:—

"20. *General duties of Chief Electoral Officers.*—Subject to the superintendence, direction and control of the Election Commission, the Chief Electoral Officer of each State shall supervise the conduct of all elections in the State under this Act.

21. *Returning Officers and Scrutiny Officers.*—For every constituency, for every election (other than a primary election) to fill a seat or seats in the Council of States and for every election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State, the Election Commission shall, in consultation with the Government of that State, designate or nominate—

(*a*) a Returning Officer who shall be an officer of Government; and

(*b*) a Scrutiny Officer who, being a person in the judicial service of the State, shall have for at least ten years held judicial office:

Provided that nothing in this section shall prevent the Election Commission from designating or nominating the same person to be the Returning Officer or Scrutiny Officer for more than one constituency."

11. Amendment of section 22, Act XLIII of 1951.—In section 22 of the principal Act, * the proviso to sub-section (*2*) *** shall be omitted.

12. Amendment of section 26, Act XLIII of 1951.—In section 26 of the principal Act, to sub-section (*1*), the following further proviso shall be added, namely:—

"Provided further that nothing in this sub-section shall prevent the Returning Officer from appointing the same person to be the presiding officer for more than one polling station in the same premises."

13. Substitution of new section for section 30 in Act XLIII of 1951.—For section 30 of the principal Act, the following section shall be substituted, namely:—

"30. *Appointment of dates for nominations, scrutiny and polling.*—(*1*) As soon as the notification calling upon a constituency to elect a member or members is issued under this Act, the Election Commission shall, by notification in the Official Gazette, appoint—

(*a*) the last date for making nominations, which shall be a date not later than the fourteenth day after the date of publication of the first-mentioned notification and not earlier than the eighth day after the date of publication of the notification under this sub-section; and

(*b*) the date for the commencement of the scrutiny of nominations, which shall be the fourth day after the last date for making nominations.

(*2*) The Election Commission shall in due course, by another notification in the Official Gazette, appoint the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the thirtieth day, and not later than the sixtieth day, after the date appointed for the commencement of the scrutiny of nominations under clause (*b*) of sub-section (*1*)."

14. Substitution of new section for section 33 in Act XLIII of 1951.—For section 33 of the principal Act, the following section shall be substituted, namely:—

"33. *Presentation of nomination paper and requirements for a valid nomination.*—(*1*) On or before the date appointed under clause (*a*) of sub-section (*1*) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Scrutiny Officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.

(*2*) Any elector of the constituency may sign as proposer as many nomination papers as there are vacancies to be filled but no more:

Provided that if the name of the person is entered more than once in the electoral roll of a constituency or is included in the electoral rolls of two or more constituencies of the same class, such person shall not be entitled to sign as proposer more than one nomination paper for each vacancy to be filled in that constituency or in not more than one of such constituencies of the same class.

(3) In a constituency where any seat is reserved, a candidate shall be deemed to be qualified to be chosen to fill that seat only if the nomination paper contains a declaration by the candidate specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a scheduled caste or, as the case may be, a scheduled tribe of the State.

(4) Where the candidate is a person who, having held any office referred to in clause (*f*) of section 7, has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(5) Any nomination paper which is not received before three o'clock in the afternoon on the last date appointed under clause (*a*) of sub-section (*1*) of section 30 shall be rejected.

(6) On the presentation of a nomination paper, the Scrutiny Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that the Scrutiny Officer shall permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and where necessary, direct that any clerical or printing error in the said entries shall be overlooked:

Provided further that where the candidate is an elector of a different constituency, the electoral roll of which is not available with the Scrutiny Officer, that Officer shall require the person presenting the nomination paper to produce either a copy of that electoral roll or of the relevant part thereof or a certified copy of the relevant entries in such roll.

(7) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper for election in the same constituency."

15. Amendment of section 34, Act XLIII of 1951.—In section 34 of the principal Act, in sub-section (2), for the words "Returning Officer" the words "Scrutiny Officer" shall be substituted.

16. Amendment of section 35, Act XLIII of 1951.—In section 35 of the principal Act,—

(*a*) for the words "Returning Officer" the words "Scrutiny Officer" shall be substituted;

(*b*) for the words "scrutiny of nominations" the words "commencement of the scrutiny of nominations" shall be substituted; and

(*c*) for the words "the persons who have subscribed the nomination paper as proposer and seconder" the words "the proposer" shall be substituted.

17. Substitution of new sections for section 36 in Act XLIII of 1951.—For section 36 of the principal Act, the following sections shall be substituted, namely:—

"36. *Scrutiny of nominations.*—(*1*) The Scrutiny Officer may refuse a nomination on any of the following grounds, and no others, namely:—

(*a*) that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act or the Government of Part C States Act, 1951 (XLIX of 1951); or

(*b*) that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act or the Government of Part C States Act, 1951; or

(*c*) that the signature of the candidate or the proposer on the nomination paper is not genuine; or

(*d*) that there has been a failure to comply with any of the provisions of section 33 or section 34:

Provided that—

(*i*) the Scrutiny Officer shall not refuse the nomination of a candidate under clause (*c*) or clause (*d*) because of an irregularity in respect of a nomination paper if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed;

(*ii*) for the purposes of clause (*d*), where a person has signed as proposer a larger number of nomination papers than there are vacancies to be filled, his signature shall only be operative on those of the papers which have been first received up to the number of vacancies to be filled and shall be inoperative on the others; and

(*iii*) the Scrutiny Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(*2*) Each candidate, the election agent and one proposer of each candidate and one other person duly authorised by each candidate, but no other person, may attend at the time and place appointed by the Scrutiny Officer for the scrutiny of nominations; and the Scrutiny Officer shall give them all reasonable facilities for examining the nomination papers of all candidates.

(3) On the date fixed for the commencement of the scrutiny of nominations, the Scrutiny Officer shall examine the nomination papers of each candidate, and if no objection is made by or on behalf of any other candidate, shall endorse on each nomination paper his decision accepting or rejecting the same:

Provided that no nomination paper shall be rejected by the Scrutiny Officer on his own motion without giving the candidate or other person attending on his behalf an opportunity to show cause, and in every such case the Scrutiny Officer shall record in writing a brief statement of his reasons for such rejection.

(4) (*a*) Every objection by or on behalf of a candidate to the nomination of another candidate shall be made, either orally or in writing, as soon as the nomination papers of that other candidate are taken up for scrutiny, and if any objection is so made by or on behalf of the candidate concerned and if time is reuired for replying to the objection, the Scrutiny Officer shall allow time until the next day but one for such reply.

(*b*) If any of the parties requires time for the production of any oral or documentary evidence in support or in rebuttal of any such objection, the Scrutiny Officer shall adjourn the proceedings for the purpose to such date (not later than the sixth day after the date on which the objection was made) as he may think fit.

(*c*) The Scrutiny Officer shall, after taking such evidence as may be produced by the parties and hearing them in regard to the objection, record his decision accepting or rejecting the nomination paper, together with a brief statement of the reasons for his decision.

(5) The Scrutiny Officer shall have the power—

(*a*) to issue summonses to persons for giving evidence or for producing documents;

(*b*) to examine witnesses on oath; and

(*c*) to receive evidence taken on affidavit.

(6) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (XLIII of 1950).

(7) The Scrutiny Officer shall complete the scrutiny under this section as expeditiously as possible, and in any event within a period of two weeks from the commencement of that scrutiny, and save as expressly provided in sub-section (4) or as may become unavoidably necessary, shall not allow any adjournment of the proceedings.

(8) Immediately after the scrutiny of nomination papers under the preceding provisions of this section is complete and decisions accepting or rejecting the same have been recorded,

the Scrutiny Officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.

36A. *Appeals from decisions of Scrutiny Officers.*—(*1*) An appeal shall lie to an authority as herein provided from any decision of a Scrutiny Officer accepting or rejecting a nomination paper.

(*2*) The Chief Justice of every High Court shall, at the request of the Election Commission, nominate one or more persons who are judges of that High Court to be the authority or authorities competent to dispose of appeals under this section from the decision of Scrutiny Officers in that State.

(*3*) Where only one appellate authority is so nominated for a State, all appeals from the decisions of Scrutiny Officers in that State shall be presented to, and disposed of by, that authority.

(*4*) Where more appellate authorities than one are nominated for a State, the Chief Justice shall divide the State into as many regions as there are authorities and assign to each authority one such region; and all appeals from the decisions of Scrutiny Officers within that region shall be presented to, and disposed of by, that authority.

(*5*) Any candidate or proposer of a candidate aggrieved by a decision of the Scrutiny Officer accepting or rejecting a nomination may present an appeal therefrom to the appellate authority within a period of five days from the date of the publication of the list of validly nominated candidates under sub-section (*8*) of section 36:

Provided that no such appeal shall lie unless such candidate or proposer has, not later than three o'clock in the afternoon of the day next following the said date, given the Scrutiny Officer notice in writing of his intention to appeal under this section.

(*6*) If one or more notices has or have been received in accordance with the proviso to sub-section (*5*), the Scrutiny Officer shall, immediately after the expiry of the time mentioned in that proviso,—

(*a*) publish the notices by affixing to his notice board one copy of each of the notices, together with an intimation in the prescribed form that the hearing of the appeals, if any, presented in pursuance of those notices will commence before the appellate authority on the tenth day after the date of such publication; and

(*b*) send to the authority having jurisdiction a copy of each of the notices, the intimation referred to in clause (*a*) and the list of validly nominated candidates published under sub-section (*8*) of section 36.

(*7*) The Scrutiny Officer shall, on application made by or on behalf of a candidate, supply forthwith to the applicant a copy of the decision accepting or rejecting a nomination paper together with the statement of reasons, if any, recorded by him under section 36.

(*8*) In every appeal under this section, the appellant shall join as respondents all the candidates (other than himself) whose nominations have been accepted by the Scrutiny Officer.

(*9*) The intimation affixed to the notice board of the Scrutiny Officer under clause (*a*) of sub-section (*6*) shall be deemed to be sufficient notice, both of the presentation of an appeal under this section and of the date on which the hearing thereof shall commence before the authority and it shall not be necessary to give any other notice to the appellants or the respondents and the appeal or appeals shall be deemed to have been fixed for peremptory hearing on the said date.

(*10*) Every appeal under this section shall be heard *de die in diem* and disposed of by the appellate authority as expeditiously as possible, and his decision shall be communicated forthwith to the Scrutiny Officer.

(*11*) While deciding an appeal under this section, the appellate authority may, whether at the instance of any of the parties to the appeal or on his own motion, certify that the matter in issue in the appeal shall not be deemed to have been heard and finally decided by him and may be raised again before an election tribunal in any election petition presented in accordance with the provisions of Part VI after the completion of the election.

(*12*) Where one or more notices of intention to appeal has or have been given to the Scrutiny Officer but no appeal is presented within the period specified in sub-section (*5*), the appellate authority shall immediately intimate that fact to the Scrutiny Officer in the prescribed form.

(*13*) In every case where one or more notices of intention to appeal has or have been given to the Scrutiny Officer, he shall, upon receipt of the communications referred to in sub-sections (*10*) and (*12*), republish by affixing to his notice board the list of validly nominated candidates after revising it, if necessary, in conformity with the decisions of the appellate authority.

(*14*) Save as provided in sub-section (*11*), the decision of the authority on appeal under this section, and subject only to such decision, the decision of the Scrutiny Officer under section 36, accepting or rejecting the nomination of a candidate, shall be final and conclusive and shall not be called in question in any court or tribunal, including an election tribunal."

18. Substitution of new section for section 37 in Act XLIII of 1951.—For section 37 of the principal Act, the following section shall be substituted, namely:—

"37. *Withdrawal of candidature.*—(*1*) Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be signed by him and delivered before three o'clock in the afternoon of the last date for such withdrawal to the Scrutiny Officer either by such candidate in person or by his proposer or election agent who has been authorised in this behalf in writing by such candidate.

(2) The last date for withdrawal of candidatures under this section shall be—

(a) where no notice of appeal has been given in accordance with the proviso to sub-section (5) of section 36A. the third day after the date on which the list of validly nominated candidates is published under sub-section (8) of section 36; and

(b) where such notice of appeal has been given, the third day after the date on which the list of validly nominated candidates is republished under sub-section (13) of section 36A.

(3) No person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice.

(4) The Scrutiny Officer shall, on receiving a notice of withdrawal under sub-section (1), as soon as may be thereafter, cause the notice of withdrawal to be affixed to his notice board."

19. Substitution of new section for section 38 in Act XLIII of 1951.—For section 38 of the principal Act, the following section shall be substituted, namely:—

"38. *Preparation and publication of the list of contesting candidates*:—(1) Immediately after the expiry of the period during which candidatures may be withdrawn under section 37, the Scrutiny Officer shall intimate to the Returning Officer the names and such other details as may be prescribed of the candidates who were included in the final list of validly nominated candidates and who have not withdrawn their candidatures within the said period (hereafter in this Act referred to as "the contesting candidates").

(2) The Returning Officer shall then prepare a list of the contesting candidates, setting out their names in alphabetical order and their addresses as given in the nomination papers, together with such other particulars as may be prescribed, and publish it in the prescribed manner."

20. Substitution of new section for section 40 in Act XLIII of 1951.—For section 40 of the principal Act, the following section shall be substituted, namely:—

"40. *Election agents.*—(1) There shall be an election agent for every candidate at an election.

(2) A candidate shall be deemed to have appointed himself to be his election agent until and unless he appoints another person to be his election agent.

(3) Every appointment of an election agent shall be made in the prescribed form, signed by the candidate and the election agent, and lodged with the Returning Officer; and it shall be effective only from the date on which it is so lodged.".

21. Amendment of section 44, in Act XLIII of 1951.—In section 44 of the principal Act,—

(*a*) after the words "Every election agent" the brackets and words "(including a candidate who is his own election agent)" shall be inserted.

(*b*) after the words "books of account" the words "as from the date of publication of the notification calling the election" shall be inserted.

22. Substitution of new sections for sections 46 and 47 in Act XLIII of 1951.—For sections 46 and 47 of the principal Act, the following sections shall be substituted, namely:—

"46. *Appointment of polling agents.*—A contesting candidate or his election agent may appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station provided under section 25 or at the place fixed under sub-section (*1*) of section 29 for the poll.

* * * * *

47. *Appointment of counting agents.*—A contesting candidate or his election agent may, * * * * * appoint in the prescribed manner one or more persons, but not exceeding such number as may be prescribed, to be present as his counting agent or agents at the counting of votes, and when any such appointment is made notice of the appointment shall be given in the prescribed manner to the Returning Officer.".

23. Insertion of new section 67A in Act XLIII of 1951.—In Chapter V of Part V of the principal Act, after section 67, the following section shall be inserted, namely:—

"67A. *Date of election of candidate.*—For the purposes of this Act, the date on which a candidate is declared by the Returning Officer under the provisions of section 53, section 54, or section 66, to be elected to a House of Parliament or of the legislature of a State or to an electoral college for a scheduled Part C State shall be the date of election of that candidate."

24. Amendment of section 68, Act XLIII of 1951.—In section 68 of the principal Act,—

(*a*) in sub-section (*1*), for the words "within ten days from the date of publication in the Gazette of India of the declarations that he has been so chosen or, if such publications have been made on different dates within ten days from the later of such dates, intimate" the words "within ten days from the date, or the later of the dates, on which he is so chosen, intimate" shall be substituted; and

(*b*) the following sub-section shall be added at the end, namely:—

"(*4*) For the purposes of this section and of section 69, the date on which a person is chosen to be a member of either House of Parliament shall be, in the case of an elected

member, the date of his election and in the case of a nominated member, the date of first publication in the Gazette of India of his nomination.".

25. Amendment of section 69, Act XLIII of 1951.—In section 69 of the principal Act,—

(*a*) in sub-section (*1*), for the words "on the publication in the Gazette of India of the declaration that he has been so chosen" the words "on the date on which he is so chosen" shall be substituted; and

(*b*) in sub-section (*2*), for the words "on the publication in the Gazette of India of the declaration that he has been so chosen" the words "on the date on which he is so chosen" shall be substituted.

26. Substitution of new section for section 76 in Act XLIII of 1951.—For section 76 of the principal Act, the following section shall be substituted, namely:—

"76. *Return of election expenses.*—(*1*) Within the prescribed time after every election there shall be lodged with the Returning Officer in respect of each contesting candidate a return of election expenses signed by the candidate, and where the candidate has another person as his election agent, also by the election agent.

* * * * *

(*2*) Every return of election expenses shall be in such form and contain such particulars as may be prescribed.".

27. Substitution of new section for section 78 in Act XLIII of 1951.—For section 78 of the principal Act, the following section shall be substituted, namely:—

"78. *Application of Chapter.*—This Chapter shall apply only to the following elections, namely:—

(*i*) elections to the House of the People;

(*ii*) primary elections;

(*iii*) elections to the Legislative Assembly of a State; and

(*iv*) elections to the Legislative Council of a State from a Council constituency.".

28. Amendment of section 81, Act XLIII of 1951.—In section 81 of the principal Act, in sub-section (*1*), for the words and figures "in such form and within such time but not earlier than the date of publication of the name or names of the returned candidate or candidates at such election under section 67, as may be prescribed" the words "within two months from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates" shall be substituted.

29. Substitution of new section for section 82 in Act XLIII of 1951.—For section 82 of the principal Act, the following section shall be substituted, namely:—

"82. *Parties to the petition.*—A petitioner shall join as respondents to his petition,—

(*a*) where the petitioner claims a declaration under clause (*b*) of section 84, all the contesting candidates other than the petitioner, and in any other case, all the * returned candidates; and

(*b*) any other candidate against whom allegations of any corrupt or illegal practice are made in the petition.

* * * * *

30. Substitution of new section for section 83 in Act XLIII of 1951.—For section 83 of the principal Act, the following section shall be substituted, namely:—

"83. *Contents of petition.*—(*1*) An election petition—

(*a*) shall contain a concise statement of the material facts on which the petitioner relies,

(*b*) shall set forth full particulars of any corrupt or illegal practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice, and

(*c*) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

(*2*) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.".

31. Substitution of new section for section 85 in Act XLIII of 1951.—For section 85 of the principal Act, the following section shall be substituted, namely:—

"85. *Procedure on receiving petition.*—(*1*) If the provisions of section 81, section 82 or section 117 have not been complied with, the Election Commission shall dismiss the petition:

Provided that the petition shall not be dismissed without giving the petitioner an opportunity of being heard.

(*2*) If the petition is not dismissed under sub-section (*1*) the Election Commission shall cause a copy thereof to be published in the Official Gazette, and shall also cause a copy to be served by post on each respondent."

* * * * *

32. Amendment of section 86, Act XLIII of 1951.—In section 86 of the principal Act, for sub-section (*4*), the following sub-sections shall be substituted, namely:—

"(*4*) If during the course of the trial, the office of the Chairman or any other member of a Tribunal falls vacant owing to death, resignation or otherwise, the Election Commission shall,

as soon as practicable, appoint a person to fill the vacancy in accordance with the provisions of sub-section (*3*) and upon such person joining the Tribunal the trial shall be continued as if he had been on the Tribunal from the commencement of the trial:

Provided that the Tribunal may, if it thinks fit, re-call and re-examine any of the witnesses already examined.

(*4A*) The Tribunal shall have power to act notwithstanding the casual absence of not more than one member; and no act or proceeding of the Tribunal shall be invalid or called in question on the ground merely of such casual absence.".

33. Insertion of new section 87A in Act XLIII of 1951.—After section 87 of the principal Act. the following section shall be inserted, namely:—

"87A. *Power of Election Commission to withdraw and transfer petitions.*—The Election Commission may at any stage for reasons to be recorded withdraw any petition pending before a Tribunal and transfer it for trial to another Tribunal constituted in accordance with the provisions of section 86: and upon such transfer, that Tribunal shall proceed with the trial from the point at which it was withdrawn:

Provided that it may, if it thinks fit, re-call and re-examine any of the witnesses already examined.".

34. Amendment of section 90, Act XLIII of 1951.—In section 90 of the principal Act,—

(*a*) sub-section (*1*) shall be omitted:

(*b*) sub-sections (*2*) and (*3*) shall be re-numbered as sub-sections (*1*) and (*2*) respectively;

(*c*) for sub-section (*4*), the following sub-sections shall be substituted, namely:—

"(*3*) The Tribunal shall dismiss an election petition which does not comply with the provisions of section 81, section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under sub-section (*1*) of section 85.

(*4*) Any candidate not already a respondent shall, upon application made to the Tribunal within fourteen days of the appointment of a Chairman and subject to the provisions of section 119, be entitled to be joined as a respondent.

(5) The Tribunal may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt or illegal practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt or illegal practice not previously alleged in the petition.".

35. Amendment of section 100, Act XLIII of 1951.—In section 100 of the principal Act, for sub-sections (*1*) and (*2*) the following sub-sections shall be substituted, namely:—

"(*1*) If the Tribunal is of opinion that the election has not been a free election by reason that bribery, undue influence or group intimidation has extensively prevailed at the election, the Tribunal shall declare the election as a whole to be void:

Provided that where at the election a candidate has been declared under sub-section (*2*) of section 54 to be elected to fill a reserved seat and the Tribunal is of opinion that bribery, undue influence or group intimidation prevailed only in regard to the election to fill the remaining seat, the Tribunal shall declare to be void only the election of the returned candidate to fill that remaining seat.

Explanation.—In this sub-section,—

(*a*) the expressions "bribery" and "undue influence" have the meanings given to them in section 123, and

(*b*) the expression "group intimidation" means any interference or attempt at interference by a community, group or section with the free exercise by another community, group or section of the right to vote or refrain from voting by intimidation, coercion, social or economic boycott, threat of such boycott or other similar means.

(*2*) Subject to the provisions of sub-sections (*2A*) and (*3*), if the Tribunal is of opinion—

(*a*) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Part C States Act, 1951; or

(*b*) that any corrupt practice specified in section 123 has been committed by a returned candidate or his agent or by any other person with the connivance of a returned candidate or his agent; or

(*c*) that the election of a returned candidate has been procured or induced by any corrupt or illegal practice; or

(*d*) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(*i*) by the improper acceptance or rejection of any nomination; or

(*ii*) by the improper reception or refusal of any vote or the reception of any vote which is void; or

(*iii*) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or any other Act or rules relating to the election,

the Tribunal shall declare the election of the returned candidate to be void.

(*2A*) The question whether the result of the election has been materially affected by the improper acceptance or rejec-

tion of any nomination shall not be inquired into and decided by the Tribunal unless the question of the acceptance or rejection of that nomination was a matter in issue in an appeal under section 36A and the authority deciding that appeal has given a certificate under sub-section (*11*) of that section."

36. Amendment of section 123, Act XLIII of 1951.—In section 123 of the principal Act, in clause (*b*) of the *Explanation* to clause (*8*), for the words "but shall not include a person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply" the following shall be substituted, namely:—

"but shall not include—

(*i*) any person (other than such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply; and

(*ii*) any such village officer as aforesaid who is a candidate for election to Parliament or the Legislature of the State and is not disqualified for being chosen as a member of Parliament or, as the case may be, of the Legislature of the State.".

* * * *

37. Insertion of new section 135A in Act XLIII of 1951.—After section 135 of the principal Act, the following section shall be inserted namely:—

"135A. *Making false declarations.*—If a person makes in, or in connection with, any nomination of a candidate for election or any return of election expenses, a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.".

38. Amendment of section 139, Act XLIII of 1951.—In section 139 of the principal Act, in clause (*b*) of sub-section (*1*), after the word and figures "section 135" the words, figures and letter "or section 135A" shall be inserted.

* * * *

39. Amendment of section 141, Act XLIII of 1951.—In section 141 of the principal Act, in clause (*a*), after the word and figures "section 135" the words, figures and letter "or section 135A" shall be inserted.

* * * *

40. Omission of section 143 in Act XLIII of 1951.—(*1*) Section 143 of the principal Act shall be omitted.

(*2*) It is hereby declared that any disqualification for voting incurred by any person under the said section for failure to lodge return of election expenses shall stand removed.

41. Amendment of section 169, Act XLIII of 1951.—In section 169 of the principal Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) All rules made under this Act shall, as soon as may be after they are made, be laid before both Houses of Parliament.".

42. Certain provisions of the Act not to apply to pending elections.—The amendments made in the principal Act by the provisions of section 10 regarding Scrutiny Officers, and sections 11 to 22, 28 to 31, 34 and 35 and items 19, 21 to 24, 26 to 29 and 31 to 34 of the Schedule shall not apply to any election which, or to any constituency in which any election, is in progress on the date of the coming into force of the said amendments; and any such election shall be held and all matters in connection with any such election (including the decision of disputes regarding the same) shall be regulated in accordance with the provisions of the principal Act in force immediately before such date as amended by the other provisions of this Act.

PART IV.—CONSEQUENTIAL AND MINOR AMENDMENTS

43. Consequential and minor amendments in Acts XLIII of 1950, XLIII of 1951 and XLIX of 1951.—The further amendments specified in the Schedule, being amendments consequential upon the foregoing provisions of this Act or relating to matters of minor detail, shall be made in the Representation of the People Act, 1950, the Representation of the People Act, 1951 and the Government of Part C States Act, 1951.

THE SCHEDULE

(*See* section 43)

I.—AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

1. In section 2,—

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

"(*b*) 'Assembly constituency' means a constituency provided by order made under section 9 of this Act or under sub-section (*2*) of section 4 of the Government of Part C States Act, 1951 (XLIX of 1951) for the purpose of election to the Legislative Assembly of State.";

(*b*) after clause (*h*), the following clause shall be added at the end, namely:—

"(*i*) 'State Government', in relation to a Part C State, means the Lieutenant-Governor or Chief Commissioner thereof.".

2. In section 3A, sub-section (*2*) shall be omitted.

3. In section 8, for the words "a Legislative Assembly" the words "the said Legislative Assemblies" shall be substituted.

4. In section 9, in clause (*a*), after the words "each State" the words "specified in the Second Schedule" shall be inserted.

5. For the heading of Part III, the heading "ELECTORAL ROLLS FOR ASSEMBLY, COUNCIL OF STATES AND PARLIAMENTARY CONSTITUENCIES" shall be substituted.

6. In section 17, after the word "constituency" the words "in the same State" shall be inserted.

7. In section 20,—

(*a*) in sub-section (*4*), the words "during any period or" and the words "during that period or" shall be omitted;

(*b*) in sub-section (*5*), the words "during any period or" shall be omitted;

(*c*) in sub-section (*6*), the words "during any period" and the words "that period" shall be omitted; and

(*d*) sub-section (*7*) shall be omitted.

8. In section 22,—

(*a*) in sub-section (*1*), after the words "shall be prepared" the words "and revised" shall be inserted; and

(*b*) in sub-section (*2*), after the words "the preparation" the words "and revision" shall be inserted.

9. Section 22A shall be omitted.

10. For the heading of Part IV, the heading "ELECTORAL ROLLS FOR COUNCIL CONSTITUENCIES" shall be substituted.

11. In section 27,—

(*a*) for sub-section (*4*), the following sub-section shall be substituted, namely:—

"(*4*) The provisions of sections 15, 16, 18, 20, 21, 22, 23, 24 and 25 shall apply in relation to Council constituencies as they apply in relation to Assembly constituencies";

(*b*) in sub-section (*6*)—

(*i*) for the word "April" the word "January" shall be substituted; and

(*ii*) the words "or revised" shall be added at the end.

12. Section 27F shall be omitted.

13. In section 28, in sub-section (*2*), for clause (*h*), the following clause shall be substituted, namely:—

"(*h*) the *revision of electoral rolls;".

14. The Sixth and Seventh Schedules shall be omitted.

II.—AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

15. In section 2,—

(*a*) in sub-section (*1*),—

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

"(*bb*) 'Chief Electoral Officer' means the officer appointed under section 21 of the Representation of the People Act, 1950 (XLIII of 1950).";

(*ii*) for clause (*e*), the following clause shall be substituted, namely:—

"(*e*) 'elector' in relation to a constituency, means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950.";

(*iii*) clause (*i*) shall be omitted;

(*iv*) clauses (*j*) and (*k*) shall be re-lettered as clauses (*i*) and (*j*) and after clause (*j*) as so re-lettered, the following clause shall be inserted, namely:—

"(*k*) 'State Government' in relation to a Part C State, means the Lieutenant-Governor or Chief Commissioner thereof.";

(*b*) sub-sections (5) and (7) shall be omitted.

16. In section 8, in sub-section (*1*), clause (*g*) shall be omitted.

17. In section 16, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) A general election shall be held for the purpose of constituting in due time the Legislative Assembly of each State under the Constitution or under the Government of Part C States Act, 1951 (XLIX of 1951), as the case may be.".

18. In section 17,—

(*a*) the words "under the Constitution in due time or" shall be omitted;

(*b*) for the words "Governor or Rajpramukh" the words, "Governor, Rajpramukh, Lieutenant-Governor or Chief Commissioner" shall be substituted.

* * * * *

19. In section 31, after the words "a notification under" the words, brackets and figure "sub-section (*1*) of" shall be inserted.

20. To section 32, the words, letter, brackets and figures "or under the provisions of the Government of Part C States Act, 1951 (XLIX of 1951), as the case may be" shall be added at the end.

* * * * *

21. In section 39,—

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

"(*2*) As soon as the notification calling upon the elected members or the members of the Legislative Assembly of a State or the members of the electoral college for a Part C

State or group of such States to elect a member or members is issued under this Act, the Election Commission shall, by notification in the Official Gazette, appoint—

(*a*) the last date for making nominations, which shall be a date not later than the fourteenth day after the date of publication of the first-mentioned notification and not earlier than the eighth day after the date of publication of the notification under this sub-section; and

(*b*) the date for the commencement of the scrutiny of nominations, which shall be the fourth day after the last date for making nominations.

(*2A*) The Election Commission shall in due course, by another notification in the Official Gazette, appoint the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the thirtieth day, and not later than the sixtieth day, after the date of publication of the notification under sub-section (*2*)."

(*b*) in sub-section (*4*),—

(*i*) for the brackets, figures and word "(*1*), (*3*), (*4*), (*5*) and (*7*)" the brackets, figures and words "(*1*), (*4*), (*5*), (*6*) (other than the second proviso), and (*7*)" shall be substituted;

(*ii*) in the first proviso, the words "or seconder" shall be omitted;

(*iii*) in the second proviso after the words "electoral roll" the words "or of the relevant part thereof" shall be inserted;

(*iv*) for clause (*b*) of the third proviso the following clause shall be substituted, namely:—

"(*b*) to section 30, and to section 31 shall be construed as references to sub-sections (*2*) and (*2A*) of this section and to sub-section (*3*) of this section respectively".

22. In section 52 for the words "If a candidate who has been duly nominated under this Act dies after the date fixed for the scrutiny of nominations and a report of his death is received by the Returning Officer" the words "If a report of the death of a contesting candidate is received" be substituted.

23. In section 53, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) If the number of contesting candidates exceeds the number of seats to be filled, a poll shall be taken.".

24. In section 54, for sub-section (*6*), the following sub-section shall be substituted, namely:—

"(*6*) In this section all references to candidates shall be construed as references to the contesting candidates.".

25. To section 55, the words, letter and figures "or under the Government of Part C States Act, 1951 (XLIX of 1951), as the case may be" shall be added at the end.

26. In section 58,—

(*a*) in sub-section (*1*), the proviso shall be omitted:

(*b*) in sub-section (*2*),—

(*i*) the words "or at any polling booth" shall be omitted:

(*ii*) the words "or in such polling booth, as the case may be" shall be omitted.

(*c*) in sub-section (*3*), the words "or in such polling booth" shall be omitted.

27. In section 84, for clause (*c*) the following clause shall be substituted, namely:—

"(*c*) that the election as a whole is void".

28. In section 97,—

(*a*) in the proviso to sub-section (*1*), for the words and figures "from the date of the publication of the election petition under section 90" the words "from the date of appointment of the Chairman" shall be substituted:

(*b*) in sub-section (*2*), for the words "and list of" the words "together with the" shall be substituted.

29. In section 98, in clause (*d*), for the words "to be wholly void" the words "as a whole to be void" shall be substituted.

30. In section 99, in sub-clause (*ii*) of clause (*a*) of sub-section (*1*), for the figures and word "141 to 143" the figures and word "141 and 142" shall be substituted.

31. In section 119, for the word, brackets and figure "sub-section (*1*)" the word, brackets and figure "sub-section (*4*)" shall be substituted.

32. In section 129, in sub-section (*1*) for the words "Returning Officers" the words "Scrutiny Officers, Returning Officers" shall be substituted.

33. In section 134, in sub-section (*3*) for the words "Returning Officers" the words "Scrutiny Officers, Returning Officers" shall be substituted.

34. In section 136, for the words "Returning Officer" wherever they occur the words "Scrutiny Officer or a Returning Officer" shall be substituted.

35. In section 153, in sub-section (*2*), for the words "or Rajpramukh of the State" the words "Rajpramukh, Lieutenant-Governor or Chief Commissioner of the State" shall be substituted.

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36. In section 2, sub-section (*2*) shall be omitted.

37. Section 6 shall be omitted.

38. In section 7,—

(*a*) the word "and" shall be added at the end of clause (*a*); and

(*b*) the word "and" at the end of clause (*b*), the whole of clause (*c*) and the *Explanation* shall be omitted.

39. Section 8 shall be omitted.

40. The First and Second Schedules shall be omitted.

GIPD—LAD—182 M of Law—1-12-53—2000

HOUSE OF THE PEOPLE

Report of the Select Committee on the Bill further to amend the Representation of the People Act, 1950, and the Representation of the People Act, 1951, and to make certain consequential amendments in the Government of Part C States Act, 1951.

(As amended by the Select Committee)

GIPD—LAD—182 PS—1-12-53—2000