

CONCLUSIONS

(Report of the Select Committee)



March, 1953.

**Reports of Select Committees Presented
to Parliament in - 1953.**

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S. No.	Name of Bill	Date of Presentation	Date of Publication in the Gazette.
.	The Tea Bill.	14th-2-53	19.2.53
.	The Food Adulteration Bill	16-2-53	19-2-53
.	The Estate Duty Bill	31-3-53	10-4-53
.	The Industries (Development and Regulation) Amendment Bill.	29-4-53	29-4-53
.	The Air Corporations Bill	30.4.53	30.4.53
..	The Representation of the People (Amendment) Bill, 1955		

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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 Balwantraoi 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 Tej 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 change 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 disponent 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 interests 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 *shradha* 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.

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

M. ANANTHASAYANAM AYYANGAR,

NEW DELHI;

Chairman of the Select Committee.

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 in 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 31st 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 assesseees would be of an illusory character.

8. 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 property 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 philanthropy 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 28-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 remembered 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 manners 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 31st 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 31st 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 a 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, heirlooms, drawings, paintings, family diaries, 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 handover 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 866(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 866(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 Aliasantana 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 negligence 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 expenses 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.

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

83. *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 31st March, 1953.

VI

I regret that I am not in agreement with my colleagues in the Committee with respect of 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 31st March, 1953.

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 31st 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 assesseees 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 31st March, 1953.

It was because of our agreement with the principle of this Bill that inspite 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 principle 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 concession 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;

V. P. NAYAR

The 31st March, 1953.

KAMAL KUMAR BASU.

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.**

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

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

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

(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;** 10

(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 incor- 15
porated;

(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;** 20

(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; 25

(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; 5

(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; 10

(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; 15

(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. 20 25

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, 30

(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: 35

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: 40

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. 45

(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

10 **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.

15 (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

25 **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.

30 **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 ceasing 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.

35 (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.

40 *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.

45 (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.

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(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. 5

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. 10 15

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. 20

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. 25

(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: 30

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. 35 40

(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. 45 50

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 38 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 distributed 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, entitle 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) generally 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 any 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 distribution:

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 280 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—

5 (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—

10 (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.

15 (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.

20 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.

25 **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.

40 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.

45 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 disponent.—(1) Where by a disposition of any property an interest is conferred on any person, other than the disponent, for the life of such person or determinable on his death, the remainder being conferred upon the disponent 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 reverting to the disponent in his life time.

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(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.

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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.

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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.

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(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.

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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—

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(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:

5 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.

10 (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.

15 (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
20 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
25 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
30 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 men-
35 tioned in the last foregoing sub-section.

(5) If the deceased has made in favour of a controlled company a dis-
position 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
40 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
45 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
50 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,—

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(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;

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(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;

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(iv) “associated operations” means any two or more operations of any kind being—

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(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

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(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;

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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—

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(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

- 5 (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, 10 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 15 *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 20 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 25 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 with- 30 in 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:—

- 35 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.;

- 40 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.:

- 45 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;

5 (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 necessities 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.

10 (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
15 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

20 **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
25 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
30 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.

35 (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
40 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
45 exempt from estate duty means any property which is exempt from estate duty under section 32 and also any agricultural land situate in any State 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 Parlia-
50 ment:

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 Aliyasantana law, to the extent to which the principal value of the estate does not exceed rupees fifty thousand; 5

(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— 10

(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* 15

(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

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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: 30

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. 35-40

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 45

possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then—

5 (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.

10 **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

15 (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 20 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.

25 **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 30 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

35 **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 in rupees one thousand) and for debts and incumbrances; but an allowance shall not be made—

40 (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, 45 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,

50 (c) ~~more than~~ 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.

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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;

(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

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(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 subsection, 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

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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.

20 **45. Debts to persons resident in foreign country not to be deducted in first instance except from duty-paid property in that country.**—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
25 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
30 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
35 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
40 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
45 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
50 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. 5

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, 15

(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 20

(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: 25

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: 30

Provided that he shall become so accountable if, and to the extent that, he subsequently recovers possession of such assets. 35

(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. 40

(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 45

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 58 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: 5 10

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— 15

(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 20

(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. 25

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. 30

(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. 35

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. 40

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. 45

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 under-estimated 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.

5 (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).

10 (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.

15 (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.

20 (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
25 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.

30 (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.

35 (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,
 - 40 (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,
 - 45 (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: 5

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. 10

(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. 15

(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: 20

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. 25

(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. 30

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. 35 40

(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. 45

(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. 5 10

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. 15

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. 20 25

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. 30

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. 35 40

(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: 45

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 properly 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

76. 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.

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

5

THE SCHEDULE

(See section 5.)

States in which estate duty is leviable on agricultural land.

Bombay.

Madhya Pradesh.

10

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)