

NOES

Bade, Shri
Banerjee, Shri S.M.
Chakravarty, Shrimati Renu
Chaturvedi, Shri S.N.

Daji, Shri
Elias, Shri Mohammad
Gupta, Shri Indrajit

Kar, Shri Prabhat
Mukerjee, Shri H.N.
Warior, Shri

Mr. Deputy-Speaker: The result of the Division is: Ayes 136; Noes 10.

The motion was adopted.

Shri H. N. Mukerjee: In view of what has happened, we leave the House as a gesture of protest against the passing of this measure.

(Shri H. N. Mukerjee and some other hon. Members then left the House).

15.47 hrs.

INCOME-TAX (AMENDMENT) BILL

(Amendment of Section 2) by Shri C. K. Bhattacharyya.

Mr. Deputy-Speaker: We will now take up the next item of business. Shri C. K. Bhattacharyya.

Shri C. K. Bhattacharyya (Raiganj): What about the Constitution (Amendment) Bill of Shri Prakash Vir Shastri?

Mr. Deputy-Speaker: It has been postponed.

श्री प्रकाशवीर शास्त्री (बिजनौर) : इससे पहले कि श्री भट्टाचार्य अपना भाषण प्रारम्भ करें, मैं आप से यह निवेदन करना चाहता हूँ कि पिछले विधेयक के लिए जो 45 मिनट का समय निर्धारित किया गया था, उससे अधिक ज़रा समय लग गया है, वह समय आज ही बढ़ा लिया जाये। जो पन्द्रह बीस मिनट अधिक लग गए हैं, वे आज ही पांच बजे के बाद ले लिये जायें, क्योंकि काश्मीर की स्थिति ऐसी है कि गवर्नमेंट का प्वायंट ऑफ व्यू भी सदन के सामने आ जाना चाहिए।

Mr. Deputy-Speaker: No.

Shri C. K. Bhattacharyya: I beg to move:

"That the Bill further to amend the Income-tax Act, 1961, be taken into consideration."

This Bill says that in section 2 of the Income-tax Act, the following clause shall be inserted, namely:

"Hindu undivided family' means a Hindu undivided family governed by the mitakshara law."

15.49 hrs.

[DR. SAROJINI MAHISHI in the Chair]

I had introduced a Bill for this purpose in the Second Lok Sabha but the Bill lapsed when the Lok Sabha . . .

श्री हुकम चन्द कछबाय (देवास) : यह कौनसा बिल चल रहा है ?

श्री प्रकाशवीर शास्त्री : सभानेती जी, मैं आपसे यह व्यवस्था चाहता हूँ कि इसके बाद वह विधेयक आना चाहिए, जिस को "ए" कैटेगरी में रखा गया है। इसके बाद दूसरे विधेयक किस तरह से आ सकते हैं— "बी" और "सी" कैटेगरी के बिल किस तरह चर्चा का विषय हो सकते हैं ?

Mr. Chairman: Once the Deputy-Speaker has given a ruling, I cannot have any say in the matter.

श्री प्रकाशवीर शास्त्री : रूलिंग का सवाल नहीं है।

Mr. Chairman: According to the procedure it is indefinitely adjourned. There is no special time fixed for taking up the discussion again.

श्री प्रकाशवीर शास्त्री : डिप्टी स्पीकर साहब से जो बातचत हुई है या जो फंसला उन्होंने दिया है वह केवल इतना ही है कि 45 मिनिट्स का बिल के लिए दे दिये जायें पहले जो राज्य सभा से पास हो कर आया है और उसके बाद काश्मोर वाला विधेयक ले लिया जाए। अगर विधान बीच में बाधक होता है तो हाउस की राय ले ली जाए और...

सभापति महोदय : राय लेने का प्रश्न नहीं है। डिप्टी स्पीकर ने एक बार निर्णय ले लिया है। अब यही बिल चलेगा।

श्री प्रकाशवीर शास्त्री : उन्होंने निर्णय नहीं लिया है। हाउस से कभी नहीं पूछा गया है इस विषय में। आप हाउस से पूछ लीजिये। हाउस सुप्रीम है।

Mr. Chairman: The question of taking the vote of the House does not arise at all. The motion has been adopted, namely,—

"That the Debate on the Constitution (Amendment) Bill, 1964, be adjourned."

Therefore it is indefinitely adjourned and it has been decided by the Deputy-Speaker that Shri Bhattacharyya's Bill be discussed.

श्री प्रकाशवीर शास्त्री : मैं दुबारा प्रस्ताव उपस्थित करता हूँ कि इस विधेयक को जो पहले से चला आ रहा है, पहले ले लिया जाए और हाउस की राय इस सम्बन्ध में जान ली जाए। हाउस सुप्रीम है और जो चाहे, निर्णय ले सकता है। सारा हाउस इस पक्ष में है और हाउस के निर्णय को आपको मानना पड़ेगा।

Mr. Chairman: Once the ruling has been given . . .

श्री प्रकाशवीर शास्त्री : रूलिंग नहीं दिया गया है। निर्णय था कि उस विधेयक को

जिसमें राज्य सभा ने एमेंडमेंट्स सुझाई हैं, पहले ले लिया जाए। वह रूलिंग नहीं था।

सभापति महोदय : नया बिल जो है, उसको ले लिया...

श्री प्रकाशवीर शास्त्री : नया बिल इसके बाद लिया जा सकता है। इसी वास्ते मैंने कहा था कि हम थोड़ी देर और बैठ जायें और इस पर डिस्कशन खत्म कर लें।

Mr. Chairman: Once the decision has been taken by the Deputy-Speaker I cannot do anything in the matter. He has requested Shri Bhattacharyya to proceed with his Bill. Yes, Shri Bhattacharyya.

श्री प्रकाशवीर शास्त्री : निर्णय केवल इतना था कि यह विधेयक बीच में आ गया है, राज्य सभा वाला, और इसको पहले ले लिया जाए और इसके बाद इस मेरे विधेयक को ले लिया जाए। इसको सभी ने माना है। अगर कोई कठिनाई है तो हाउस की राय ले ली जाए। हाउस का निर्णय हमेशा सुप्रीम होता है।

Mr. Chairman: For your information I may say that this motion has been adopted by the House last time, that is, today, namely—

"That the Debate on the Constitution (Amendment) Bill, 1964, be adjourned."

Under rule 338.

"A motion shall not raise a question substantially identical with one on which the House has given a decision in the same session."

It has been adjourned.

So I request Shri Bhattacharyya to continue his speech.

The Minister of Planning (Shri B. R. Bhagat): The ruling is very sound.

श्री प्रकाशवीर शास्त्री : साउण्ड का सवाल नहीं है। जा मैं कह रहा हूँ इससे सभी सहमत हैं। सवाल सबसे बड़ा यह है कि हाउस का जो निर्णय होता है वह सबसे उच्च होता है, वह हमेशा ही मान्य होता है। हाउस का निर्णय इस प्रकार का था कि इस राज्य सभा वाले विधेयक के बाद इस मेरे काश्मीर विधेयक को ले लिया जाए। गवर्नमेंट अपनी जिम्मेदारियों से क्यों भागती है प्रोसीजर का बहाना ले करके या दूसरे तरीके से? सारा हाउस इसके पक्ष में है। तब प्रोसीजर का बहाना क्यों लिया जा रहा है। जब इसको स्थागित किया गया था तब कहा गया था कि इसके बाद इस मेरे बिल को ले लिया जाएगा।

श्री हुकम चन्द कछवाय : मत विभाजन इसी विषय पर हुआ था कि उस बिल के बाद इसी को लेंगे। इसी पर मत विभाजन हुआ था।

श्री प्रकाशवीर शास्त्री : आपको ध्यान होगा कि एक बार इसी प्रकार लोक सभा की यह जो प्रक्रिया है इसके विपरीत कुछ निर्णय लेना था तो उस समय स्पीकर ने हाउस के सामने उसका रखा था और जब हाउस ने मान लिया तो उस चीज को ले लिया गया था। इसको भी आप हाउस के सामने रख दीजिये। अगर हाउस सहमत हो तो इस मेरे विधेयक को ले लिया जाए।

Mr. Chairman: Today only the motion has been adopted that this particular thing should be adjourned. The rules are framed by the House and therefore it is nothing going against the rules of the House. I request Shri Prakash Vir Shastri not to interrupt and to allow the discussion to continue.

Dr. M. S. Aney (Nagpur): My submission is that when the motion for adjournment was moved there was general understanding that it was being postponed to be taken up after the Bill about salaries. I do not know what the exact wording of that motion is, but if there is a doubt on this point,

it is open to you to put the matter to the vote of the House and get it cleared.

Shri Gauri Shankar Kakkar (Fatehpur): I was present here when the motion was moved by hon. Member, Shri Kamath. It was decided that it would be postponed and would be taken up after that Bill. Even the hon. Deputy-Speaker had taken it in that light. It was implied that this will be taken up after the Salaries and Allowances of Members of Parliament (Amendment) Bill. That was impliedly meant. I think, there is some misunderstanding somewhere and I shall request that on such a special occasion the opinion of the House which is supreme over the rules be taken. There is no bar to taking the opinion of the House under these circumstances, when the House had dealt with it and it was made by the House.

Shri C. K. Bhattacharyya: Though my Bill comes after Shri Prakash Vir Shastri's Bill, I believe, I should make some observation on this. The procedure that you have adopted today is rather unusual. His Bill was first in the list and we took up Shri Raghunath Singh's Bill first and it was adjourned. He is right that the understanding in the House was that Shri Prakash Vir Shastri's Bill will come up after Shri Raghunath Singh's Bill. That is why when the hon. Deputy-Speaker called upon me to speak, I at once asked, "What about Shri Prakash Vir Shastri's Bill?" That understanding was in the mind of everyone of us. Otherwise, it would look like stifling the discussion of Shri Prakash Vir Shastri's Bill just in the middle of the way. It is an important matter. I do not know whether there is any way out of it, but the question that is raised by Shri Prakash Vir Shastri appears to me to be a very valid question.

Shri Shree Narayan Das (Darbhanga): I think, the hon. Member will have to give another notice for the consideration of his Bill; otherwise, it cannot come up today. Only if the sponsor of the Bill gives notice

[Shri Shree Narayan Das]

to the House and that notice is accepted, that will be considered.

Shri Gauri Shankar Kakkar: Now I formally move:—

“That the Bill moved by Shri Shastri which was adjourned, be taken into consideration.”

Then, Shri Bhattacharyya's Bill may be taken up.

An Hon. Member: That cannot be done.

Mr. Chairman: I am extremely thankful to hon. Members for their kind advice and observations in this matter, but the thing is that a motion has been adopted by the House today only and therefore under rule 338 this cannot be taken up today. The rules have been framed by the House and once the rules have been framed by the House—of course, the House can go against the rules also as the House is a supreme body—the convention is that as far as possible we should resort to the rules that the supreme body has framed. Therefore, once the hon. Deputy-Speaker has decided in this matter that the discussion of Shri Prakash Vir Shastri's Bill is being adjourned—of course, that will be discussed in course of time—he need not be afraid that it will altogether be put an end to—therefore I now request Shri Bhattacharyya to continue with his speech and request Shri Prakash Vir Shastri not to interrupt.

श्री प्रकाशवीर शास्त्री : आपने हाउस की इच्छा को जान कर कई बार हल्का स्थगित किये हैं और हाउस ने जिस प्रकार इच्छा जाहिर की, आपने निर्णय लिया है। यह पहने हो चुका है इसी लोक सभा के अन्दर। अब भी सारे हाउस की इच्छा है कि काश्मीर वाले मेरे बिल को ले लिया जाए। इसलिए अगर आपका विधान बीच में आता भी है, तो उसको स्थगित करने के बारे में हाउस की इच्छा जान ली जाए।

16 hrs.

Mr. Chairman: The motion has been adopted only today by this House for the adjournment of the debate on Shri Prakash Vir Shastri's Bill. Once the House has adopted that particular motion, I do not think that the House would like to go back upon what it has adopted.

Shri Prakash Vir Shastri: The House is supreme.

An Hon. Member: That rule may be suspended.

Shri Gauri Shankar Kakkar: May I be permitted to move a formal motion that the application of rule 338 be suspended in relation to Shri Prakash Vir Shastri's Bill? That has been done on previous occasions also. I formally move that the operation of rule 338 which comes in the way be suspended by the House in connection with the consideration of Shri Prakash Vir Shastri's Bill?

Shri Shree Narayan Das: As regards the motion which the hon. Member wants to move, I would submit that that has to be given notice of first. Unless notice is given and it is included in the Order Paper, the discussion cannot continue.

Mr. Chairman: There are so many other technical difficulties also which come in the way. We are laying down certain good conventions and we should follow them. Once the hon. Deputy-Speaker has taken this decision, we shall proceed with the discussion on Shri C. K. Bhattacharyya's Bill now, and the discussion on Shri Prakash Vir Shastri's Bill can be resumed in course of time.

श्री प्रकाशवीर शास्त्री : मैं आप के इस निर्णय के विरोध में आज पहली बार सदन का त्याग कर रहा हूँ।

श्री हुकमचन्द कच्छवाय : मैं इसका रसयन करता हूँ। मैं भी सदन का त्याग करता हूँ।

(Shri Prakash Vir Shastri and Shri Hukum Chand Kachhavaitya left the House).

Shri C. K. Bhattacharyya: This is rather a confusing situation for discussing such a technical matter as for which I have brought forward this amending Bill. In fact, we were preparing for the discussion of the Bill seeking to delete article 370 of the Constitution, and the whole House was getting ready for that and was remaining in suspense. Anyway, it has come about that this Bill should come up.

The amendment which I am suggesting is this, that—

“In section 2 of the Income-tax Act, 1961, . . . the following clause shall be inserted namely—

“(23A) ‘Hindu undivided family’ means a Hindu undivided family governed by the Mitakshara law.”.

This is not the first time that I have taken up this point. I took it up in 1961, and then again in 1962, while the Finance Bill was being moved for consideration. When Dr. B. Gopala Reddi was the Minister of State in the Ministry of Finance, I moved my amendment to the Finance Bill, if I remember aright . . .

श्री गौरी शंकर कक्कड : मुझे कोरम

सम्बन्धों प्राप्त हैं ।

Mr. Chairman: The bell is being rung . . .

Now, there is quorum. Shri C. K. Bhattacharyya may continue his speech now.

Shri C. K. Bhattacharyya: At that time, Dr. B. Gopala Reddi was so much impressed with the arguments that I had put forward in support of my proposal that he suggested to me that I might bring it forward in the form of a Bill seeking to amend the Act. Later, I put forward that proposition again when Shri Morarji Desai was the Finance Minister. I had put it forward in the form of a Bill as well as in the

form of an amendment to the Finance Bill which the hon. Finance Minister was moving for consideration at that time. In fact, when his Bill was being referred to a Select Committee, I suggested that my Bill for amending this section might also be referred to the same Select Committee so that the Select Committee might take cognisance of both the Finance Bill and also the amendments suggested by me. I do not know what happened in the Select Committee. But the amendment suggested by me was not considered by them; at least in the form in which the Bill came up to the House again, my amendment was not there.

But when the Finance Bill was being discussed, I put forward my arguments and Shri Morarji Desai was at that time almost in favour of accepting my amendment. But then, again, he stopped. At one moment, he said to the Speaker—I hope it is recorded in the proceedings of the House—“I am prepared to accept the amendment”. Then, he said to the Speaker that it might be suggested to me to consult legal experts whether the acceptance of the amendment would be to the good of the parties for whom I was pleading. And then he hesitated, and the amendment was not accepted.

That is why I have brought up this point again before the House in the form of a Bill. The term ‘Hindu undivided family’ is nowhere defined in the Income-tax Act. As a result, it is extended to families that should not be considered as Hindu undivided families; I am referring to the Dayabhaga families of the eastern region, particularly of Bengal. I hope that as a result of the studies which you, Mr. Chairman, have made, proofs of which often come out in the speeches that you make, you would be inclined to accept my proposition that the Dayabhaga families are radically different from the Mitakshara families.

In the Mitakshara families, the coparcenary comes into existence

[Shri C. K. Bhattacharyya]

with the birth of the child. When the child is born, it gets a coparcenary interest or co-tenancy interest in the Hindu undivided family. The difference in the case of the Dayabhaga family is that the rights come into existence on the death of the father. So long as the father is living, the children have no right to the property, in the case of the Dayabhaga family, while in the Mitakshara family, a child gets a share of the property the moment he is born, the only thing being that his share remains undefined. That is why Mitakshara families can be called Hindu undivided families. But so far as the Dayabhaga families are concerned, the share of each child, after the death of the father, is defined; the only thing is that they enjoy their shares together so long as they live jointly.

In these circumstances, the application of the Income-tax Act to them is a great defect. That is why I insist that it should be an essential condition that the term 'Hindu undivided family' should be defined somewhere in the Income-tax Act.

That is not done. What I find is that the expression "Hindu undivided family," as applied to the Dayabhaga family, leads to injustice. The "Hindu undivided family" is put in the category of "person". In this way like the Mitakshara family, in which the individuals are assessed together, the Dayabhaga families are also assessed as "persons" so that they pay a higher assessment than what they should pay if individuals were assessed separately.

On the other hand, practically such assessment enforces a breaking up of the Dayabhaga family, that is the joint family is broken up, the brothers having to separate from each other so that they will be assessed, each one of them, and whatever relief they might claim would be allowed to each of them. It is from the unwarranted extension of the term "Hindu undivided

family" that the Dayabhaga family should be spared in anyway possible and it should not come under the same and should not be taken into consideration when the income-tax assessment is made on such a family.

The main question to be considered is what constitutes a family which can be called an undivided family and what kind of income or property belonging to such families should be assessed, as distinguished from the individuals who compose it. Under the general law, as I have stated, the main features of a Hindu undivided family is that it is a coparcenary or tenancy-in-common; only the coparcenary or tenancy-in-common arises within certain relations. So, it exists only among families in which those relations obtain. What I want is to make it clear in the Act that where those relations do not obtain, this term will not be extended.

The concept of Hindu undivided family essentially is that the family property or the family is divisible but has not been actually divided. This can apply, as I have stated, to one kind of families governed by Mitakshara law but not to the families governed by Dayabhaga law. The characteristics of the Mitakshara law is first, the right by birth and second the right or passing of that right by survivorship. Compare the Dayabhaga family with the Mitakshara family. I have stated that a child in the Mitakshara family, the moment it is born, becomes a partner in the family property, but not in the Dayabhaga family. The father in the Dayabhaga family is a dictator, so long as he lives. None of his sons has any share to the property. The idea is completely different from the Mitakshara family property.

Then again, when it is a joint family, the brothers live jointly in the Dayabhaga family. If any of them dies, his share passes to his issues, but not to the other partners. Take the case of the Mitakshara family. When one coparcener dies, by right of survivorship,

his share passes to the next of the coparceners and not to his children only, but to the coparceners. In that way, I have been trying to distinguish the Dayabhaga family from the Mitakshara family. As I said, the coparcenary starts with the birth of the son and when one coparcener dies, his share passes to the rest of the coparceners to that extent only. These are the characteristics of the Hindu undivided family as held by the courts. These do not exist in the Dayabhaga family, as I have stated.

In the courts also, it has been held that the Mitakshara family after a preliminary decree of partition comes to the position of a Dayabhaga family, because, then, the shares have been defined, but the shares have not been partitioned. That is the position of the Dayabhaga family always; the shares are already defined; only they are being enjoyed in common. After the preliminary decree for partition has been made, where only shares are defined and before actual partition, persons are in the same position as the Dayabhaga family and can be assessed in respect of their shares only. This is the view of the courts. So, I have been trying to prove that the characteristics of the Dayabhaga family do not bring it under the term "Hindu undivided family," as put in the Income-tax Act. And that is why I want that the term should be clearly defined in order to exclude the Dayabhaga family from them.

I may give an example which will make it clear. Supposing A, B and C are three brothers constituting a Dayabhaga family. If A sells away property to a non-Hindu and the term "Hindu undivided family" be applied to that family, so long as the property is held in common, the non-Hindu gets a title to be included in the Hindu family, because the shares are defined already. It is not that the shares are defined after partition; the shares are

defined by inheritance; they inherit the shares separately and it is not so in the case of the Mitakshara family, as I have stated.

In fact, I am not merely speculating. The Bengal Agricultural Income-tax Act has accepted and followed the true and correct position of the Hindu law. Under the same Act, the Bengal Agricultural Income-tax Act, the Hindu undivided family has been clearly defined as the Hindu undivided family governed by the Mitakshara law. What I want is that the definition given in the Bengal Agricultural Income-tax Act be accepted in our Income-tax Act itself.

That is the suggestion that I make.

In the above Act every member of the Dayabhaga family is treated as an individual from before the partition of the family and each member is assessed for his share of the income from the property as an individual, but the case becomes different in the Income-tax law; in spite of the shares and the members of the Dayabhaga family being defined, they are treated as a Hindu undivided family. That is a great injustice. This should not be so. On the one hand, it gives the advantage to persons belonging to the Mitakshara family. On the other hand, it puts a disadvantage to the persons belonging to the Dayabhaga family. In that view of the matter, the income-tax law should be amended in accordance with principle of Hindu law.

This, I maintain, is against the spirit of the Hindu law itself. The spirit of the Hindu law is that the term "Hindu Undivided Family" should not be applied to the Dayabhaga family and it is because of this spirit inherent in Hindu law that I want that when the Income-tax Act uses the term "Hindu Undivided Family, it should go by the spirit of the Hindu law itself and not put forward its own interpretation upon it and apply it to cases to which it should not be applied. That is the

[Shri C. K. Bhattacharyya]

position I am trying to explain, namely, that persons governed by the Dayabhaga school of law should be always treated as individuals and not as Hindu Undivided Family. Great injustice is done to them. Each one of them owns family property and they should be assessed individually, because the family property does not exist as undivided property. The property is already inherently divided. But under the income-tax law, the assessment is made on the property as undivided property. That is the wrong that the Income-tax Act does and that is what I want to be remedied.

The term 'partition' has different meanings when it is applied to the Mitakshara school and to the Dayabhaga school. When the term is applied to the Dayabhaga school, it means the splitting up of joint possession and assigning specific portions of property to the several coparceners. Only joint possession is split up; the shares are already known. But under the Mitakshara school, partition means breaking up of the joint ownership. The ownership is joint. Partition breaks it up, defining the shares of the coparceners. In the case of Dayabhaga school, the shares are already defined; the ownership is known. Only joint ownership is broken into individual ownership whereas in the case of Mitakshara family, the ownership itself has to be defined and split up. The share of each coparcener has to be defined before partition can take effect. This already exists in the Dayabhaga school. That is why I maintain that the characteristics of the two schools of Hindu law are so different that the term "Hindu Undivided Family" should not be applied to the Dayabhaga school and it may be applied only to the Mitakshara school.

Moreover there are certain properties, like tank, bazar, hatt etc. which by nature are indivisible and can never be partitioned or divided by meets and bounds; they can be parti-

tioned only by defining the share among the members. This definite share always exists with the members of the Dayabhaga law since the day of inheritance of such properties. So far as the income of such properties is concerned, why should the members of Dayabhaga law be treated as Hindu Undivided Family and not as individuals and why should they be assessed as belonging to an Hindu Undivided Family?

I would draw the attention of the Government to the fact that if the proposed amendment is made, not much revenue will be lost. But apart from the question of revenue, equity, propriety and justice demand that the two types of families, when they differ in their characteristics and basically in their conception according to the Hindu law, should not be regarded as one. The cardinal difference of inheritance, enjoyment and ownership of property under the two schools should not be ignored in the way that the income-tax law does.

In fact, I would go a little further and say that the term "Hindu Undivided Family" is a misnomer as applied to Dayabhaga. It is high time that this anomaly should be removed. That is why I have brought in this Bill. That is why I have been attempting since 1961 to bring this to the notice of Government. It is a great injustice that is being done to one section of the Hindus by applying to them a concept of Hindu law which is not applicable to them. It is due to a sheer misunderstanding of the income-tax authorities and sheer obsession on their part that they are doing it. Government should itself move to amend the income-tax law according to the lines I have indicated.

Shri Koya (Kozhikode): In U. K. quorum is not challenged during non-official days. May I know what is the practice here?

Mr. Chairman: If he wants to raise the question of quorum, he may do so.

Shri C. K. Bhattacharyya: I suggest to the Government that they should themselves take into consideration the provision in the Bengal Agricultural Income-tax Act and move for the modification of the Income-tax Act according to those lines. The very fact that the Bengal Legislature has realised this anomaly and has limited the expression Hindu Undivided Family to families governed by the Mitakshara law is a strong argument in my favour and I request the Government to amend the Central Act according to those lines.

I request the Finance Minister to accept my amendment. As I said, the acceptance of this amendment will not cause any loss of revenue to the Government. It is not just and proper that the Act should leave open such loopholes. This is a loophole that the Act has left open by roping in families which should not come under the Act and making assessment upon them, which assessment should not be made and should not have been made up till now. I do not know why this expression has been left vague. It can be easily defined. Only in two places in the Income-tax Act it occurs. The Minister himself may move for making it more definite, so that it may not be extended to cases which should not come under it.

I request that this amendment should be accepted and relief afforded to the families on whose behalf I have been pleading before this House, trying to remove an injustice which has been done to them so long. If it were possible, I would request the Government to accept the amendment even with retrospective effect, just as they apply the Income-tax Act retrospectively for assessing the people and realising taxes from them. This is a case where taxes have been realised in the

most unwarranted fashion. If necessary, they should consult experts on Hindu law.

There are experts on Hindu Law. Take their opinion whether this term is actually applicable to the Dayabhaga families as has been done by the Income-tax Act so long.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Income-tax Act, 1961, be taken into consideration."

Now, before I proceed further I would like to inform the House that the hon. Finance Minister will be making a very important statement at five o' clock today.

Shri Harish Chandra Mathur: Can we know the subject of the statement?

The Minister of Planning (Shri B. R. Bhagat): You will know it at five o' clock.

Mr. Chairman: I find no hon. Member rising to participate in this debate. The hon. Minister may reply.

16.32 hrs.

Shri B. R. Bhagat: Madam Chairman, I am sorry to say that I am not inclined to agree with the hon. Member. As he himself has said, a similar Bill was moved in the year 1961 by way of an amendment to the Income-tax Act and it was negatived by the Lok Sabha.

Shri C. K. Bhattacharyya: If he goes through the proceedings he will find that the Finance Minister was almost on the point of accepting it.

Shri B. R. Bhagat: But it was not accepted by Lok Sabha.

[Shri B. R. Bhagat]

The Income-tax Act is a fiscal legislation applicable to all schools of Hindu law and it will not be proper to single out only the Mitakshara school of law as conforming to the concept of a Hindu undivided family. It had been pointed by hon. Members that the proposed amendment would not benefit the persons governed by the Dayabhaga school of Hindu law. If a Dayabhaga family is not assessed as a Hindu undivided family, the owner of the property would be taxable as an individual and after his death, the persons succeeding to or inheriting the property would be assessable as an association of persons or a body of individuals. They would, thereby, be deprived of the benefits of larger initial margin—I think it will affect them adversely—of income exempt from income-tax, and a higher ceiling for rebate of income-tax on account of insurance premia now enjoyed by the Hindu undivided family. In this connection, I may mention that the question as to the justifiability of the assessment of Hindu undivided families, governed by the Mitakshara or the Dayabhaga law, as a unit was examined by the Income-tax Investigation Commission and the Taxation Enquiry Commission. Both these commissions were of the view that the assessment of a Hindu undivided family as a unit was not only consistent with but substantially agreed with the legal position under the Hindu law. The hon. Member said it is a matter of equity. Here is the opinion of experts, the opinion of two bodies which went into this question. Then, a Member of Lok Sabha, the late Pandit Thakur Das Bhargava, had suggested the appointment of a Committee to go into the question of taxation of Hindu undivided families. The matter was examined in consultation with the Law Ministry but it was considered that in the existing state of Hindu law, no useful purpose would be served by the appointment of a Committee to examine such a question, and the hon. Member was informed accordingly.

So long as the institution of Hindu undivided family continues to hold the present peculiar position in law, no useful purpose would be served by defining it through an amendment of the Income-tax Act as proposed by the hon. Member, and making a distinction between families governed by one of school of Hindu law and another. Incidentally, I may say, the amendment in the present form is also defective because if only distinguishes between Mitakshara and Dayabhaga schools and leaves out Marumakkattayam and Aliyasanthana. In view of this position, it is not possible to accept the amendment in the present form or to send it for eliciting public opinion or to a Select Committee. Sir, I oppose this Bill.

Shri C. K. Bhattacharyya: Madam, I have heard the hon. Minister. One unfortunate matter in relation to this Bill is that it has come up at the fag end of the day after the House has been exercised by repeated calls to divisions, the Members are irritated and are not inclined to go into a technical matter like this. The atmosphere was not favourable for consideration of a Bill like this after what we had experienced over the amendments by Rajya Sabha and Shri Prakash Vir Shastri's insistence that his Bill should be taken up again. In any case, I tried to put up the case in this atmosphere as best as I could.

What I suggested to the hon. Minister was not to make any distinction between different types of Hindu families as conceived by the Hindu law. What I suggested to him was not to apply a term to a family to which it does not belong. The term "Hindu undivided family" as used in the Income-tax Act is not applicable to the Dayabhaga families. That is my contention. I do not want him to make any favouritism, discrimination or any distinction in favour of the Dayabhaga family.

Shri B. R. Bhagat: The amendment does.

Shri C. K. Bhattacharyya: I did not mention Dayabhaga family at all. I only want him to clarify what, at the moment, the Income-tax Act has left unclarified. They say: "Hindu undivided family" while they could have said "Hindu undivided family as defined in the Mitakshara law". In saying this, as I said I am not speculating, I am not speaking in the air or standing in the air. The hon. Minister mentioned about commissions and committees on the Income-tax Act and also Pandit Thakur Das Bhargava's motion to have a committee. These committees must have been composed of eminent persons with enough knowledge of things and of what they were doing. But I took my stand on the Act adopted by the West Bengal Legislative Council. The West Bengal Legislative Council while applying the same definition to the Agricultural Income-tax Act defined it as "Hindu undivided family as defined in the Mitakshara law". Therefore, someone is in the wrong; either the West Bengal Legislative Council in adopting that definition in the Agricultural Income-tax Act is wrong or the committees to which the hon. Minister has made a reference just now must have been in the wrong. If the term "undivided family" does mean only "Hindu undivided family as defined in the Mitakshara law" for the Agricultural Income-tax Act passed by the West Bengal Legislative Council, it should have been taken objection to by the Centre. They have not done so. It has been passed about ten years back. Therefore, my stand is not as shaky as the hon. Minister would like to make it appear. There is a precedent. That is why, when the West Bengal Legislative Council had adopted that definition, I wanted to bring it before the notice of the Central Government. That is the only thing I have done and nothing more than that.

He mentioned about Marumakkattayam families and others. I am not

familiar with the *smritis* of those families. My knowledge is limited. My knowledge of the Hindu law in this respect is limited only to Mitakshara families and Dayabhaga families only. I can speak about these two and not about other types of Hindu families obtaining in the west and south of India. I do not know about them; he might find that out. That is why I had suggested to him, in the end, that some expert opinion on Hindu law might be taken as to whether the term "Hindu undivided family" has to be extended to the Dayabhaga school. I am demanding justice to the Dayabhaga. By that no injustice is meant to Mitakshara. I do not know whether anybody can take it to the court and challenge the income-tax law in that way. Some may or may not do it. But why should Government not remove an injustice which is being perpetuated?

The hon. Minister referred to the Taxation Enquiry Committee report. With all respect to him, I do not accept that Committee as authority on Hindu law. That can be decided only by experts on Hindu law. In that connection, the hon. Minister referred to Mitakshara, Dayabhaga, Marumakkattayam and Aliyasanthana laws. It is Dr. Ambedkar who referred to all the laws obtaining in India and it is through him that we came to know of them when he brought in the Hindu Code to make the Hindu law consistent and harmonious. That is not my concern. Neither do I want to make any discrimination or show favouritism to any particular school. I want only to make it clear in the definition as to what a Hindu undivided family means. Why is the Minister not prepared to define Hindu undivided family in the Income-tax Act? Why do the Government not make a move in that direction? If you leave it undefined, leaving unlimited scope of the income-tax authorities to proceed in whatever way they like, either to the right or to the left, it will create all sorts of difficulties to the people and there is no remedy. That is why I am suggesting that the law may be made clearer.

Shri B. R. Bhagat: I said that the income-tax legislation is a fiscal legislation and this concept relating to Hindu law cannot be incorporated there.

Shri C. K. Bhattacharyya: I do not dispute what the hon. Minister has stated. But when a term is used in the Bill, it should be clearly defined; either in the Act itself, or in the General Clauses Act or somewhere else. An Act cannot go on using a definition which is vague, which is capable of many interpretations.

Secondly, the essence of the meaning of Hindu undivided family should be found out from experts on Hindu law, who alone can say how far the scope of that term should go and whether it should include all types of Hindu families.

These are the two suggestions I want to make to the hon. Minister. I have been trying for it all these years, and I would be trying for it again. I find the hon. Minister is not in a frame of mind to accept it, but in the expectation....

Shri B. E. Bhagat: The House has also to accept it.

Shri C. K. Bhattacharyya: The Minister should accept it first. Then the House will automatically accept it. That goes without saying.

16.44 hrs.

[MR. SPEAKER *in the Chair*]

My first object is the hon. Minister and then the House. If he is not in a frame of mind to accept it, I would rather have the Bill withdrawn. I will bring it again at a more suitable time, when there is a more favourable climate for the consideration of such a Bill and when the hon. Minister is in a mood for the acceptance of the Bill.

Mr. Speaker: Has the hon. Member the permission of the House to withdraw his Bill?

Some Hon. Members: Yes.

The Bill was, by leave, withdrawn.

16.45 hrs.

STATEMENT RE: ENHANCEMENT OF BANK RATE, MODIFICATION OF CREDIT CONTROL, ETC.

The Minister of Finance (Shri T. T. Krishnamachari): Mr. Speaker, when I spoke in the Lok Sabha a little over a week ago I referred to the concern with which Government viewed the deterioration in the price situation. The general index was 156.7 on September 5, an increase or not less than 14 per cent over the year. The deterioration in the price situation and the vulnerability in particular of food prices are basically the symptoms of increasing strain under which the economy is currently operating.

A policy of utmost economy in governmental expenditure and a drastic pruning down of non-essential expenditure is called for urgently to reduce the strain of excess demand on the economy. A few weeks ago I had announced that the Central Government had decided to effect economies in expenditure of over Rs. 70 crores. I would like to reiterate, however, that this figure must be regarded as the absolute minimum.

It was also my hope that the States would be able to prune down their expenditure substantially. I would earnestly appeal to the States to review their expenditure position in the light of the current serious supply and price situation. The financial position of several States despite substantial Central assistance continues to cause concern. In the interest of over all stability and successful planning there is no alternative to the maintenance of utmost vigilance in limiting overall expenditure to available resources.

In particular we should seek to keep the level of deficit financing to the absolute minimum. This is all the more necessary as the capacity of the economy to bear deficit financing has been weakened by continuous recourse to this form of finance and