THE
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PARLIAMENTARY DEBATES
(Part II—Proceedings other than Questions and Answers)
OFFICIAL REPORT

HOUSE OF THE PEOPLE

Wednesday, 9th September, 1953

The House met at a Quarter Past Eight of the Clock.

[MR. DEPUTY-SPEAKER *in the Chair.*]

QUESTIONS AND ANSWERS

(*See Part I*)

9-15 A.M.

PAPERS LAID ON THE TABLE

COMMODITY CONTROLS COMMITTEE REPORT AND GOVERNMENT RESOLUTION THEREON.

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): Sir, I beg to lay on the Table a copy of each of the following papers:—

(i) Report of the Commodity Controls Committee, 1953; and

(ii) Ministry of Commerce and Industry Resolution No. 25-PC(6)/53, dated the 9th September, 1953.

[*Placed in Library. See* No. IX U. a(76).]

ESTATE DUTY BILL—*Contd.*

Mr. Deputy-Speaker: The House will now proceed with the further consideration of the Bill to provide for the levy and collection of an estate duty, as reported by the Select Committee.

Clause 33 is over. I request hon. Members who have tabled amendments kindly to say which are the amendments that they want to move to clause 34.

Clause 34.—(*Rates of duty etc.*)

Shri Barman (North Bengal—Reserved—Sch. Castes): I beg to move:

In pages 20 and 21, *for* clause 34, *substitute*:

"34. *Rates of Estate Duty on Property including agricultural land.*

(1) The rates of estate duty shall be as mentioned in the Second Schedule:

Provided that no such duty shall be levied upon the property to the extent to which the principal value of the estate does not exceed rupees fifty thousand:

Provided further that where the property consists of an interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law, duty shall be payable on the principal value of the estate calculated on the basis as if the Dayabhag law of succession applied to the family at the time of death.

(2) Notwithstanding anything contained in sub-section (1) and the Second Schedule, where any property passing on the death of any person consists wholly or in part of agricultural land

[Shri Barman]

and the principal value of the estate does not exceed rupees two lakhs, there shall be allowed by way of rebate—

(a) in the case of an estate which consists wholly of agricultural land, a sum representing one fourth of the estate duty payable; and

(b) in the case of an estate which consists in part only of agricultural land, a sum representing one fourth of the estate duty payable on that part of that estate which consists of agricultural land, the duty on such part being a sum which bears to the total amount of estate duty the same proportion as the value of the agricultural land bears to the value of the estate."

The Minister of Finance (Shri C. D. Deshmukh): I beg to move:

In page 20, *for* lines 48 to 50, *substitute*:

"34. Rates of estate duty on property including agricultural land. (1) The rates of estate duty shall be as mentioned in the Second Schedule."

Shri Krishna Chandra (Mathura Distt.—West): I beg to move:

In page 20, line 49, *after* "duty" *insert* "shall vary with the amount of property left and also with the remoteness of relationship with the deceased and they".

Mr. Deputy-Speaker: Mr. Tek Chand. Absent.

Shri S. V. Ramaswamy (Salem): I may be allowed to move it, Sir.

Mr. Deputy-Speaker: No, I am sorry, unless the hon. Member has given notice of the amendment. He has had sufficient notice of the procedure.

Shri Krishna Chandra: I beg to move:

In page 21, *for* lines 1 to 7, *substitute*:

"Provided that no such duty shall be levied in case where the estate left by the deceased—

(a) includes a dwelling house provided that other chargeable property left by the deceased in addition to the house do not exceed in value the sum of rupees fifteen thousand;

(b) consists of an interest in the joint family property of a Hindu family governed by Mitakshara, Marumakkattayam or Aliyasantana law provided that value thereof does not exceed rupees thirty thousand;

(c) consists of property of any other kind provided that its value does not exceed rupees fifty thousand."

Shri Sarmah (Golaghat-Jorhat): Mine is a consequential amendment. I cannot move it.

Mr. Deputy-Speaker: It is concluded.

Shri Ramachandra Reddi (Nellore): I beg to move:

In page 21, line 5, *for* "rupees fifty thousand" *substitute* "rupees one lakh".

Shri U. S. Dube (Basti Distt.—North): I beg to move:

In page 21, line 5, *for* "rupees fifty thousand" *substitute* "rupees thirty thousand".

Shri H. G. Vaishnav (Ambad): I am not moving my amendment.

Shri C. R. Iyyunni (Trichur): I beg to move:

In page 21, *after* line 5, *insert*:

"(aa) Property of any other kind, if belonging to the father

absolutely to the extent to which the principal value of the estate does not exceed the sum equivalent to the sum obtained by multiplying seventy-five thousand rupees by the number of heirs who succeed him as per will, if any, or on intestacy if there is no will specifying the heirs."

Shri Sarmah: Mine is a consequential amendment. I am not moving.

Shri Ramachandra Reddi: I beg to move:

In page 21, line 7, *for* "rupees seventy-five thousand" *substitute* "rupees one lakh and fifty thousand".

Mr. Deputy-Speaker: Mr. Dube.

Shri Nambiar (Mayuram): Instead of Mr. Dube, I move it.

Mr. Deputy-Speaker: I cannot allow.

Shri Nambiar: My name is there.

Mr. Deputy-Speaker: Then, why should he say, instead of Mr. Dube?

Shri Nambiar: He is not here. I move it.

I beg to move:

In page 21, line 7, *for* "seventy-five thousand" *substitute* "fifty thousand".

Mr. Deputy-Speaker: The hon. Member forgets that he has an independent individuality.

Shri S. C. Samanta (Tamluk): I beg to move:

In page 21, line 7, *for* "rupees seventy-five thousand" *substitute* "rupees one lakh."

Shri Barman: I beg to move:

In page 21 line 7, *for* "rupees seventy-five thousand" *substitute* "rupees one lakh."

Shri S. C. Samanta: I beg to move:

In page 21, line 7,—

for "rupees seventy-five thousand" *substitute* "rupees one lakh and twenty-five thousand".

Shri S. C. Singhal (Aligarh Distt.): I beg to move:

In page 21, *after* line 7, *add*:

"Provided further that no successor shall have the right to inherit property of the value of more than rupees five lakhs and the excess if any left will be charged as Super-Estate Duty."

Shri V. B. Gandhi (Bombay City—North): Sir, I do not move amendment No. 143. I beg to move:

In page 21, *after* line 7, *insert*:

"(1A) The rates of estate duty may be increased by a surcharge for purposes of the Union according to such scales as may be fixed by an Act of Parliament."

Shri Sarmah: I am not moving my amendment.

Shri S. C. Samanta: I am not moving.

Shri Shobha Ram (Alwar): I move:

In page 21, *for* lines 8 to 19, *substitute*:

"(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, no duty shall be levied upon—

(i) the amount bearing the same proportion to the exemption limit prescribed under clause (a) of the proviso to sub-section (1) as the property of the nature described in clause (a) of the said proviso bears to the value of the estate, plus

(ii) the amount bearing the same proportion to the exemption limit prescribed under clause (b)

[Shri Shobha Ram]

of the proviso to sub-section (1) as the property of the nature described in clause (b) of the said proviso bears to the value of the estate."

Shri C. D. Deshmukh: I beg to move:

In page 21, *after* line 19, *insert*:

"(3) Notwithstanding anything contained in sub-section (1) and the Second Schedule, where any property passing on the death of any person consists wholly or in part of agricultural land and the principal value of the estate does not exceed rupees two lakhs, there shall be allowed by way of rebate—

(a) in the case of an estate which consists wholly of agricultural land, a sum representing one-fourth of the estate duty payable; and

(b) in the case of an estate which consists in part only of agricultural land, a sum representing one-fourth of the estate duty payable on that part of the estate which consists of agricultural land, the duty on such part being a sum which bears to the total amount of estate duty the same proportion as the value of the agricultural land bears to the value of the estate."

Shri Tulsidas (Mehsana West): I beg to move:

In the amendment proposed by Shri C. D. Deshmukh,

omit "and the principal value of the estate does not exceed rupees two lakhs".

Shri B. P. Sinha (Monghyr Sadr *cum* Jamui): I beg to move:

In the amendment proposed by Shri C. D. Deshmukh,

in part (a), *for* "one fourth" *substitute* "three-fourth".

Shri Chandak (Betul): I beg to move:

In the amendment proposed by Shri C. D. Deshmukh,

in part (a) *for* "one fourth" *substitute* "half".

Shrimati Jayashri (Bombay-Suburban): I beg to move:

In the amendment proposed by Shri C. D. Deshmukh,

after part (a) of the proposed new sub-clause (3), *insert*:

"(aa) in the case of an estate consisting of agricultural land which wholly or in part has been given away in a Bhoodan Yagnya the rebate allowed shall be seventy-five per cent. of the estate duty payable; and".

Shri B. P. Sinha: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh,

in part (b), *for* "one-fourth" *substitute* "three-fourth".

Shri Chandak: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh,

in part (b) *for* "one fourth" *substitute* "half".

Shri S. V. Ramaswamy: I beg to move:

In page 21, *after* line 19, *insert*:

"Provided also that where necessary, the amount of the duty payable on an estate at the rate applicable thereto is reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the next lower rate".

Mr. Deputy-Speaker: Any other amendments?

Shri Jhunjhunwala (Bhagalpur Central): I beg to move:

In page 21, line 5, *for* "fifty thousand" *substitute* "seventy-five thousand".

Shri Jhulan Sinha (Saran North): Sir, I want to move amendment No. 149; sorry; that relates to another clause.

Shri Mulchand Dube (Farrukhabad Distt.—North): I want to move amendments Nos. 710, 712, 715, 716, 717.

Mr. Deputy-Speaker: Do they relate to this clause 34?

Shri Mulchand Dube: Yes.

Shri Damodara Menon (Kozhikode): May I know whether we can move amendments to the Schedule proposed by Mr. C. D. Deshmukh? Are they going to be taken up also now?

Mr. Deputy-Speaker: This is a clause authorising the imposition of the tax. Why not reserve the Schedule later? Hon. Members wanted some kind of general discussion on the scheme as a whole along with the clause and so on. Unless they want to take it up now, we may take it later.

Shri Kelappan (Ponnani): Are you going to take up the Schedule later?

Mr. Deputy-Speaker: The Schedule will be taken up later.

Shri C. D. Deshmukh: Sir, it will be difficult to deal with clause 34 without the Schedule. The clause merely says that the rates will be as fixed in the schedule. We have in mind that the whole of this day will be taken up in the discussion of this clause. That is not likely to happen if we postpone consideration of the Schedule to some other day.

Shri Gadgil (Poona Central): The House must have the Schedule before it. It is not printed here. It is in one of the amendments. I would rather suggest that the Schedule should be moved at this stage and the consideration postponed.

The Deputy Minister of Finance (Shri M. C. Shah): Why not straightaway now, here?

Mr. Deputy-Speaker: I forgot that this is the Schedule with respect to which there was a Bill and an amendment was allowed in which case I would have taken care to see that we dealt with some other portion yesterday. I agree that I would allow sufficient discussion on this schedule. Both the Schedule and the Clause will be taken together now. Hon. Members, whoever wants to speak on the one or the other or on both, may go on.

Shri T. N. Singh (Banaras Distt.—East): Shall we put the Schedule to the vote also at this stage?

Mr. Deputy-Speaker: Yes, certainly.

Shri T. N. Singh: Along with clause 34?

Mr. Deputy-Speaker: Along with Clause 34. Instead of taking up the Schedule later, the time that has to be spent on it may be taken now, and hon. Members can discuss now.

Some hon. Members: What about amendments to the Schedule?

Mr. Deputy-Speaker: Very well, amendments also.

Shri K. P. Gounder (Erode): On a point of order, Sir. Under Article 274 of the Constitution..

Mr. Deputy-Speakr: Hon. Members have interrupted me unnecessarily. Let me finish the amendments to Clause 34 first. I will come to the point of order later on.

The following amendments have been allowed to be moved, are treated as moved. If I have omitted any amendment, hon. Members will kindly inform me:

Nos. 655, 633, 642, 421, 137, 138, 668, 442, 139, 457, 281, 346, 347, 142, 283, 144, 634, 726, 701, 702, 649, 703, 704 and 145.

Shri Mulchand Dube: My amendments are to the Schedule.

Mr. Deputy-Speaker: These amendments are to the Clause, excluding the Schedule. I am coming to the Schedule. His amendments are to the Schedule.

Shri U. S. Dube: I beg to move Amendment No. 140.

Mr. Deputy-Speaker: To Clause 34?

Shri U. S. Dube: Yes, Sir.

Mr. Deputy-Speaker: Was the hon. Member here when I called him first?

Shri U. S. Dube: I was here at the time you were pleased to call.

Mr. Deputy-Speaker: All right. He may move it now.

Shri U. S. Dube: I beg to move:

In page 21, line 7, *for* "rupees seventy-five thousand" *substitute* "rupees fifty thousand".

Shri H. L. Agarawal (Jalaun Distt. *cum* Etawah Distt.—West *cum* Jhansi Distt.—North): I want to move Amendment No. 656.

Mr. Deputy-Speaker: He was not in his seat when I called him.

Shri H. L. Agarawal: I was not. I have come late.

Mr. Deputy-Speaker: No, no. I cannot accept. I called him. My voice is loud enough I think.

Shri H. L. Agarawal: I was not here.

Mr. Deputy-Speaker: If he was not here, why should he be given permission?

Shri H. L. Agarawal: If you permit me, Sir.

Mr. Deputy-Speaker: All right.

Shri H. L. Agarawal: I beg to move:

In the amendment proposed by Shri C. D. Deshmukh, *after* "estate duty" *insert*:

"graduated on the basis of firstly the amount of value of the estate and secondly on the number of successors or recipients,"

Shri Tek Chand (Ambala—Simla): May I ask for the same indulgence?

Mr. Deputy-Speaker: He must move.

Shri Tek Chand: I beg to move:

(1) In page 20,

(i) after line 50, *add*:

"Provided that the amount of the estate duty payable shall be reduced to one-third where the property passes to the following relatives of the deceased widow or widower, lineal ancestors, lineal descendents, adopted children and their issue and adoptive parents; and to two thirds where the property passes to the following relatives of the deceased: illegitimate and step children; brothers and sisters and their descendents including those of the half blood and their spouses."; and

(ii) In page 21, line 1, *after* "Provided" *insert* "further".

(2) In page 21, line 5, *for* "fifty thousand" *substitute* "one lakh".

(3) In page 21, line 7, *for* "seventy-five thousand" *substitute* "one lakh and fifty thousand".

(4) In page 21, line 9, *after* "clause (a) of the" *insert* "second".

Mr. Deputy-Speaker: If there are any other amendments in the name of the hon. Member, he can find out the numbers and give them at the table here.

Now, amendments to the Schedule. What I feel is, why not treat the Schedule as part of Clause 34 and dispose of the whole thing?

Shri S. S. More (Sholapur): On a point of order, Sir. Under Rule 110..

Mr. Deputy-Speaker: There was a point of order on this matter here on the right side. Let me hear that first.

Shri K. P. Gounder: I will read out the relevant portion of Article 274:

"No Bill or amendment which imposes or varies.."

Mr. Deputy-Speaker: Without the sanction of the President?

Shri K. P. Gounder: "..shall be introduced or moved in either House of Parliament except on the recommendation of the President."

Shri A. M. Thomas (Ernakulam): That point has been raised before.

Mr. Deputy-Speaker: "..tax or duty in which the States are interested.."

Article 274 does not relate to that.

Shri S. S. More: I think he refers to 170.

Mr. Deputy-Speaker: Article 274 is about taxation in which the States are interested.

Shri K. P. Gounder: "...shall be introduced or moved in either House of Parliament except on the recommendation of the President".

Mr. Deputy-Speaker: He wants to know if the recommendation of the President has been taken for this?

Shri K. P. Gounder: You cannot move amendments if the States are interested without the recommendation of the President.

Mr. Deputy-Speaker: "States are interested" means a tax or duty, part of the net proceeds of which are assigned to the States. Therefore, hon. Member feels that all these amendments require the previous sanction of the President.

Shri K. P. Gounder: That is my contention.

Mr. Deputy-Speaker: Except the hon. Finance Minister who has already obtained sanction for his amendment.

Shri K. P. Gounder: He may be presumed to have obtained.

Mr. Deputy-Speaker: No question of presumption. He has already obtained permission for his amendment. I want to ask the hon. Finance Minister if, independently of the second Bill that he introduced, he has obtained the permission of the President to introduce this amendment as Schedule to this Bill.

Shri M. C. Shah: We have obtained the recommendation of the President.

Shri C. D. Deshmukh: We have communicated it to you already.

Mr. Deputy-Speaker: Therefore there is proper sanction for the Government's amendments to the Schedule. The question arises with regard to the other amendments.

Shri C. D. Pande (Naini Tal Distt. *cum* Almora Distt.—South West *cum* Bareilly Distt.—North): On a point of order, Sir...

Mr. Deputy-Speaker: What is it that the hon. Member wants? Let me first dispose of one point of order, before I come to the next one. I would like to hear hon. members, so far as this matter is concerned, and then dispose of the point of order that has been raised.

Shri S. S. More: Before you give your ruling..

Mr. Deputy-Speaker: I am not giving a ruling now. It is not an easy matter for me to brush aside all these amendments. Of course, if I am bound to, I will do so.

Shri R. K. Chaudhury (Gauhati): I have also got an amendment to be moved, Amendment No. 587.

Mr. Deputy-Speaker: All right, let him pass on a chit to the Secretary.

What I want to say is this. In the case of amendments to the Finance Bill, they do not require the sanction of the President, if they seek to reduce the duty. This is provided for in the proviso to Article 117(1) of the Constitution. Is there a difference between the language used here, and that in Article 274(1)?

Shri K. P. Gounder: Yes.

Mr. Deputy-Speaker: The proviso to Article 117(1) reads:

"Provided that no recommendation shall be required under this

[Mr. Deputy-Speaker]

clause for the moving of an amendment making provision for the reduction or abolition of any tax."

Shri K. P. Gounder: A similar proviso is not there in Article 274.

Mr. Deputy-Speaker: The language of Article 274 (1) is:

> "No Bill or amendment which imposes or varies any tax or duty in which States are interested.... shall be introduced or moved in either House of Parliament except on the recommendation of the President."

The hon. member's contention is that these amendments are varying the tax. My difficulty is this. The language is "varies any tax or duty in which States are interested". Does it mean that the taxes must have already been in operation at the time these are introduced?

Shri C. D. Deshmukh: It can only mean amendment to an existing legislation under which the tax is levied. We are concerned with only two things, the imposition of a tax, and the other the rates of taxation.

Mr. Deputy-Speaker: Imposing any tax or varying any tax..

Shri C. D. Deshmukh: You can impose a tax by a Bill, and that is what we are doing by this. If it is a question of varying a tax, it cannot have reference to an amendment to a Bill which seeks to impose a tax. It can only have reference to an existing legislation to vary an existing tax.

Mr. Deputy-Speaker: What has the hon. member to say to this?

Shri K. P. Gounder: These amendments seek to impose a tax, for instead of merely varying a tax, they seek to levy a tax. Either you impose or vary. It cannot be neither.

Mr. Deputy-Speaker: Either you may impose or vary. It cannot be neither. The hon. Finance Minister feels that this Article applies only to imposition of tax. And the President's sanction is necessary for the imposition. Varying a tax means varying of a tax which is already in existence under another Statute. That statute must have been passed already, and should be in operation; then alone, there can be tax. Till it is passed here, it is only in the form of a proposal to impose a tax. So this question of varying a tax does not apply to the imposition of a tax. That is the contention now.

Shri K. P. Gounder: Every amendment seeks to impose a tax. We need not be carried away by the fact that the language of the amendment is to the effect, impose 5 per cent. tax on Rs. 50,000, or impose 7½ per cent. tax on Rs. 75,000 and so on. But in effect, each one of these amendments seeks to impose a tax, 5 per cent. on Rs. 50,000, or 7½ per cent. on Rs. 75,000 and so on.

Mr. Deputy-Speaker: So it is not variation of an existing tax, from 5 per cent. on Rs. 50,000 to 7½ per cent. on Rs. 75,000, but is simple imposition of a tax.

Government have not yet imposed the tax. Whether it be on the part of the Government or on the part of any hon. member, it is still a question of an imposition or a proposal to impose. That is what the hon. Member feels.

Shri S. S. More: May I make a submission on this point of order? I will come to my other point of order later on. Article 274 has perfect relevance to the present case, because the term 'tax or duty in which States are interested' has been defined in Article 274 (2), as follows:

> "(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State".

Therefore, Article 274 is very relevant in the present case.

Mr. Deputy-Speaker: Nobody denies it.

Shri S. S. More: I would rather say 'no Bill or amendment which imposes'. In this case, it is Government that has

introduced this Bill, and so a recommendation is to be expected for its introduction from the President. Regarding this particular Schedule, which has now come in the form of a Government amendment, we find that it has also been recommended by the President. So, any amendment to an amendment which has been recommended by the President, cannot be said to be coming under Article 274.

Mr. Deputy-Speaker: He is not objecting. He says that the Government's amendment for the addition of the Schedule is proper, because it has got the sanction of the President.

Shri S. S. More: The other amendments which are amendments to Government's amendment, cannot be barred under Article 274, because it is Government's amendment which is imposing the duty.

Mr. Deputy-Speaker: What the hon. Member says is this. In spite of the fact that the amendments seek to substitute Rs. 15,000 for Rs. 10,000, and Rs. 50,000 for Rs. 75,000 and so on, still they are imposing a duty.

Shri S. S. More: Those who are moving amendments to the Government's amendment are seeking a variation not in any existing tax, but to an amendment which Government have introduced for the purpose of imposing a tax.

Mr. Deputy-Speaker: The hon. Member who has raised the point of order, is aware of that. This has been brought to his notice. His point is this. Variation of tax would apply only when the tax is already in existence, and a bill on an amendment is brought forward to vary it. Until the tax has been imposed, if it is a proposal by Government, it is equally a proposal by hon. Members as well.

Shri S. S. More: With your permission, I would read Article 274 (1):

> "No Bill or amendment which imposes or varies any tax...."

Mr. Deputy-Speaker: He wants to impose a tax.

Shri S. S. More: It is the Government's amendment which seeks to impose a tax.

Mr. Deputy-Speaker: By whatever name it is called, it is still imposition of a tax, whether it is Government that have brought forward the proposal or any other hon. member.

Shri S. S. More: Government have obtained the recommendation of the President, for their amendment. The question therefore of getting the recommendation of the President for amendments to the Government's amendment will not be a relevant one.

Mr. Deputy-Speaker: That is one point.

Shri S. S. More: As far as this matter is concerned, that is my submission. I will speak on my other point of order, after you dispose of this one.

Shri Raghavachari (Penukonda): I think the point of order raised does not apply to this case. The language of Article 274 is "No Bill or amendment which imposes or varies any tax or duty". My submission is that the word 'imposes' goes with Bill, while the word 'varies' goes with the word 'amendment'.

Here is a Bill or an amendment which proposes or rather imposes a tax, and the permission has been obtained from the President for doing so. So far as amendments are concerned, they must be varying any tax or duty; so the tax or duty here contemplated is not merely a proposal, but a thing already in existence.

Mr. Deputy-Speaker: An amendment also may impose a tax. The word 'imposes' may attach itself both to the Bill as also to the amendment.

Shri Raghavachari: It is only a Bill that imposes a tax. An amendment can always be only....

Mr. Deputy-Speaker: An amendment also can impose a tax.

Shri Raghavachari: An amendment can only vary a tax.

Mr. Deputy-Speaker: What is the objection to an amendment imposing a tax? Any one can say that the duty should be such and such, and he can say so by way of an amendment to a Bill.

Shri Raghavachari: No. It is a Bill which imposes a tax....

Mr. Deputy-Speaker: A Bill can impose a tax; an amendment also can impose a tax.

Shri Raghavachari: It can only vary.

Mr. Deputy-Speaker: Why? If there is no tax at all, let us assume, an amendment is introduced whereby so much tax is to be levied, and we will assume a Board is constituted for the different areas....

Shri Raghavachari: That will be a Bill imposing a tax. Let me come to another point. So far as the word or phrase 'in which the States are interested' is concerned, I feel that it might probably have a reference to the States' List only, *i.e.* to agricultural property only. For the rest, it is the proviso to Article 117 that should be taken into consideration.

Mr. Deputy-Speaker: How are we to divide the one from the other? The States are interested in every portion of it. Evidently not a pie of of this estate duty goes to the coffers of the Central Government, excepting in so far as collection charges are withheld, if the collection happens to be done by them.

Shri Raghavachari: I think that would be right.

Shri N. R. M. Swamy (Wandiwash): May I make one submission, Sir? The objection taken by Mr. Gounder is not tenable in this case for this reason that the recommendation which the Finance Minister has obtained when introducing these rates will inure to the benefits other amendments also.

Mr. Deputy-Speaker: How?

Shri N. R. M. Swamy: The recommendation which has been obtained for introducing the Schedule in regard to rates under clause 34 will inure to the other movers also. Every one of the movers cannot be getting a recommendation of the President for his amendment. Instead of that, the first recommendation will inure to the rest of the amendment also.

Mr. Deputy-Speaker: Why? Is it because the President has to sign a number of recommendations?

Shri N. C. Chatterjee (Hooghly): It is a very serious matter, Sir. May I make a submission? No Bill which imposes or varies any tax or duty in which the States are interested shall be introduced or moved in either House except on the recommendation of the President. Now, Sir, there was no tax or duty in existence. Therefore, it is a new measure which is imposing an estate duty. Therefore, it comes under the first part. It is a Bill which is imposing a duty. Take, for instance, this Schedule which the Finance Minister is proposing in regard to exemption limits: Rs. 75,000—nil; next Rs. 25,000—5 per cent, next Rs. 50,000—7½ per cent. and so on. Now, Sir, I submit that it clearly comes within the first part. It is a Bill which is imposing a duty on property over Rs. 75,000 other than Hindu Undivided Family property. But I submit, Sir, an amendment will not impose any tax or duty. The Bill is imposing the tax or duty. We are not going to impose a duty or suggest that the proper duty should be this. I submit that won't come within the scope of article 274. Otherwise, Sir, all our amendments will be shut out.

Mr. Deputy-Speaker: That can't be a ground. That is exactly the point. that all the amendments are out of order.

Shri N. C. Chatterjee: I submit it is a serious matter, Sir. That means practically the House is debarred from considering what should be the rate of duty which will govern posterity.

Mr. Deputy-Speaker: All of them have to send applications to the President. That is all.

Shri N. C. Chatterjee: The question is: Is it incumbent by the mandatory provisions of the Constitution? Does it mean that a Bill which says that 5 per cent. should be the duty on Rs. 1 lakh and 7½ per cent. should be the duty on Rs. 1¼ lakhs requires the President's sanction and recommendation? Or does it mean any amendment to the Bill which is before the House for consideration should also require the President's sanction?

Mr. Deputy-Speaker: That is exactly the point. The hon. Member will answer that point. He will kindly refer to article 117.

Shri N. C. Chatterjee: "A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced.....". That is a Money Bill.

Mr. Deputy-Speaker: "....shall not be moved except on the recommendation of the President". The hon. Member will kindly see the Proviso.

Shri N. C. Chatterjee: "Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax".

Mr. Deputy-Speaker: A similar provision is not here in 274.

Shri N. C. Chatterjee: What I am pointing out is this: that this is a Bill which is imposing a duty. Therefore, it comes under that. Is this amendment imposing any duty?

Mr. Deputy-Speaker: Yes.

Shri N. C. Chatterjee: I submit not. It is the Bill which is imposing the duty.

Mr. Deputy-Speaker: Let me take up one amendment.

Shri C. D. Deshmukh: May I make a submission? It arises out of observations you have made. I think I might help. Now, I grant that if an amendment is introduced to a Bill which otherwise does not deal with the imposition of a tax, one could say that that particular amendment is an amendment imposing a tax. In other words, one could conceive of an amendment trying to impose a tax in a measure which has otherwise got nothing to do with the imposition of a tax. The point here is that we are dealing with a measure, the purpose of which is to impose a tax. Therefore....

Mr. Deputy-Speaker: Let me clear it up. Let us take, for example, the Finance Bill. Let us say on cards no special tax is imposed. Then in regard to envelopes one wants to add a new category. It is a Finance Bill, but he adds a new category saying that envelopes of a certain size shall bear, say, 3 annas. Now, does the hon. Minister mean to say that merely because it is a Finance Bill the amendment can be moved without the sanction of the President?

Shri C. D. Deshmukh: I do not think that can be read into what I said, because that is imposing a tax on envelopes. What we are dealing with is the imposition of a tax on estates. Now if you say, imposing a tax on estates of Rs. 1,000, Rs. 5,000, Rs. 10,000, Rs. 15,000 and so on, that would be reading too far into this business of imposing a tax. The categories must be wide enough and capable of being defined separately. Now, the object of this tax is to impose a duty on estates passing or interest passing on death. That purpose is achieved by the main Bill, and clause 34 left the power to be determined by another Act of Parliament, that is to say, it was only a procedural thing. They suggest instead of trying to fix it for all time or for a long time....

Mr. Deputy-Speaker: We will assume it is part of the Bill. Instead of having another Bill, we are having it here. Now, this has become part and parcel of the Bill.

Shri C. D. Deshmukh: That is only a matter of rates. It is not a matter of

[Shri C. D. Deshmukh]

imposing a tax on estates or interest passing on death.

Mr. Deputy-Speaker: Why? The other tax is not there. Does he mean to say that if it is a Money Bill it would not require sanction?

Shri C. D. Deshmukh: Therefore, I am saying that the original Bill required the recommendation of the President.

Mr. Deputy-Speaker: The rates also require recommendation of the President.

Shri C. D. Deshmukh: That is a matter which we have to determine by interpretation of this clause. I am trying to interpret it. I am saying that although there can be an amendment in an otherwise non-tax-imposing Bill, which could impose a tax, here we are dealing with an amendment which does not seek to do the original work of imposing a tax. That is already being done by a Bill which has the necessary recommendation.

There is only one other point I would like to answer. You made a reference to article 117. Now, the recommendation we have obtained is under 117(3), because we said that it might involve a certain amount of expenditure.

Shri Gadgil: The Bill itself is described as "to provide for the levy and collection of an estate duty".

Mr. Deputy-Speaker: Whether it has been obtained there or not, the recommendation is here. Does the recommendation include this?

Shri C. D. Deshmukh: One can't draw an inference assuming that the recommendation is under 117(1) and then try to interpret what the meaning of 274 is by reason of the fact that we obtained the recommendation under 117.

Mr. Deputy-Speaker: These are two distinct things. Left to myself, I feel that it must be recommendation under 117(1), so far as this matter is concerned. If it is merely 117(3), I would consider whether the amendment itself is in order or not.

Pandit Thakur Das Bhargava (Gurgaon): May I submit a word, Sir?

Mr. Deputy-Speaker: I will give the hon. Member an opportunity. Let me clear up one point after another.

Pandit Thakur Das Bhargava: On this point, Sir.

Mr. Deputy-Speaker: I know; do you mean to say that I am going to allow any irrelevant point to be discussed here? Let me clear up one point after another.

Pandit Thakur Das Bhargava: Your good self was pleased to refer to the proviso to Article 117(1). I want to make a suggestion on that.

Shri C. D. Deshmukh: So far as we are concerned, Sir, we have got the recommendation in respect of this amendment under both the articles.

Mr. Deputy-Speaker: Therefore the hon. Minister's amendment is quite in order. Let me clear up my difficulties.

Now, what the hon. Minister says is that he has proposed a particular tax under the main clause 34. The schedule consists only of rates. This is for the imposition of the tax under clause 34. Sanction for that has been obtained. Am I to understand that he is of the opinion that for the schedule no sanction is necessary? In such a case the imposing of the tax is under the main clause 34 and the schedule is only an adjunct.

Shri S. S. More: May I say one word with reference to the statement of yours? The tax is not being imposed under clause 34; it has already been imposed under clause 5 and clause 34 only prescribes the rates. It is not concerned with the imposition of the tax. That has already been done. There is valid imposition now.

Shri C. D. Deshmukh: So far as our procedure is concerned, we have obtained the recommendations which cover the totality of articles 117 and 274.

Mr. Deputy-Speaker: Therefore there is no difficulty.

Shri C. D. Deshmukh: But, I am still interested in some of the amendments and that is why I argued that both for the purposes of article 274 as also for the purposes of article 117, we should hold that the amendment is not amendment imposing a tax.

Shri C. D. Pande: Your armoury is well equipped.

Mr. Deputy-Speaker: If any hon. Member wants to speak he will kindly take my permission to speak. I have been noting it too constantly, particularly with the hon. Member.

Am I to understand the hon. Minister to say, as Mr. More has pointed out, that the power to impose the tax is not given under clause 34 but it has already been given under clause 5, the charging section? The charging section is already there and the rates are coming for consideration under clause 34 and the schedule together. I felt that the hon. Minister was arguing that so far as the rates are concerned, notwithstanding the fact that by way of abundant caution he has taken the recommendation of the President both under article 117 and under article 274, with respect to the rates it is not necessary to take the sanction in so far as sanction for the charging section has been taken. Is it the point?

Shri C. D. Deshmukh: Yes, Sir.

Mr. Deputy-Speaker: If it is so, and the recommendation of the President having been taken for a general charge, whatever it may be, can he now come to the House and say, 'I have got the recommendation of the President to impose the duty and therefore I can impose a duty from one pie up to one lakh of rupees'? It will lead to absurd lengths. The President might have thought that he was giving the sanction for the imposition of one pie by way of additional cess and now under the charging section he has got the power can he impose a duty of a crore of rupees? What is the President's sanction for? I do not think the President's sanction is divorced from the rates. The President's sanction must be for the imposition as well as the rates.

10 A.M.

Shri Gadgil: Sir, the sanction of the President is with respect to the procedure. If he has sanctioned such a thing, the Bill can be introduced in the House. It has nothing to do with the merits of the case.

Mr. Deputy-Speaker: I cannot accept that. What is the meaning of procedure? Without sanction the Minister cannot introduce a measure for imposing a tax. The President has ultimately to see when sanctioning the imposition of a tax whether it is proper or improper for him to withhold the sanction.

Shri S. S. More: I want to get some clarification from you, Sir. When a Bill is sought to be introduced by Government imposing a certain tax or certain rates, does it mean that not only every clause of the Bill but also every item of the rate schedule has to be sanctioned by the President?

Mr. Deputy-Speaker: He has to look into it. He need not say separately about every one of them.

Shri S. S. More: My submission is this. When the President's recommendation for the Bill was got including clauses 5 and 34 as they stood, *ipso facto* the President has recommended the fixation of rates which is necessary for implementing clause 5. Let me develop my point. It is a major point. What you say would mean that the President has allowed the imposition of a tax under clause 5 but the President has not recommended the necessary implementation of that clause. As a matter of fact, certain recommendations may be expressed and certain recommendations may be implied from the Bill itself.

Mr. Deputy-Speaker: Let me interpret. I am trying to finish each point by itself. There were originally two Bills; the first Bill was only a charging Bill. The second Bill was the one specifying the rates. Does the hon. Member mean that for the second Bill no sanction is necessary?

Shri S. S. More: My submission is that there are two relevant articles.

Mr. Deputy-Speaker: Let me not go to the articles. The sum and substance of what he said was.....

Shri S. S. More: My submission is that clause 34 of the Bill as it originally stood.....

Mr. Deputy-Speaker: I am not worried about clause 34. There is clause 5 which is the charging section. Does he mean to say that if for the first Bill the President gives his sanction, the hon. Minister can charge or impose any duty?

Shri S. S. More: The article says that for the imposition of a tax the recommendation or sanction is necessary. Clause 5 deals with the imposition and has been recommended by the President.

Mr. Deputy-Speaker: Then any way the tax can be imposed?

Shri S. S. More: It may lead us to absurd positions as you suggest; but since the Constitution does not provide for that sort of absurdity, we must tolerate that absurdity. We cannot help it.

Shri Gadgil: The difficulty does not seem to be about the Government amendment. They have already received the sanction. The question is about the amendments that are moved with respect to the schedule by other members. My submission is that inasmuch as the Government changed their tactics and put the substance of the Act by way of an amendment, you should give a liberal interpretation and allow other members to move their amendments.

Pandit Thakur Das Bhargava: I wish to submit, Sir,.....

Mr. Deputy-Speaker: Why not have the benefit of the views of the Law Minister?

Pandit Thakur Das Bhargava: Sir, you were pleased to refer to the proviso to article 117, which says that:

> "no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax."

This proviso is not to be found under article 274.

Mr. Deputy-Speaker: Let me ask the hon. Member one thing. Let us assume that article 274 does not apply. Let us take that it is a Money Bill under article 117. Under the proviso no recommendation is necessary under this clause for the moving of an amendment for the reduction of any tax. If it is a reduction of the tax which is proposed by the Government, who have obtained sanction, no sanction is necessary.

Shri Gadgil: Most of the amendments are such.

Mr. Deputy-Speaker: Let me formulate my question. We will assume that the Minister wants to impose a 6 per cent. tax. If any other member wants to impose 7 per cent., the proviso impliedly means that for 7 per cent. he must obtain the sanction of the President.

Now this is still in the stage of a Bill. If the hon. Member wants to substitute Rs. 20,000 for Rs. 15,000, I am sure the Finance Minister will be the first person to say that under the proviso this ought not to be done. So far as this matter is concerned we are concerned with Article 274 and not 117. Under 274 there is no similar proviso. With the proviso it means the amendment which increases the rate requires the sanction of the President. Without the proviso, even for reduction sanction of the President will be necessary. What is wrong with the point that has been raised by the hon. Member. I would like to be further educated about it.

Pandit Thakur Das Bhargava: I want to add one thing. No tax can be levied by the President giving his consent or recommendation unless the President passes a law.

Mr. Deputy-Speaker: But the hon. Member must remember that President is the custodian of the interest of the State, whose consent you will have to take before you move the amendment.

Pandit Thakur Das Bhargava: I was submitting, Sir, that so far as proviso to Article 117 is concerned it requires that no recommendation is needed for the moving of an amendment making provision for the reduction or abolition of any tax. But in so far as Article 274 is concerned we have not got such a proviso. So far as the Bill is concerned I understand that it is the Bill only which imposes the tax and not the amendment particularly when a Bill is presented to the House which, as a matter of fact, has got the sanction of the President. When passed it will be an Act because the sanction has already been obtained. My submission is that the proviso to 117 need not have been incorporated under Article 274. Any amendment which seeks to abolish or reduce the tax proposed in the Bill will not require any sanction So far as the question of varying is concerned, "varying" has only a reference to pre-existing tax.

Mr. Deputy-Speaker: I think that was one of the arguments.

Pandit Thakur Das Bhargava: That is quite a good argument which conditions 'varying' to a pre-existing tax. Can there be a variation when there is nothing existing. Therefore, we are only concerned with the meaning of the word "imposition". If there is an amendment relating to a reduction or abolition it is certainly not an amendment imposing the taxes.

So far as the imposition of tax or an amendment is concerned I can only visualise one point. When the Bill says Rs. 5 and the amendment says Rs. 7 it enhances the rate. That is an amendment which really imposes enhancement to the extent that it goes beyond the provisions of the Bill. So if there is any amendment which enhances the tax, I should think it requires the sanction of the President. So far as there is any amendment which reduces or abolishes that does not require the sanction of the President. Because even if there is no proviso as in Article 117, Article 274 is there. Reduction or abolition does not impose any tax; it only reduces the tax. The word 'imposition' is very important. Imposition does not mean abolition or reduction. Imposition means a fresh taxation.

Mr. Deputy-Speaker: No taxes have been imposed. There is only a proposal by the Government. There is an equal proposal by an hon. Member.

Pandit Thakur Das Bhargava: But the proposal when passed becomes actually a law. I come to the conclusion that if there is any amendment here in this House which enhances the tax that amendment does require the sanction of the President. If there is an amendment which only reduces or abolishes the tax that does not require the sanction of the President.

Mr. Deputy-Speaker: The hon. Member will assume that this proviso is not here.

Pandit Thakur Das Bhargava: This proviso is merely a clarification.

Shri C. D. Deshmukh: The matter is clearer now. So far as I said, the crucial thing is that Government is competent. Even if we say that it is an amendment imposing a tax....

Mr. Deputy-Speaker: The Government itself wants to increase or decrease?

Shri C. D. Deshmukh: What I am arguing is that the imposition of tax upto a certain stage has the recommendation of the President. Initiative no doubt was taken by Government but the matter is before the House.

[Shri C. D. Deshmukh]

You cannot say that only one amendment would be moved and not the other because they are identical amendments. Therefore, I say so far as the interest of the States are concerned,—the point last mentioned by the hon. Member that their interests have to be safeguarded by the President,—indeed the President has taken this matter into consideration and upto a certain stage he says a measure may be introduced.

Let us take the amendment bringing in these rates. Now there are two categories of Members. The one category who say that tax at a low level may be maintained and there is no question of amendment and there are others who say that tax at a higher rate may be imposed. What I am saying is even if Article 274 applies, it can only apply to an amendment which seeks to raise the level of taxation but so far as the amendments in the direction of lowering the taxes are concerned there is already a Government amendment moved or going to be moved in the House under proviso to Article 117.

Mr. Deputy-Speaker: That is only for a particular rate. The Government has obtained the consent of the President for a particular schedule of rates.

Shri C. D. Deshmukh: They are for a particular tax.

Mr. Deputy-Speaker: Imposition of tax and not particular rates?

Shri C. D. Deshmukh: I say even if we concede that it is an imposition of tax, I say that all these members who want to reduce it....

Mr. Deputy-Speaker: There shall not be so much of tax It will be a little less. Even when the President might feel that there are certain things under the constitution chargeable to the Consolidated Fund the Parliament, notwithstanding all the members who are representatives from the various constituencies, is not allowed certain things. When once the duty is charged to the Consolidated Fund this Parliament shall have no jurisdiction to reduce it. Therefore, the Rresident might feel that in the interest of the Government which is now here a particular rate alone is necessary so as to raise sufficient fund to be charged to estate duty.

Shri C. D. Deshmukh: I say that Article 117 has a universality.

Mr. Deputy-Speaker: Unless Article 117 and its proviso apply also to Article 274 it cannot stand good, *i.e.* Article 274 must be read with 117.

Shri C. D. Deshmukh: Because in both cases we are dealing with the case of imposition of a tax by means of an amendment.

Mr. Deputy-Speaker: I agree. But there is a specific provision: if the States are interested.

Shri K. P. Gounder: This House seems to be working under the impression that it is in the discretion of the President to interfere on all these things. But the thing to be considered is that these are matters which are for the interest of the states and the President has been made the custodian to safeguard their interests. So whenever you want to interfere with the rights of the states you have to take the sanction of the President.

Mr. Deputy-Speaker: Unless it is said anywhere!

Shri N. C. Chatterjee: Parliament, not the President. That construction ought not to be accepted.

It is only for the purpose of enabling the House to take cognizance of the matter. I say, five per cent. of the estate duty, or 7 per cent. or 40 per cent.—and it has got to be accepted as it is, or rejected! That cannot be the interpretation. With great respect, I am asking you to put this interpretation which will be perfectly consistent with all accepted canons of interpretations. "No Bill or amendment which imposes or varies any tax or

duty"—I agree with Mr. Thakur Das Bhargava—any subsisting tax or duty which is in operation. So, the only question is: What is the imposition of the tax? Which is imposing it? The Bill is imposing tax or duty. Is it any amendment which has come within the cognizance of the House that cannot be discussed? Assuming that it is 6 per cent., I want to make it 5 per cent., somebody else wants to make it 4 per cent., and another Member makes it 6½ per cent.—that won't be the point. I submit that if you restrict the word "varies" which means modification of a subsisting duty or tax, then it would come within the cognizance of the House. The Finance Minister previously said it is correct, if there is a complete hiatus, vacuum, on this point. Supposing the Bill says that agricultural income shall not be taxed, no duty will be levied. But when there is no hiatus, every property that is sought to be roped in could come in. So I submit there is nothing in this section which takes away the jurisdiction of the House to consider the matter on its merits or to discuss those amendments.

Shri Kelappan: This Parliament is a sovereign body.

Mr. Deputy-Speaker: I do not want to make this less sovereign, but so long as the federal constitution is there, this Parliament cannot be sovereign inasmuch as certain subjects have been transferred to the States.

Shri Kelappan: That excepted: in what lies within the purview of the Parliament. Sir, a provision which seeks to restrict the authority of the Parliament must be interpreted very strictly. Now, the difference between a money bill and any other bill is only this. A money bill can be initiated only by the President. It is not said that he has to sanction it. The wording is, to recommend the bill to the Parliament. But when once it is introduced in the House, when once the the bill is taken up questions as to what tax shall be imposed, what rates shall be imposed, etc., are within the competence of the Parliament. Under article 116 of the Constitution....

Mr. Deputy-Speaker: That is "vote on account".

Shri Kelappan: In article 111 of the Constitution, the proviso says:

> "Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill...." etc.
>
> "The Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom".

That is in the case of Bills other than a Money Bill. The Money Bill need not go again to the President. Therefore, he cannot alter what has been passed by the House. So, I cannot understand how the powers of this Parliament can be restricted.

Shri S. S. More: The benefit of doubt ought to be given to the House.

Shri Raghuramaiah (Tenali): With reference to the point raised by my hon. friend Mr. Chatterjee that article 274 does not take away the jurisdiction of this House on this point, I should like to say a few words. I would say that the amendment in question has to be read along with the charging clauses 5 and 34 of the Bill. The amendments by themselves are lifeless. The amendments must be read along with the charging section. Then, it becomes a case of tax being imposed. It is true that some of these amendments are worded as if they are amendments to Government amendments. The Government amendment is not yet a part of the Bill. It is yet to be incorporated in the Bill. Therefore, at the moment, there are two independent sets of amendments and whatever

[Shri Raghuramaiah]

applies to the Government amendments will apply to the non-official amendments also. The schedule has to be read along with clauses 5 and 35—charging clauses—and then the amendments become amendments imposing a certain tax within the meaning of article 274 of the Constitution, and they would attract all the provisions of that article.

Shri C. D. Deshmukh: One question. Even if you hold that other amendments are passed. I can move an amendment to my amendment reducing the rates.

Mr. Deputy-Speaker: That cannot be done. The President must recommend it.

Shri Gadgil: Sir, I may put one question. I do not assume that the sanction of the President is such a sacrosanct thing. Has the House the power to vary or even reject the Bill? If it has, the sanction is procedural—not on merits.

Mr. Deputy-Speaker: I am looking into it—whether this is merely procedural or not. I remember that we should have prior sanction. But another point arises. What is my jurisdiction to decide this matter? I would like to see whether there is any special provision. There are some provisions which say that the Speaker's decision is final.

Shri C. R. Narasimhan (Krishnagiri): This affects not only the hour to hour discussion but also the minute to minute debate in the House. Someone may think of moving an amendment at any moment. So these things should not be talked out like this. I think we are protected under article 122(1). In order to develop our discussion, we must resort to that article—article 122(1). As the amendments are not going to be declared illegal or irregular, we can proceed as if no bar existed, whatever Article was the hour to hour or minute to minute discussion should not be prevented.

Mr. Deputy-Speaker: We can commit any irregularity! What irregularity there is, must not be prevented by an hour to hour discussion or even a minute to minute discussion. We are not generally discussing about the rates.

Shri Dabhi *rose*—

Mr. Deputy-Speaker: Is the hon. Member a lawyer?

Shri B. N. Singh (Muzaffarpur North-East): Is it the monopoly of lawyers alone?

Mr. Deputy-Speaker: The hon. Member did not rise from his seat. If he is particular, I shall give him a chance.

Shri Dabhi: (Kaira North): Sir, it is a rule of interpretation of statute that a legislature does nothing without a particular intention. Now, look to article 274 of the Constitution, and also to article 117(1) of the Constitution. The proviso to article 117(1) says that a particular amendment of a particular nature would not require the sanction of the President, while in the other article—article 274—there is no such proviso. So, it would automatically follow that under article 274, it would require the sanction of the President. The ordinary rule of interpretation of statute is that the legislature does nothing without some intention, and therefore, there was some intention in providing this proviso. In the other article, there is no such proviso. Therefore, all these amendments require the sanction of the President.

Mr. Deputy-Speaker: I have heard enough about this matter.

Shri R. D. Misra *rose*—

Mr. Deputy-Speaker: Shall I hear all the five hundred members on this matter?

Shri R. D. Misra: Sir, I have another point of order.

Mr. Deputy-Speaker: Over this point of order? Hon. Members will

kindly appreciate that once a point of order is raised that has to be disposed of. Unless there is a point of order to this point of order, I would like to dispose this of.

Shri R. D. Misra: My point of order is that as this Bill imposes a new tax, therefore whether all the amendments that have been moved up to this time and that are going to be moved are all illegal or legal?

Mr. Deputy-Speaker: Let the House have the benefit of the Law Minister's advice.

The Minister of Law (Shri Biswas): Unfortunately the Law Minister was not here when this point was raised and he does not know anything about the discussions which took place.

Shri Raghavachari: May I draw your attention to Article 265? It has relevance to this particular controversy. The Article which is a small one reads as follows:

> "No tax shall be levied or collected except by authority of law."

Therefore, the whole matter will be subject to the consideration of this House and the general provision of Article 117 and the proviso must necessarily be under the purview of this House.

Pandit S. C. Mishra (Monghyr North-East): Before you dispose of the points of order raised by hon. Members, I have to make a submission. The points raised boil down to three: It has almost been accepted that the Bill introduced by the Finance Minister is not out of order. At least two wise men (the hon. the Finance Minister and Pandit Thakur Das Bhargava) have agreed on another point, that any amendment which seeks to reduce the rate will be in order, but any amendment seeking to enhance the rate will not be in order.

Some Hon. Members. No, no.

Pandit S. C. Mishra: I only said that 'at least' two hon. Members are agreed on that point.

Now, I want to submit that just the opposite will be the case. This provision has been incorporated in the Constitution so that the President may safeguard the interests of the States and not of the Centre. It is not meant to be applied in a case where the same party rules both at the Centre and in all the provinces. Suppose the Congress is in office in ten provinces and the Muslim League, or the Hindu Mahasabha or the Jan Sangh is in office in four or five. In that case there will always be conflict and in that situation any measure which seeks to take away or to add to the revenues of the provinces should only be introduced with the permission of the President. Therefore, I submit that only those amendments will be now in order which seek to enhance the rates and any provision which seeks to whittle the rates shall not be in order and cannot be introduced in the House without the previous consent of the President.

Mr. Deputy-Speaker: This is a matter which requires serious consideration: all sections of the House are very much interested in it. If I hold up all those amendments which require the previous sanction of the President, all of them will have to make applications. I have not made up my mind. I would like to hear the hon. the Law Minister. I will give him sufficient time and hear him in the afternoon.

So let us have a general discussion on all the amendments moved to clause 34. After hearing the hon. the Law Minister, I shall say what I feel about it and the individual amendments may be taken up later.

Shri Biswas: May I ask for ten minutes' time?

Mr. Deputy-Speaker: He need give his opinion only in the afternoon. So, discussion on clause 34 and the amendments that have been moved will proceed.

Shri S. S. More: I rise to a point of order.

Mr. Deputy-Speaker: I am afraid with so many points of order I will not be able to keep up to the scheduled time.

Shri S. S. More: May I refer you, Sir, to Rule 110 of the Rules of Procedure?

Mr. Deputy-Speaker: The practice is to state the point of order first and then support it if necessary. What is the point of order?

Shri S. S. More: The point is that we cannot take into consideration the schedule unless all the clauses have been disposed of. Now it has been suggested that we should consider clause 34 along with the schedule. There we go against the provisions of Rule 110 (unless it is suspended) which says:

> "The consideration of the schedule or schedules, if any, shall follow the consideration of clauses."

So, unless all the clauses of the Bill are disposed of this schedule cannot be taken up, unless the Finance Minister makes a motion for the suspension of this rule and you accept it.

Mr. Deputy-Speaker: The clauses refer to the schedules. We assume these schedules and proceed to discuss them. This was the procedure we adopted in regard to the Seventh Schedule of the Andhra State Bill, on the ground that the entire Bill is a single entity.

What has the Finance Minister to say? Rule 110 stands in the way of the schedule being discussed or put to the House.

> "The consideration of the schedule or schedules, if any, shall follow the consideration of clauses, Schedules shall be put from the Chair, and may be amended, in the same manner as clauses, and the consideration of new schedules shall follow the consideration of the original schedules. The question shall then be put: "That this schedule (or, as the case may be, that this schedule as amended) stand part of the Bill."

Mr. Deputy-Speaker: There, in the context, apart from the language of this clause, there is nothing that stands in the way of our proceeding with Clause 34 and its amendments.

Shri N. C. Chatterjee: If you kindly look at List No. 23, Amendment No. 658 standing in the name of Mr. Agarwal, you will find that it is trying to alter the rates of duty and therefore is going to amend the schedule. If you look at No. 659 suggested by Mr. Damodara Menon, and No. 660 by Mr. Gurupadaswamy,.....

Mr. Deputy-Speaker: Amendment of the Schedule cannot be made without amendment of Clause 34. All that was intended was that the House must have an idea of what the Government propose and there is absolutely no hampering. Hon. Members may think that that schedule will pass and so they argue about it saying what will happen if the schedule is thrown out. I am not going to suspend the rule in so far as the Clause is concerned. The schedule will stand over for discussion and consideration and will be taken up after the clauses are all over. In the meanwhile I will give my ruling on this point after hearing the Law Minister and any other person that the Government may want and the Attorney-General if he is available. Once a point is raised, it is not only for the present, but for the future also. Under those circumstances, I would like to consider and give my ruling regarding the necessity for the recommendation for these rates of duty, and even if the Government want to change them or consider that further recommendations are necessary in respect of the rates in the schedule, I will consider.

I have read Article 255. It says that prior recommendation of the President is necessary, but it can be waived if subsequently the Bill is passed and the President consents to give his assent. If it is a State Bill,

we are not interested in it here. But the point is that if the President withholds his assent, all our labours would be lost. Now, therefore, Article 255 does not help us.

Shri S. V. Ramaswamy: If subsequent to the passing of this Bill by this House, the President gives his assent, is it deemed that he has given his recommendation?

Mr. Deputy-Speaker: The hon. Member is assuming that the President is going to give his assent. It is not given until it is given. If the President has given sanction, it protects the House so far as the Courts are concerned, but it has not authorised this House to flout the rules. If otherwise you feel that these amendments require the sanction or the previous recommendation of the President, I shall hear the Law Minister and, if necessary, the Attorney-General, and then come to my conclusion. In the meantime, agreeing with Mr. More, I think that the schedule cannot be taken up.

I will, therefore, defer consideration of the schedule until all the clauses are disposed of. In the meantime there is sufficient time for the Law Minister and the Government to place before the House such further legal opinion as the House would like to hear. Now, let us proceed with clause 34.

Shri T. N. Singh: An amendment which amounts to a modification or actual variation of the schedules in advance should not be allowed to be discussed, Sir, in my opinion.

Mr. Deputy-Speaker: I have allowed all amendments now without going into the details of the amendments, but whenever any point is raised in the course of the discussion, I will look into the matter and say whether that particular amendment is relevant and is admissible. What has the Finance Minister to say with respect to the amendments to clause 34 being taken up.

Shri R. K. Chaudhury *rose*—

Mr. Deputy-Speaker: I will not allow any further interruptions; it has become a habit to interrupt.

Shri C. D. Deshmukh: I need only concern myself with Amendments Nos. 633 and 634 now. No. 637 will not be moved at this stage in accordance with your ruling because that contains the actual schedule of rates.

Regarding Amendment 633, there is not very much to say. The rates of estate duty shall be as mentioned in the Second Schedule. The actual consideration or reasonableness of this amendment will arise later when we discuss the Second Schedule.

Let me now proceed to No. 634. This amendment, Sir, will give relief to agricultural property included in small estates. It imposes a lower rate of duty on agricultural property upto a certain limit. That is the purport of the amendment. It has been urged that in an agricultural country like India, some relief is necessary on property consisting of agricultural land, and reference has been made to the U.K. Law under which the rate of duty on agricultural land is 55 per cent. of the normal rate. Now, I have to make some reference to the exemption limits—and we might assume that they will stand.

An Hon. Member: This House is entitled to defeat this part of the Bill.

Shri C. D. Deshmukh: Our exemption limit is already high, as I pointed out yesterday, and should not lead to fragmentation of small agricultural holdings by virtue of the imposition of this duty. Nevertheless, I consider that a certain concession is justified for small estates of which the principal value does not exceed Rs. 2 lakhs. The amendment gives a relief of 25 per cent. of the duty on the value of agricultural land included within such estates.

Mr. Deputy-Speaker: Shri Rohini Kumar Chaudhury. The hon. Member

[Mr. Deputy-Speaker]

may occasionally interrupt, not every day!

Shri R. K. Chaudhury (Gauhati): Thank you, Sir. This lamp which is put between us and you creates some difficulty.

Mr. Deputy-Speaker: I am able to look over the lamp. The hon. Member is sufficiently tall.

Shri R. K. Chaudhury: I beg to move:

In page 21, line 7, *for* "seventy-five thousand" *substitute* "one lakh".

My amendment is that in sub-clause (b) instead of Rs. 75,000 it should be Rs. 1 lakh. It is a very simple amendment. My hon. friend Mr. Gadgil said day before yesterday that he has been hearing a whisper that the hon. the Finance Minister will accept this one lakh instead of seventy-five thousand. If this whisper has any foundation I need not waste the time of the House by making any speech.

Mr. Deputy-Speaker: The hon. Member wants to raise the figure from seventy-five thousand to one lakh, is it?

Shri R. K. Chaudhury: Yes, Sir.

Mr. Deputy-Speaker: Not from fifty thousand to one lakh?

Shri R. K. Chaudhury: My amendment is to sub-clause (b) only. But I should be prepared to amend it and to make it apply also to sub-clause (a). I do not mind.

Mr. Deputy-Speaker: Is his amendment with respect to both (a) and (b)?

Shri R. K. Chaudhury: Technically speaking my amendment is only with regard to (b). Sir, I was asking the Finance Minister.....

Mr. Deputy-Speaker: What is the good of asking the Finance Minister? There is a Select Committee Report to which he was a party. He would like to hear all people and then come to a conclusion, naturally.

Shri R. K. Chaudhury: I wish to point out to the hon. the Finance Minister that he has made two sorts of exemptions: one is Rs. 50,000 for *Mitakshara* and other families, and one Rs. 75,000. I do not understand the basis on which this distinction has been made—why in place of fifty thousand it should not be one lakh. Take for instance the case of a *Mitakshara* family, a father having only one son, and a *Dayabhaga* family, the father having one son. The distinction does not seem to be very reasonable. If you make a real distinction in giving relief to the *Dayabhaga* family it should be raised from seventy-five thousand to at least one lakh of rupees. That would give some relief to the members of the *Dayabhaga* family in the matter of payment of Estate Duty. Even if you make it one lakh for both *Mitakshara* and *Dayabhaga* families I do not suppose that Government is standing to lose very much. But in my amendment I am not concerned with that. It will be very reasonable as well as generous on the part of the Finance Minister to accept an exemption of one lakh of rupees in all cases. I do not mind it. But I want relief for *Dayabhaga* families and one lakh will satisfy me, although it will not be as adequate as it should be.

Having disposed of the amendments, which had been moved in this House earlier, rather cruelly the Finance Minister might pause for a moment and see whether he could not accept this amendment. He has turned a deaf ear entirely to the appeal made in the interests of widows. He has turned a deaf ear to the appeal made in the interests of those persons who have only one dwelling house. Here I am afraid there has been some misunderstanding about the amendment which I had moved in respect of dwelling houses. (*An hon. Member:* We have disposed of that question). In our part of the country one

has not got brick-built mansions. Inside a compound there are various dwelling houses, one for the head of the family, another for the sons, another for the widowed sister and so on. They are all dwelling houses for different persons of the family. If you apply it literally to the dwelling house in which the deceased had lived and exempt only that, the other houses in which the other members of the family live would not be exempted. Therefore I used the word "dwelling houses" and he will find how "dwelling houses" means exactly one house. He may have one brick-built mansion where all the members live. But we have no such arrangement in our part of the country. Therefore I used the word "dwelling houses". But he has taken such an adamant attitude. Although he has been cruel in the matter of giving exemption to dwelling houses I would request him whether he should not give some relief by accepting the amendment which I have moved.

Shri A. M. Thomas: While discussing clause 7 of the Bill we discussed in detail the question with regard to the desirability of raising the limit of seventy-five thousand rupees to a little more. I had my chance to make my own observations and I said that to achieve, as far as possible, equality in the incidence of taxation we will have to raise the seventy-five thousand to a little more.

Sir, I would support my hon. friend Shri Rohini Kumar Chaudhury in his plea that the limit has to be raised at least to a lakh of rupees. The majority of cases which we will have to deal with are the cases relating to self-acquired property and properties which bear the incidence of self-acquired property. The application will be of clause 34(1)(b) so that my submission is that the complaint, that the exemption limit is too low, has to be got over.

One thing which we have to bear in mind while fixing the exemption limit is that middle-class society is the backbone of the State and we must, as far as possible, try to raise the lower income groups and the labour class to the level of the middle-class and not lower the lot of the middle-class to the lot of the lower income groups and the labour force. On their security, that is on the security of the middle class, and on their safety, depends the safety of the State itself. I would therefore earnestly commend the amendment of Shri Rohini Kumar Chaudhury.

I concede that in the clause by clause stage that has gone on the Finance Minister was liberal enough to make several concessions. All the same I would say that this concession also has to be made, and that will meet the complaints raised from various quarters of the House and also from the public at large. As I have already said, the staying power of the middle-class family should be our concern, and I would again appeal to the Finance Minister to raise the limit of seventy-five thousand rupees to one lakh. That will meet all the legitimate complaints of the sections of the people who have fought on behalf of the *Dayabhaga* family and also other sections of people who follow other rules of inheritance other than *Mitakshara*.

[PANDIT THAKUR DAS BHARGAVA *in the Chair.*]

Sir, I do not want to address myself on the rates as the Chair has ruled that they will form the subject-matter of another debate. All the same I would say that we may assume for the sake of argument that the rates that have been given by the Finance Minister will be passed by the House. In that case I would say that having regard to the rates which have been fixed in the Schedule, the low income groups will be very much adversely affected if the present limit is retained.

The rates proposed justify the contention that the exemption limit should be raised a little more. I do

[Shri A. M. Thomas]

not want to say anything more. I believe the Finance Minister will find his way to accept the very reasonable amendment which has been moved by my hon. friend Mr. R. K. Chaudhury.

Shri N. C. Chatterjee: Sir, I am again appealing to you that the discussion of clause 34 would be really futile unless you take up the amendment regarding the Schedule. I find the hon. Deputy Minister is also of the same opinion. This would be wasting the time of the Parliament. These two are integrated. You know the scheme, Sir, I am suggesting that Rule 110 may be suspended so that the Schedule could be taken along with clause 34. I must bow down to the ruling of the Deputy-Speaker that it must stand apart. We cannot amend the Schedule unless and until this rule is suspended. I suggest that Rule 110 be suspended so that the Schedule can be considered along with clause 34 and the whole thing finished. You may impose a certain time limit. But, the time table will not work unless you allow the schedule to be discussed along with the clause. If you agree, we may move or the Finance Minister may move and if the House accepts, the thing will be over.

Shri U. M. Trivedi (Chittor): On a point of order, Sir, sometimes we find that when some Member is speaking, some other Member keeps standing and speaking in the House. I do not know whether that privilege attaches to the Chief Whip. Mr. Satya Narayan Sinha keeps standing there. Whip or no Whip, I would like to know whether two Members of the House can stand at the same time?

Mr. Chairman: The rule is quite clear. No Member should stand while the Speaker or any other Member is speaking. As regards the question raised by Mr. Chatterjee, the hon. Deputy-Speaker, while he was in the Chair, considered the point and stated categorically that he is not going to suspend this rule.

Shri N. C. Chatterjee: He said that he is not going to suspend the rule. Really it is for the House to suspend. If I move and the House accepts or if the Finance Minister moves and the House accepts, the whole thing can be finished.

Shri S. S. More: If any consent is required, it is the consent of the Speaker: not of the Deputy-Speaker or of the Chairman.

Mr. Chairman: I do not agree.

Shri N. C. Chatterjee: You are clothed with all the authority of the Speaker.

Mr. Chairman: So far as the powers of the Chairman are concerned, he has exactly the same powers as the Speaker as long as he sits in the Chair. At the same time, since the consent of the Chairman or Deputy-Speaker or Speaker is necessary, and since the Deputy-Speaker, when he was in the Chair, said categorically that he is not going to suspend the rule, I cannot possibly give my consent as soon as he has left the Chair.

Shri R. K. Chaudhury: May I point out, Sir, that the amendment that I have moved presents no such difficulty?

Shri N. C. Chatterjee: Sir, I have two amendments: 137 and 139. I am driven to move them. Otherwise, an amendment of the Schedule would have been more logical, Sir, I move:

In page 21, lines 5, *for* "rupees fifty thousand" *substitute* "rupees one lakh".

I am also moving:

In page 21, line 7, *for* "rupees seventy-five thousand" *substitute* "rupees one lakh and fifty thousand".

This is intended to reduce inequality. Sir, I am not raising the old question as between *Mitakshara* and *Dayabhaga*. On that point I have made my submissions. Now, I am trying to

point out that having regard to the artificial increase in the land values in the big cities, particularly in the urban areas, this limit of Rs. 75,000 for the separate property of Hindus or of all properties of Muslims, Christians and Parsis is a very very small exemption limit and is not reasonable. I appeal to the Finance Minister and I hope his heart will melt and will respond to our appeal.

11 A.M.

This is an extraordinary legislation introduced for the first time in our country. You should carry the country with you and your first shock should be gentle. You are not legislating for the present generation. You are legislating for future generations, legislating for posterity. Generations yet unborn will have to pay this tax. What is this limit of Rs. 75,000? You are not exempting any dwelling house. An ordinary poor middle class family possibly has a house in Calcutta or Bombay or Madras. A house which was valued at Rs. 30,000 or 40,000 twenty years back will be valued at more than 1 lakh today. There has been such an appreciation of land values in the cities. Therefore, if a man lives in his house and has a little money either in the Post Office Savings bank or in an Insurance company, he will have to pay the duty on over one lakh. Therefore, I am saying that this is not a reasonable and fair limit.

Look at what they did in America and England and other countries. I am reading from Willis Constitutional law where it is said that in the Act of 1932 the minimum rate was 1 per cent. and that rate applied to 10,000 dollars above the amount exempted. The maximum rate was 45 per cent. over 10 million dollars. But, under this law in the U.S.A., the amount of exemption was 50,000 dollars. Therefore, in respect of property 2½ lakhs, there was no estate duty levied. If that was fair, when the estate duty legislation was promulgated in America, in this country, I submit, the same should be the limit. Even if you do not take that, at least have 1½ lakhs or at least 1 lakh as suggested by Shri R. K. Chaudhury. I have worked out the figures. The estate duty levied was 100 dollars in U.S.A. in respect of property worth 60,000 dollars. That means, in respect of property worth Rs. 2½ lakhs, the tax-payer had to pay Rs. 400. That was the tax imposed in America.

Shri R. K. Chaudhury: Such a rich country.

Shri N. C. Chatterjee: And remember the social amenities that those countries have: old age pension, unemployment insurance, etc. I am appealing to the Finance Minister to realise.....

Shri K. K. Basu: Unappealable.

Shri N. C. Chatterjee: I am still an optimist. I think he will still respond. In the previous Bill, which was originally introduced, I think the exemption limit fixed was 1 lakh. I submit that that is the minimum which should be exempted. The land values have gone up in the mean time and have not come down. Remember, there are no social insurance schemes, no insurance against unemployment, ill-health and widowhood. We have not got the benefits which are conferred by the State in other western countries. Therefore it is necessary and absolutely essential for the middle class people in this country to provide some property for their dependants as a stand by in times of distress and difficulty. See what will happen. Now that you have decided that you won't allow any exemption in respect of the dwelling house, most of the middle class families in the urban areas may be driven to sell their dwelling houses. That would be disaster. In this Act, as you are going to enact, very wide powers have been given to the Controller to fix the valuation. He may fix the value at 1 lakh or 1½ lakhs. It will be very difficult for the middle class families to fight the Controller, to come up to Delhi and appear before the Board. Or even if you give an appellate tribunal, it will be very difficult for them. Therefore, they will have to dispose of their property to

[Shri N. C. Chatterjee]

pay this tax. That means, there will be more unemployment, more people on the streets of big cities. You will find many families in great distress. Instead of redressing the inequalities in the present social and economic structure, you will create social and economic difficulties which it will be very difficult to redress. In your attempt to level up the inequalities of economic wealth, you would be destroying many middle class families and aggravating the existing inequalities. I submit that 1 lakh is the minimum which you should fix. That would do good to all people.

Of course, the bulk of the people would be affected, and I gave some figures to this House the other day. I am not thinking of other properties. If a man, Hindu or Muslim or Christian, dies leaving three sons and property worth Rs. 5 lakhs, what happens? In this case he will have to pay Rs. 52,500. In the case of a joint Hindu family governed by *Mitakshara*, it will be only Rs. 4,375. In the case of property worth Rs. 2 lakhs left by a father and three sons—a coparcenary—the duty is nil. He has not got to pay one penny even with the Rs. 50,000 exemption. With regard to an ordinary *Dayabagha* Hindu or *Mitakshara*, who has separate property or Muslim or Christian, he has got to pay Rs. 10,000. Therefore, the disparity is there. The only way to redress the disparity is to raise the exemption limit or to reduce the slab. I cannot talk of the slab now according to the ruling of the Deputy-Speaker. That would have been more equitable. In any event I am appealing that there should be equity, some kind of fairplay that the disparity should be reduced. Having regard to the very, very limited scope of exemptions given, especially after this House has ruled out any exemption in regard to dwelling houses, it is only fair and proper that the exemption limit should be raised if possible to a lakh and half, and if that is not possible, I will appeal earnestly to the Finance Minister to accept at least Rs. 1 lakh which is the very minimum having regard to existing conditions.

श्री सुनसुनवाला (भागलपुर मध्य): सभापति जी, मैं अपने संशोधन की वास्तविकता पर बोलने के पूर्व यह कह देना चाहता हूं कि मेरी यह इच्छा नहीं है, और मेरे संशोधन का यह अर्थ नहीं है कि मैं यह चाहूं कि एग्जेम्पशन लिमिट बढ़ा दी जाय और न मुझे दायभाग वालों से कोई डाह ही है कि अगर उन की एक लाख की लिमिट कर दी जाय तो मिताक्षर के लोगों की लिमिट भी एक लाख की कर दी जाय। मेरा यह कहना है कि जो लोग मिताक्षर से गवर्न होते हैं उन के ऊपर जो टैक्स लगाया जाता है और अभी अभी जो डेथ ड्यूटी लगाई जा रही है उस में उन के साथ भेद होता है। वे लोग अब तक बहुत ही असुविधा में रहे हैं। मैं आप को एक उदाहरण देता हूं। मान लीजिये कि कोई एक सज्जन हैं जो कि मिताक्षर से गवर्न होते हैं। उन के दो तीन भाई हैं, और चार लड़के हैं। एक दूसरे सज्जन हैं जो दायभाग से गवर्न होते हैं। उन के तीन चार भाई हैं और दो लड़के हैं। अब आप देखिये कि इस एस्टेट ड्यूटी का क्या असर पड़ेगा। जो सज्जन मिताक्षर को मानते हैं उन की जो प्रापर्टी है उस के ऊपर, उन के जो लड़के हैं और वह जो पैदा करते हैं उस के ऊपर और जो कुछ उन के पिता पैदा करते हैं उस के ऊपर, सब को मिला कर के जो कुछ पैदा होता है उस के ऊपर आप ड्यटी लगाते हैं, और उस का एग्जेम्पशन आधा है यानी पचास हजार रुपये पर मिलता है और मिताक्षरा वालों के घर में किसी की भी मृत्यु होने पर टैक्स लग जाता है जो दायभाग में नहीं होता। मैं ने जो ऐमेण्डमेण्ट दिया है कि ७५ हजार के ऊपर कर दी जाय, तो वह मैं ने इस लिये दिया था कि सरकार का सुझाव था कि जो कि मिताक्षर से गवर्न नहीं होते हैं उन को ७५ हजार दिया जाय। परन्तु अभी मैं ने सुना है कि वह चीज एक लाख से ऊपर की जा रही है। ठीक है,

यदि सरकार की समझ में यह आये कि एक लाख ठीक है तो जरूर आप एक लाख कर दीजिये परन्तु जब दायभाग, या मिताक्षर को छोड़ कर अन्य किसी कानून को मानने वाले हैं उन लोगों को एक लाख का एग्जेम्पशन दिया जाता है तो मेरी समझ में नहीं आता कि मिताक्षर वालों को क्यों कम दिया जाता है। अभी तक जैसा हमारे भाई टेक चन्द जी ने कहा था उस दिन और उन्हों ने कुछ फिगर्स भी दिये थे कि शुरू से मिताक्षर फैमिली पर इस तरह से टैक्स लगाया जाता है कि वह सिस्टम, वह जो हमारी चाल थी, वह एक दम से टुकड़े टुकड़े हो कर खत्म हो गई। ज्वायन्ट फैमिली सिस्टम से, सम्मिलित परिवार से हमें बहुत लाभ था, किस प्रकार के लोग सुख से रहते थे और किस तरह से वह साथ काम किया करते थे, अब वह इस इन्कम टैक्स की वजह से, इस में जो तरह तरह के रेट्स कर दिये गये, उस से मिताक्षर फैमिली पर बड़ा भारी बोझा पड़ा और मजबूर हो कर उन को आपस में टुकड़े कर देने पड़े। मान लीजिए एक घर में तीन चार भाई रहते हैं, वह एक साथ व्यापार इत्यादि करते हैं, सब कुछ काम एक साथ करते हैं, सम्मिलित रहते हैं, खाते-पीते हैं और उन का प्रेम बना रहता है, परन्तु इस इनकम टैक्स ने ऐसा किया कि वे लोग अब बिल्कुल अलग अलग हो गये। यह तो हमारी उस पुरानी सरकार की नीति थी कि जो भी हमारी पुरानी संस्था हो, पुरानी संस्कृति हो उस का नाश कर दे। इस चाल को चल कर ही उन्हों ने अब तक हमारे ऊपर राज्य किया था। परन्तु अब तो हमारी सरकार आ गई है। मैं यह नहीं कहता कि जो आप की इनकम है सो या जो आप की पैदावार है सो घटावें और इस लिये मिताक्षर की एग्जेम्पशन की लिमिट बढ़ावें, या इनकम टैक्स जिस प्रकार से लगाते हैं उस में सुधार करें, परन्तु मेरा यह कहना है कि इस की वजह से जो हमारा ज्वाइंट फैमिली सिस्टम है उस का नाश कर दिया गया है और अब भी जो कुछ हो रहा है वह आप का इनकम टैक्स का जो तरीका है उस की वजह से होता है और उस की वजह से जो स्थिति आज है वह हो गई है। पहले तो यह था कि एक घर में पांच लड़के थे उन में से चार पैदा करते थे और एक घर का काम देखता था और उस को भी उतना ही हक था जितना कि औरों को था, परन्तु उस का मान सम्मान वैसा ही होता था जैसा कि जो पैदा करते थे उन का होता था। अब तक वह बेचारा घर का समूचा काम देखता था और सम्मिलित तरह से रहता था। अब आप के इनकम टैक्स ने यह कर दिया है कि सबों के टुकड़े टुकड़े कर दिया है। सब लोग एक दम से आज दिक्कत में पड़ गये हैं। अब हमारी सरकार आ गई है, हमारे सभापति जी जो हैं वह इस प्रश्न को पच्चीस वर्षों से इस हाउस में ले रहे हैं। बहुत कहते कहते, कहते कहते जो एग्जेम्पशन लिमिट थी वह अब एक इन्डिविजुअल की तो है ४ हजार २ सौ और ज्वाइंट फैमिली की हो गई है ८ हजार। परन्तु इस से कोई विशेष फर्क नहीं पड़ा है। उन के लिये जो असुविधा थी और जो डिस्क्रिमिनेशन होता था वह उसी प्रकार से है और लोगों को उसी तरह का भय पड़ा हुआ है। आज उन लोगों से अपनी इनकम.....

श्री गाडगील (पूना मध्य) : कुटुम्ब को ज्वाइंट स्टाक कम्पनी बनाइये।

श्री झुनझुनवाला : हमारे गाडगिल साहब कहते हैं कि ज्वाइंट स्टाक कम्पनी बनाइये और उस में गाडगिल साहब को डाइरेक्टर या मैनेजिंग एजेन्ट कर दिया जाये जिस से कि जो धन है वह समूचा खत्म हो जाय। उन को प्रेम तो है नहीं उस फैमिली से। जो ज्वाइंट फैमिली है उस में पिता है, भाई है, बेटा है। उन में कम से कम प्रेम तो है। गाडगिल साहब का क्या है? उनको मैनेजिंग एजेन्ट रख दिया जाय

[श्री झुनझुनवाला]

जिस में सभी कुछ उन्हीं के आराम में खत्म हो जाय। उन के शेअर होल्डर जितने हैं सब को खा जायें। परन्तु मैं अपने वित्त मंत्री साहब से और जो हमारे डिप्टी मिनिस्टर हैं उन से यह कहूंगा कि इन चीजों को वह अच्छी तरह देखें कि कितना रुपया आज ज्वाइंट फैमिली से आप ने लिया है।

और यह महल आदि जो आप देख रहे हैं उन से इनकम टैक्स ले कर बनाया है और इस ज्वाइंट फैमिली सिस्टम का आप ने नाश किया है। अब भी यदि आप इस चीज को सुधार कर काम करें तो लोगों में अभी भी ज्वाइंट फैमिली सिस्टम की तरह से रहने की प्रवृत्ति है और नहीं है तो वह फिर से आ सकती है।

मैं विशेष कुछ कहना नहीं चाहता। जो हमारे लायक सभापति जी हैं जिन्हों ने जैसा मैं ने कहा कि पच्चीस वर्ष से यह प्रश्न उठाया है, वह बड़े योग्य हैं उन से ज्यादा मैं कुछ नहीं कह सकता। जब वह यहां पर आयेंगे और डिप्टी स्पीकर साहब चेअर पर होंगे तो शायद वे भी कुछ कहें। मैं इतनी ही आप से अपील करूंगा कि इस प्रश्न के ऊपर आप जरूर विचार करें। मुझे दायभाग से कोई डाह नहीं है। मैं तो इतना ही चाहता हूं कि जितनी लिमिट उन की है वही मिताक्षर की हो जाय। जो सुविधा उन को दी जाती है वही मिताक्षर को भी दी जाय।

Shri C. D. Pande (Nainl Tal Distt. *cum* Almora Distt.—South West *cum* Bareilly Distt.—North): Mr. Chairman. Sir, there has been considerable confusion between *dayabhaga* and *mitakshara*. I think there are no such categories, so far as this tax is concerned. The impression that the limit of Rs. 75,000 or 1,00,000 is only for the *Dayabhaga* people and not for others is an erroneous one.

Shri N. C. Chatterjee: On the other hand, it will help many more people besides the *Dayabhaga* people of Bengal, Bihar and Assam.

Shri Gadgil: All other property.

Shri C. D. Pande: People think of it as a concession to the *Dayabhaga* school people and not to others. (*Interruptions*). It is to them as much as to others.

Shri Jhunjhunwala: To *Mitakshara* also? (*Interruptions*).

Mr. Chairman: Order, order. Let there be no interruptions Let the hon. Member proceed.

Shri C. D. Pande: What I wanted to say was that property, for the purpose of this Act, is not governed by the *Dayabhaga* or the *Mitakshara* system of law, but is governed by the fact whether it is a joint family property or self-acquired property. If it is self-acquired property, whether it be the case of a Bengali or a Gujarati, it will still be governed by the same term 'self-acquired property', and this Rs. 75,000 limit will apply. To say that any concession has been given along these lines to only the *Dayabhaga* people and not for the *Mitakshara* people, is an absoutely mistaken impression

Shri Gadgil: Concession for the property-holders.

Shri C. D. Pande: As for persons who have acquired property, they may have both categories of property or only one. They may have joint family property, or self-acquired property or both. All gains of learning, of doctors, or professors or lawyers, or any professional occupation they are engaged in are not mixed with the joint family income. That property is kept separately. It may belong to *Mitakshara* or a *Dayabhaga* family. Therefore any concession given for self-acquired property should not be mistaken as a concession for the *Dayabhaga* family.

There is one other reason. Self-acquired property should not be taxed to the same extent as property which

is handed over from generation to generation. The property which a person has earned in his life-time by his learning or labour stands on a totally different footing than ancestral property. Therefore there is greater justification for higher incidence of taxation on unearned property for amassing which people have not made particular efforts. I therefore hold that there is no concession at all to *dayabhaga* people as such by this provision. It benefits all communities alike.

Shri U. M. Trivedi: The hon. Member is in the wrong. It is only the nucleus. It may be Rs. 10 or 100 or more. It is not necessary that it must be handed over from generation to generation, for forming a joint family.

Shri C. D. Pande: Gains of learning when saved are a form of property. He may also have a family property and he may be governed by the *mitakshara* school. But whatever he has earned is self-acquired property for the purpose of income-tax. He has to fill in two types of incom-tax forms, one for his gains of learning, and for any property derived out of that, and another for his family property. The former property is treated differently from that which comes under the joint family system.

Shri Nand Lal Sharma: Unless there is re-union.

Shri C. D. Pande: So, let there be no erroneous impression, that there is any concession for *Dayabhaga* people only. It is a concession for all.

Shri T. N. Singh: Mr. Chairman, I have been listening to this question not only during this debate but on previous occasions as well. This controversy between *Dayabhaga* and *Mitakshara* has been going on.....

Shri R. K. Chaudhury: No controversy.

Shri T. N. Singh: There is a distinction being made between the two systems of laws that govern the different families in India. On that there has been a lot of difference of opinion, and there is no gainsaying that fact.

I personally feel that it was a mistake initially to have introduced this difference—I was a member of the Select Committee—in the Select Committee stage itself. Formerly in the Bill there was no such distinction. This distinction was made in the Select Committee, and it has led to unnecessary complications. I feel that since some time past, our legislation has been designed to kill the joint family system. I regret that. It may be that it is more modern and inkeeping with twentieth-century ideas of some of our friends, not to have a joint family system at all. But our country is poor. There are several persons, for whom the joint family is the only insurance. We may easily put an end to it, but it will lead us not to any improvement of the situation, but worsening of it, when the unemployment problem is already getting worse. One of the results of this distinction between the *Dayabhaga* and *Mitakshara* systems would be that tomorrow, many joint families will divide themselves, leaving everybody to find for himself. If there is a brother, who is more prosperous and earning more, he will try to have his own property, so that he may have a better exemption limit. This is what will happen.

There is one other point which I would like to touch upon. If you go to a village, you will find that there may be as many as 20 persons in a joint family; one of them may be a *panwala*, the other may be shopkeeper and so on. If each one has an income of Rs. 100 to Rs. 150 a month, then it comes to Rs. 3,000 a month, and the income of that family is subject to super-tax, whereas the individual income of a man with his wife, his two children and probably his brother or cousin, will be only Rs. 150 a month. All the same, that man has been contributing to the coffers of the treasury without any objection, or complaint. But here in the case of people having a property worth Rs. 50,000 or Rs. 75,000, we find that there has been a lot of noise, and they want a distinc-

[Shri T. N. Singh]

tion be made between *Mitakshara* and *Dayabhaga*. I do not quite understand all this. When the super-tax was levied, whether it be the case of a *Mitakshara* family or a *Dayabhaga* family, no question was raised. Similarly when the question of granting certain concessions to joint families came up, there was no distinction, and no question was raised, except that the lower income groups were given some relief. If we want to differentiate, I would only submit that this process will have no end, and will land not only the Government, but our treasury and everybody else in trouble. The *Mitakshara* or *Dayabhaga* is a personal law. There may be people living side by side, but belonging to different schools.

Suppose there are two families living side by side, one belonging to the *Mitakshara* and the other to the *Dayabhaga* school. Supposing the *Dayabhaga* father having four sons dies leaving a property worth Rs. 60,000, no income-tax is levied; but if his neighbour who has got three sons, and has the misfortune to belong to the *Mitakshara* family dies, leaving property worth the same Rs. 60,000, then he is liable to pay tax.

Shri C. D. Pande: He will not be taxed.

Shri T. N. Singh: Proportionately.

Shri C. D. Pande: Never. Not at all. You are mistaken

Shri T. N. Singh: In this sense I am saying, because if it goes down to one person, if Rs. 60,000 were to go to each son, then he will be levied, whereas the other man will escape. though one of his sons gets Rs. 60,000. This is concentration of property in his hand. This *Dayabhaga* system as I once observed—I had the temerity to interrupt one of the speakers here—is really a '*Dayabhaga*' meaning 'right' system where concentration of property is encouraged and favoured.....

Shri C. D. Pande: It is the opposite.

Shri T. N. Singh: .. and '*Mitakshara*' means fragmentation. I have seen with my own eyes properties being fragmented. People who were once rich people, well-to-do people, people with a status in society, are today paupers, Sir, I myself belong to a family about 100 years old. My father was supposed to be a big man owning 15 or 20 villages. Today, Sir, I have got a family of 60 or 70 people. I have not got more than 3 acres of land in my possession. That is the history of every *Mitakshara* family. You go to Eastern U. P., go to Bihar or Central U. P., you will find the same story being repeated. So people who have suffered.....

Shri Punnoose: Does he wish to say that the *Mitakshara* system is not a progressive system?

Shri T N. Singh: It is a proletarian system. If you think that that proletarian system cannot be called progressive, then I bow down to your wishes. I personally think that that is the only process to ensure that the poorer sections some day assert themselves and say that it becomes the real 'rajya' of the poor people. Therefore, I strongly oppose any differentiation. I would rather suggest—late in the day—that even the existing differentiation of Rs. 50,000, Rs. 75,000 etc. should be done away with. With these few words, I resume my seat.

Shrimati Jayashri: Mr. Chairman. I am thankful to you for giving me this opportunity to move my amendment. My amendment is No. 649. It reads:

That in the amendment proposed by Shri C. D. Deshmukh, printed as No. 634 in List No. 19 of the Amendments, *after* part (a) of the proposed new sub-clause (3) *insert*: "(aa) in the case of an estate consisting of agricultural land which wholly or in part has been given away in a Bhoodan Yagnya.....".

There is a mistake. It should be 'rebate'—".....the rebate allowed shall be 75 per cent. of the estate duty payable: and".

Sir, I had moved a similar amendment to clause 9 and to clause 32, the exemption clause. At that time the Minister—I am sorry to say—was not able to accept my amendment. But in this amendment I only request this House to take into consideration the gifts which are given by land-owners to the landless and the rebate that has to be given in the estate duty leviable on these lands.

Sir, you are aware that this is the most opportune time—I should say, it is critical moment in our country when this land problem is being experimented upon by a saintly person like Vinobaji. Sir, for a piece of land we know that Kingdoms have fallen and risen. The landless have carried on *tapas* for lands for a very long time and we should now consider the *tapas* they are doing. And we hope that this mission of Vinobaji will bear fruit and result in giving lands to those who are doing *'tapas'* for such a long time. Vinobaji's great mission. Bhoomidan Yagnya is a unique one in the post—Gandhian era in that it contains all the ennobling attributes of Gandhiji's own way of working among the people. There is a very good response. I should say, people have voluntarily given their lands to the landless and people are also coming forward with so many other gifts also—Shram Dan Yagnya, Kanchan Mukti Yagnya etc.—and this process, if continued, will bring about a peaceful revolution in our country. This rebate that I request this House to accept is a very small appeal, I should say, on behalf of the land-owners. Here members are asking for differentiation between *Dayabhaga* and *Mitakshara*. I would request the members not to take into consideration all these various problems which can be solved afterwards. But at present I would request that when our country wants to solve this great problem of removing the gulf between the rich and the poor this is a very opportune time of supporting this Bill as well as of supporting Vinobaji's effort. If the Government also want to show sympathy to this great movement, I request the Minister to accept my amendment which only ask for a small rebate in the property that will be given to the landless. Sir, I move.

श्री बी० पी० सिन्हा (मुंगेर सदर व जमूई) : सभापति महोदय, मैं अपने संशोधन नम्बर ७०१ और ७०३ का समर्थन करता हूं जो वित्त मंत्री के संशोधन नम्बर ६३४ को संशोधित करना चाहते हैं। वित्त मंत्री महोदय ने कृषि भूमि पर अपने संशोधन ६३४ के द्वारा मृत्युकर में २५ प्रतिशत छूट देना स्वीकार किया है। इस से प्रकट होता है कि अर्थ मंत्री ने सिद्धान्त: एग्रीकलचरल लैंड पर सहूयलयित देने की बात को कबूल कर लिया है।

धारा ३३ पर कल वित्त मंत्री के संशोधन से पता चला कि कृषि भूमि को मृत्युकर में इसलिए सम्मिलित किया है ताकि सम्पत्ति की योग मात्रा अधिक हो जाय जिस से दूसरी तरह की सम्पत्ति पर अधिक कर लग सके। मुझे इस से कोई सरोकार नहीं है, मैं तो यह चाहता हूं कि आज जो यह संशोधन २५ प्रतिशत कमी का है और जिस सिद्धान्त को हमारे वित्त मंत्री महोदय ने कबल किया है, उस सिद्धान्त की ओर वह ज्यादा अग्रसर हों ताकि वह पूरा हो सके। भूमि, एग्रीकलचर लैंड स्टेट के अधिकार में है और स्टेट के अधिकार में बाधा न देनेका काम केन्द्र का होना चाहिए, हम को अपने संविधान का सम्मान करना चाहिए और यह देखना चाहिए कि जहां पर हमारा शासन के विकेन्द्रीकरण करने का लक्ष्य होना चाहिए, वहां हम केन्द्रीयकरण की ओर न आयें।

इस तरह से एग्रीकल्चरल लैंड को इस में ले कर मैं समझता हूं कि देश में विकेन्द्रीकरण की भावना को प्रोत्साहन न दे कर आप केन्द्रीकरण की ओर जा रहे हैं। मेरा उन से नम्र निवेदन है कि वह मेरे संशोधन के अनुसार उस में ७५ प्रति शत की छूट दें। ७५ प्रति शत की छूट देने से केन्द्र की कोई

[श्री बी० पी० सिन्हा]

हानि नहीं है, कारण यह है कि इस प्रकार की भूमि से जो भी कर प्राप्त होगा चाहे वह केन्द्र द्वारा वसूल हो चाहे वह राज्य द्वारा वसूल हो, वह पैसा राज्य का ही होगा। साथ ही साथ यह भी खयाल माननीय मंत्री को रखना चाहिये कि जिस से वह समझते हैं कि उन की सम्पत्ति की संख्या अधिक हो जायगी, मेरा नम्र निवेदन है कि उस पर वह जरा गहराई से विचार करें। मैं समझता हूं कि यहां पर कोई निर्णय नहीं हो सकता कि संविधान की धारा २६६ और १४ के मुताबिक जो भूमि कर इस बिल में रक्खा गया है उस की यह विधान पुष्टि नहीं करता है। कल मतदान के समय में जो दृश्य देखने में आया उस से तो मुझे यही प्रतीत हुआ कि हमारे वित्त मंत्री को वोट के द्वारा हाथ का सहयोग तो प्राप्त है लेकिन सदस्यों के हृदय का सहयोग प्राप्त नहीं है। आज मैं समझता हूं कि वित्त मंत्री को सदस्यों के हाथ के सहयोग के साथ साथ हृदय का सहयोग भी प्राप्त करना चाहिये। ऐसा करना बहुत श्रेयस्कर होगा। केन्द्र का भी इस में कोई घाटा नहीं है। यदि इस के जरिये से कुछ रुपया आयगा तो वह केन्द्र को थोड़े ही मिलेगा। वह तो केवल राज्य को ही जायगा। तो अगर राज्य मुनासिब समझेगा तो वह दूसरी तरह का कर उस जमीन पर लगा सकेगा इस के लिये राज्य के ऊपर कोई पाबन्दी नहीं है। साथ ही साथ यह भी पाया जाता है कि यहां पर यदि आप ने कर की दर अधिक रक्खी और राज्यों ने कर अधिक न लगाया तब तक ठीक है, लेकिन बहुत से राज्यों में एग्रिकल्चरल टैक्स के रूप में टैक्स लगा हुआ है। चाहे आप के टैक्स की जो भी दर हो, उन राज्य में जो अभी टैक्स लगे हुए हैं उन को मिला कर कृषि भूमि पर इतना ज्यादा टैक्स हो जायेगा कि किसान दब जायगा।

मैं ने बार बार मंत्री महोदय से निवेदन किया कि हमें एक मध्यम स्तर स्थिर करना चाहिये और जो लोग मध्यम् स्तर के हों उनको न छेड़ा जाय। आप समझते हैं कि आज जो हमारा जीवन स्तर है वह कैसा है। इस लिये जिस स्थान पर हम लोगों को रखना चाहते हैं नीचे स्तर के लोगों को वहां ले आयें और जो ऊपर के स्तर के लोग हैं उन को हम वहां तक नीचे ले आयें तो बहुत श्रेयस्कर होगा। इस-लिय मेरा खयाल है कि वित्त मंत्री साहब को इस ओर विशेष ध्यान देना चाहिये। इस प्रकार जो कल विधान की खींचा तानी हुई और जिस के आधार पर कि वह संशोधित धारा ३३ पास हुई उस से समझ लेना चाहिये कि आज मेम्बरों का हृदय आप के साथ नहीं है, केवल हाथ की सहायता से वोट प्राप्त कर के कोई नियम बनाना देश के लिये लाभकर न होगा। आज जो हमारी भावना है कर द्वारा अधिक से अधिक धन प्राप्त करने की वह तो ठीक है। मैं कहता हूं कि जिस के पास पैसा है उस से पूरा पूरा ले कर आप नीचे के स्तर पर लाना चाहते हैं यह तो ठीक है, लेकिन आज इस कर के द्वारा जो मध्यम् स्तर के लोग हैं, जो मिडल क्लास के लोग हैं, उन के ऊपर यह भारस्वरूप होता है और आज जब कि आप के देश में उत्पादन इतना कम है और आज आप उत्पादन को बढ़ाना चाहते हैं, इस कर के द्वारा उस में बहुत हानि पहुंचेगी। इस लिय वित्त मंत्री जी से मेरा निवेदन है कि जो मेरा संशोधन है उसे वह कबूल कर लें क्योंकि उस के सिद्धान्त को उन्हों ने कबूल कर लिया है। आप पच्चीस प्रतिशत छूट की बात कहते हैं, मैं ७५ प्रतिशत की छूट की बात कर रहा हूं। फिर वह पैसा तो राज्य सरकार के पास जायगा। यदि राज्य सरकार समझेगी कि कर कम है तो ज्यादा कर लगा कर वह और भी पैसा जनता से ले लेगी। आप को

राज्य सरकार को इतनी छूट तो देनी ही चाहिये अन्यथा यह खयाल होगा कि आप कहते तो हैं कि भूमि कर लगाने का अधिकार राज्यों को है, लेकिन जनता पर पहले से ही अधिक से अधिक कर लगा कर आप उस को मजबूर कर देते हैं। क्या आप समझते हैं कि राज्य की सरकारें इतनी नाबालिग हैं कि अपने राज्य की परिस्थिति को नहीं समझ सकती हैं। आप को मौका देना चाहिये कि वह अपने प्रान्त की परिस्थिति को समझें और परिस्थिति के अनुसार भूमि पर कर लगावें। मैं फिर भी वित्त मंत्री महोदय से इस बात का निवेदन करूंगा कि जिस सिद्धान्त को आपने कबूल कर लिया है, उस सिद्धान्त के अनुसार मेरे संशोधन में जो ७५ प्रतिशत छूट देने की बात कही गई है उस को स्वीकार करने की कृपा करें।

Shri Gadgil (Poona Central): Mr. Chairman, it is a sad commentary that a House elected by adult franchise, which, in other words, means by the franchise of the poor, is taking more interest in the property of the rich. It is said by one of the greatest French philosophers, 'O, Liberty, what crimes are committed in thy name!'. I am inclined to say, 'O, property, what amendments are given in thy name in this House!'.

Sir, look at the composition of the rich classes in this country. It is like the pyramid, broad at the bottom and gradually tapering to a point. And, from the financial point of view, if any relief is given at the bottom classes, the government loses more than any relief that may be given to classes much higher in the whole structure. This experience is quite common. When you reduce one rupee from the pay of a non-gazetted servant and you reduce 10 per cent. from the pay of the gazetted officer, the yield from the former is any day greater. Now, to ask for raising the limitation from Rs. 75,000 to Rs. 1,00,000, just consider what it means. The men with property worth one lakh would any day be more numerous than the next one and the next one and the next one in ladder. My humble submission is that those who constitute the first three steps of the ladder are more numerous than those who constitute those above. Though I cannot give detailed reasons for the same, the first three any day constitute 80 per cent. of those who will have to pay estate duty. And, it is here that you are asking for concession. My esteemed friend Mr. Rohini Kumar Chaudhury had given notice of an amendment to raise the limit from Rs. 75,000 to Rs. 1,00,000. I am sure, to be fair to him, the Government will seriously think about it, though I cannot say what ultimately the Government decision will be. But, consider what happens. For every property of the value of Rs. 1,00,000 the treasury must lose Rs. 1250. If you give full relief, then all the Rs. 1250 is gone; but, if you consider the other alternative, namely, lessened rates for the first three slabs, one lakh, one lakh and fifty thousand and from one lakh fifty thousand to two lakhs, say 3, 6 and 9 per cent. and the rest remain the same, then there is reasonable and justifiable relief. At the same time, the State treasury would not lose much.

Now, it has been suggested that this should be done in order to equate the advantages between the Mitakshara and the non-Mitakshara systems of law. Though this is a pretence for the purposes of argument, the real fight is for the property-wala, irrespective of the personal law under which one or the other is governed.

Shri R. K. Chaudhury: On a point of information, Sir. Is the hon. Member in favour of the present exemption limit of Rs. 75,000?

Shri Gadgil: You can make out what I say.

It is no secret that if the matters were left to me and some of my friends we would have lessened the exemption limit from Rs. 50,000 to Rs. 20,000 as in England and correspondingly reduce the other limit also.

[Shri Gadgil]

Taking into consideration the average income of a man in India you may limit the exemption limit in relation to the average income of the person. However, since the Select Committee, in which I was also present as a Member, decided that it should be Rs. 50,000 in one case and Rs. 75,000 in the other case, I do not want to depart from it in this direction. Whether there should be some departure in the other direction it is for the Government to consider. But speaking in relation to the economic structure of the society and the economic position of the country I would very much like to oppose all the amendments that seek to raise the exemption limit either from Rs. 50,000 to anything else or from Rs. 75,000 to Rs. 1,00,000 or Rs. 1,50,000 and so on and so forth. It seems that a new class is coming into existence and that class according to some of the speakers is poor even with property worth Rs. 1,50,000 or Rs. 2,00,000.

I have with me a representation submitted to the Government and also to some of the members who have become notorious for supporting this Estate Duty Bill including myself.....

Shri R. K. Chaudhury: Notorious is unparliamentary and should not be used for the Members.

Mr. Chairman: The hon. Member is applying that word to himself, including others.

Shri Gadgil: Why should you resent if I claim myself to be notorious?

Shri R. K. Chaudhury: If the hon. Member makes himself notorious we have no objection. He should not apply the word to all the Members.

Shri Gadgil: The Tax Payers' Association of India have pleaded that the limit should be raised to Rs. 5,00,000. Now just consider how things are moving. I earnestly submit for the consideration of this House that there is no such thing as *Mitakshara* or non-Mitakshara property. The idea is that the property belongs to the person and they are considering from what point of view if their case is further pressed they will get the benefit. The *Mitakshara* law remains as it is; the non-Mitakshara law remains as it is. It will be considered as a measure in the context of property. Are we justified in giving such a big concession for a person with Rs. 1,00,000 worth of property. Again in agricultural property rebate is given up to the limit of Rs. 2,00,000. A man with Rs. 1,00,000 worth of agricultural property will have to pay Rs. 1,250 Assuming that he gets one-fourth of the remission of that amount. He will have to pay ultimately Rs. 918. Taking that into consideration I submit that the proposal as embodied by the Select Committee is the best.

Shri U. M. Trivedi: Mr. Chairman, Sir, it appears there is some difficulty in appreciating the provisions of Clause 34. When Mr. T. N. Singh was speaking he gave an illustration of a *Mitakshara* father dying leaving Rs. 60,000 with three sons. He said he will be taxed. I think there he is wrong. That is not the purpose of this Clause. The arguments advanced by my friend Mr. Chatterjee that there would be a great disparity as against the *Dayabhaga* people are also wrong. The inequality, if any, will be working as against the *Mitakshara* joint family. If I were to give a concrete example—I have repeated that example and it would be worth while repeating it—of two gentlemen living together. They are neighbours. In both cases they have got four sons. Now in one case a young boy of 18, 19 or 20 years dies. The family has got a property worth Rs. 2 lakhs. If it has got three sons then immediately the Government of the day will pounce upon that family and have the property taxed. It will not happen in the case of a *Dayabhaga* family. Even if the son dies it will be just natural. He may just leave a widow but nothing further than that. No further calamity

will come to that family. If that happens to be a Mohammadan family nothing will happen. His widow on the contrary, as the law stands, will not be even entitled to any maintenance. I do not know why those who are always speaking for ladies and always trying to run down the Hindu religion of not providing for ladies and then thinking that the widows must be given this or that have never taken up the question. The poor daughter-in-law in a Mohammadan family gets nothing. The only alternative for that lady is to seek a fresh husband.

Now this is a digression but what I was going to suggest is this that you have got discrimination directly facing you and that relates only to the joint Hindu family. Therefore, I suggest that although I was one of those who had joined hands in suggesting this amendment of raising this limit from Rs. 75,000 to Rs. 1,00,000. I know fully well that this exemption should not be granted unless and until a similar exemption limit is granted in the case of Hindu joint family also.

In the case of those who are governed by *Dayabhaga* law they have got the chance of paying the tax once in 20 years where those who belong to the joint family may have to pay once in every three or four years. There is a greater spread for those who are in the *Dayabhaga* but there is greater question of taxation and frequent taxation in the case of those who belong to the joint family. So the element of disparity is certainly going to work against the joint family governed by the *Mitakshara* or the *Aliasanthana* but it is not going to work in the case of *Dayabhaga*. In this good measure we should not be led away by the party affiliations we are holding. Let every one of us come to this decision that we shall give a fair and square deal to the nation of our deliberations. I think I would not be exaggerating if I say that nobody will be agreeable to give this preference to *Dayabhaga*, to Mohammadans, to Christians and Parsis at the cost of Joint Hindu family. Therefore my suggestion is that if you want to give an exemption do give equitable exemptions to both. But there appears to be no need, as talks are going on, to give greater exemption to *Dayabhaga* or even to those, as Mr. C. D. Pande had pointed out, who have self acquired property. If a self-acquired property is taxed nobody grumbles. The only consideration is that you should not tax them over and over again.

Shri K. K. Basu: It applies to both.

Shri U. M. Trivedi: It is not in *Dayabhaga* The tax on the property will be levied only when the father dies because the whole of the property belongs to the father. In the case of son dying nothing will happen. On the contrary the sons become the full owners of the property on the father's death and are in no manner, interdependent in holding the property. The *mitakshara* picture will not apply. Immediately when succession opens out, they all get their share completely. Then, they may not be interdependent. There is no question of their being joint owners of the property. No such question arises with them. There is no question of survivorship with them.

The same is the case with the Anglo-Indians, Christians, and for that matter, every other community, except those unfortunate people who will be governed by the *Mitakshara* law. As I said on the previous occasion, and as my friend Mr. T. N. Singh was pleased to point out, I reiterate the same thing now, namely, that the main object of the taxation is, in the present ways of thinking, the Government are going towards greater social security. But by applying these principles of greater social security, we are forgetting that the greatest insurance for social security was the joint Hindu family. It was this system which did not obtain in any other part of the world. It is only here that we must pause, and also have research over the problem whether or not the social se-

[Shri U. M. Trivedi]

curity which we desire as the aim of the State could be obtained by following the laws which may or may not work to our advantage. But we have that system inherent in our country and liked by the people. If it was not liked, it would have gone long ago, but it is going on, for three, four, five generations, are living together in villages, and even when the people have forgotten the actual forefather who started the family. But still the name of the original family goes on. Those are the circumstances which we have to take into consideration and if we are not to drop the indigenous system of social security, we should ponder and consider over it. If we want to give relief, my personal submission is this: give an equitable relief to the same extent to the *Mitakshara* joint family also, and do not give merely to those who do not deserve it.

Shri Tek Chand (Ambala-Simla): Mr. Chairman, the tidal wave of idealism, divorced from reality, seems to be sweeping us off our feet, but I want idealism wedded to reality. Then alone we can arrive at some sane, sober conclusions. The amendments which I have moved and on which I wish to make my submission at the present moment are 279 and 280 in which I want that the limit of Rs. 50,000 should be doubled to a lakh, and the limit of Rs. 75,000 should be doubled to a lakh and a half. In doing so, I am doing nothing but towing the line of those hon. Members who sponsored the earlier Bill, the earlier Estate Duty Bill of 1946. I am not talking of what the intention of the Legislature or the conditions of this country a century ago were—a century ago or half a century ago. As early as 1946, the Select Committee on the Estate Duty Bill reported that the limit should be a hundred thousand rupees. In addition, they also provided absolute exemption of agricultural property. Seven years is not a great period. The value of the rupee has not appreciated. It has depreciated. But there is a substantial departure from what was considered to be a good law in 1946. My amendment, if it was desirable previously, has become imperative now, in view of the niggardly exemptions that have been allowed. So long as a dwelling house has not been exempted, so long as no consideration has been given in the case of death due to *vis major* or the criminal acts of others, I submit the desirability of accepting my amendment becomes imperative. I know of one State adjacent to my State, PEPSU, where according to Government reports last year there were as many as 366 murders,—one murder a day, and an extra murder reserved for the leap year. In all these cases, the breadwinner has been butchered, hacked to pieces, and yet the other person comes along with an axe claiming death duty. In view of these circumstances, I submit that it is absolutely necessary that the two limits should be raised as it was contemplated by the draftsmen of the Bill of 1946.

My other reasons are that terminal inexactitude has led to unnecessary controversy.

Shri C. D. Deshmukh: Terminological inexactitude.

Shri Tek Chand: Yes; I stand corrected. Terminological inexactitude has led to unnecessary controversy which has conduced to confusion. There is no controversy that is material, that is germane to the issue as between *Dayabhaga* versus *Mitakshara*. That has been unnecessarily introduced. The considerations are to be examined, whether non-coparcenary system appertains to *Mitakshara*, or to both the systems of inheritance, and also to Muslims, Christians and others. Both have their disadvantages and both deserve fullest protection. The disadvantage suffered by the coparcenary system is that after all the ten members of the coparcener, on the death of each one, the Finance Minister's axe

will be falling on the property—on the death of any one. Therefore, it will lead to fragmentation. In the case of a non-coparcenary family, the whole reference is to the use of the word "*Dayabhaga*", because it is not exclusive. In the case of the non-coparcenary family, a very heavy axe will fall, not every time the death takes place but on the death of the breadwinner, the father. Therefore, in one case it will be a heavy blow, if one particular individual member dies. In the other case, there will be recurrent blows with the death of every member of the coparcener. Therefore, in fairness to both systems, the limit deserves to be doubled. That relief to both is urgent and necessary. Those of my hon. friends who cited according to their convenience, instances of other countries, say, for instance, U.K. where the exemptable limit is £2,000, completely forgot the conditions prevailing in that country. It will be not out of point if a contrast were made and if the two pictures could be brought to our forefront. No doubt, the taxation limit, the lowest taxation exemption limit, is £2,000, but the rate of duty in England starts with one per cent. Our minimum rate starts with five per cent. Apart from that, look at the social security system in the U.K. There is insurance against unemployment; there are the old age pensions; there is relief for the infirm; free medical aid to the sick and free medical treatment. Besides, the sanitary conditions are so good that the average longevity is, if I mistake not, nearly twice and a half longer in that country than in ours. Even assuming that the longevity is double, the tax will be levied—applying the rule of average—once, whereas in this country it will be levied twice in the case of the same family. Not only that, not only from the point of view of age-limit, but also from the point of view of mortality in this country of ours, we have the highest mortality and the lowest age at death, with the result that more people would die and the axe of the Finance Ministry will be falling far more frequently than it does in that country.

If you go across the Atlantic there the exemptible limit is $1,00,000, or approximately Rs. 5 lakhs, in addition to the social amenities and the social security system in that country. There is one more point of contrast that is worth examining. In England, in the United States of America and in other parts of Europe virtually every adult member, be that member male or female, is an earning member, he is a wealth producing member, whereas in this country every adult member—I am confining myself to the case of adult males, forgetting adult females—has not got employment, even if he be employable. The social conditions are such that employment is not readily available. They are not being equipped by any national system whereby they could receive proper education. Therefore, if you tax at a lower rate, nevertheless, every individual adult member is a member who contributes to the production of wealth.

Then I submit that there will also be another difficulty. There will be a lot of administrative difficulties if you wish to levy duty at lower levels. You must have an army of valuers. The problem of finding out deaths in villages of people leaving property of that value and the resultant expenditure of the State even in making a survey of people who have died leaving property worth Rs. 50,000 will be tremendous. That aspect deserves to be examined, especially having regard to the territorial length and width of this great country. In thousands and thousands of villages death of people with property worth Rs. 50,000 or more may be taking place.

Then, Sir, apart from the tremendous administrative expenses, apart from the tremendous administrative difficulties, there will be in a greater proportion harassment, harassment, of all those people living in remote villages to whom the services of lawyers are not accessible. They will be ground down under the heels of people who are unscrupulous, who in order to

[Shri Tek Chand]

grease their own palm are either going to strangulate an individual or going to cheat the Government. Therefore, the loser in the case of over valuation will be the poor individual, and in the case of under-valuation the loser will be the Government. There will be a new class of people whose palms will be constantly greased so that they may be able to swindle the State and deprive it of its just dues, or harass the poor man. Therefore the trouble will be on both sides: the sufferers will be the State and the citizen and the gainers as a result of this duty at this low level will be that army of valuers whose denudations it will be impossible to check, much less prevent. This aspect of the matter is worthy of closer study and scrutiny by the State in its own interest as much as in the interest of the citizen.

Then, Sir, the joint family deserves to be protected, because it is the greatest sheet-anchor of Hindu society. It is the greatest insurance for those people who are unprovided for, for distant relations who have been orphaned, for those widowed children who cannot under our bad customs remarry. Another fact which deserves to be noticed—a painful fact, nonetheless a truthful fact say what you will whether you like it or whether you don't—is that in this country we are unfortunately most prolific. We multiply like rabbits, if I may say so. That being so, the duty is not going to stop it. The propensities and the proclivities of the people are there. They have to be taken into consideration. The result, therefore, will be that there will be in the ranks of the poor and the destitute tremendous multiplication. The only safeguard, that of the joint family insurance, even that is taken away. There are no arrangements by the State against sickness, no provision for education, no provision for health, no provision for employment. That being so, the only source from which a poor person can derive some sustenance, some support, some help in the hour of misery is the family which is going to be broken. Therefore, save the joint family; give them some relief.

My hon. and esteemed friend Shri Gadgil said: everybody seems to be defender of property. Well, in a debate on estate, the people without estate are not the persons concerned. People with estates happen to be the persons concerned and therefore the question of defending the property does not arise. All that you have to consider is to what extent you are going to tax people. Is it desirable to kill the goose that lays golden eggs, or you should merely content yourself by pulling it a bit, or pulling its wings, so that it may yield something and continue to yield something. Don't smother it, don't choke it out of existence.

Therefore, if exemption is sought for a person having property worth a lakh, that exemption is being souhgt not for the rich, but for the middle class, who are the bulwark, who are the strength and weakness of any society. Choke your middle class out of existence, you bleed the life out of the nation. Strengthen your middle class, you strengthen the nation. If there is anybody who is going to be adversely affected by the present limit of Rs. 50,000 it will be the middle class. They are the persons who produce the wealth of the country; they are the persons who conserve the morals of the country; they are the people who supply you earnings, who supply you with soldiers and who also supply you with an army of people who serve you in more ways than one. So far as the middle class is concerned, tax them to a reasonable limit, but at least to that extent they deserve protection. This is all that I wish to say on my amendments 279 and 280. I seek your guidance at this instant because I have also moved amendment 278, which is not germane to the matter of the rates being revised, but this is very relevant to clause 34. May I

make my submission on this amendment at this stage or later? If it is your pleasure that I should make it now, I am prepared to do so, Sir.

Mr. Chairman: The hon. Member may finish his arguments on the third amendment also

Shri Tek Chand: My third amendment 278 is as follows—

> "Provided that the amount of the estate duty payable shall be reduced to one-third where the property passes to the following relatives of the deceased: widow or widower, lineal ancestors, lineal decendents, adopted children and their issue and adoptive parents; and to two-thirds where the property passes to the following relatives of the deceased: illegitimate and step children; brothers and sisters and their decendants including those of the half blood and their spouses."

My idea and my objective in moving this amendment are not that the State should receive a penny less, but all that I want is that whatever you have to realise, realise it by all means and not an anna less, but the incidence of taxation should be so governed that you should tax those people who are the natural objects of one's bounty least and those who are the remoter objects of one's munificence most. It is a universal human feeling that a man wants to leave everything to his nearest, his widow and his children, more perhaps to the children unprovided for than to the grown-up children. A man wants to leave a little less for those who are related to him in the second or third degree and in most cases the man is least concerned when there are remoter bilaterals and he is not interested in their acquiring his wealth. If the burden in the form of rates is the least upon the immediate dependants and it increases with the remoter relations, the State will not get less, but the objects of immediate bounty will be subserved. One possible objection a juridical purist may, during the course of the debate, bring is this. "If we accept that theory, we will be introducing the principle of succession duty and will be saying good-bye to the principle of death duties." My submission is this. There is no sharp line of demarcation between the two principles. No doubt the principle of succession duty is more equitable whereas the principle of death duty is said to be more handy, and more easy of administration. Equity is going to be a fugitive before expediency. Leaving apart the questionable logic, all that I submit is that in some cases we have followed the principle which is said to be the succession principle. For instance, in the case of agricultural land you are subjecting it to a lower rate. If you can introduce that principle for purposes of agricultural land, why cannot the same principle be introduced for purposes of children as against remoter bilaterals. You will not be violating either in theory or principle or even practice, if I may say so. This practice, to a limited extent, is even recognised in England in the case of the Act in respect of persons killed in 1914 war. There was an exemption up to £5,000, to which again there are two gradations. One is the widow and lineal ascendants and descendants, and the other class is the collaterals, the brothers, sisters and others. England has, therefore, to a limited extent, has recognised that principle. In this country, the necessity is greater especially when a man leaves small children, minors who are unprovided and who have to be educated. The exclusive responsibility for bringing up those children is that of the family. Further education is again that of the family. In short, the responsibility in all cases is of the family. Therefore, in praying that this amendment of mine be accepted, I am not asking you to make any departure from any principles, and the only principle that should be borne in the forefront is the principle of justice, the principle of equity and the principle of fair play.

Shri V. B. Gandhi: Sir, my amendment No. 283 is as follows:—

In page 21, after line 7, *insert*:

"(1A) The rates of estate duty may be increased by a surcharge for purposes of the Union according to such scales as may be fixed by an Act of Parliament"

Now, Sir, if this amendment is accepted, Government will be inserting a provision in this Bill, in which the right of the Government will be categorically stated, to impose a surcharge on estate duty rates for purposes of the Union Government. From all the discussion that has taken place in this House, from all that is being said on the subject of estate duty outside the House in the country and from all kinds of impressions that one receives, there is a general feeling or some kind of impression that these estate duties are intended only for the use of the States and that somehow the belief continues that the Union Government have nothing to do with these duties for purposes of the Union Government. Now, Sir, it is not so. This impression is created by the wording of Section 269. It is also further strengthened by expressions like those which one finds in the Planning Commission's recommendations. Where a reference to the estate duty is made, the Planning Commission says that these duties may be levied in order that they can be of assistance to the States in completing their plans. Article 269 says—

"The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided....."

It is true that these Estate Duties are to be assigned to the States. But it is not true that the Union Government is excluded from having any share in the Estate Duties if it thinks it needs such share. Because, that is so provided under article 271. So far too much attention has been concentrated on article 269. But our consideration of Estate Duties will not be really complete unless we also consider article 271 and consider this subject in all its aspects and in all its potentialities. Article 271 reads:

"Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India."

So, Sir, if our consideration of this subject is to be full it is incumbent upon us to take into consideration the provision of article 271.

Now, Sir, the way article 269 provides for the assignment of the Estate Duty to States and for the collection of the Estate Duty by the Union Government is because what the framers of the Constitution at this stage were considering was the distribution of revenues between the States and the Union Government. That is principally what they had in mind, namely the distribution between the Union Government and the State Governments, of these revenues. It must be said to the credit of the framers of the Constitution that in providing.....

Mr. Chairman: Order, order. Before the hon. Member proceeds with his amendment—he has referred to article 271 which gives the power already to the Union Government—may I just enquire of him what is the real purport of his amendment? He also wants to give the power, that by an Act of Parliament, the surcharge may be levied. Article 271 is quite clear on the point. Then may I enquire of him why he wants his amendment?

Shri V. B. Gandhi: The purpose of my amendment is just to get expressly and more categorically provided a power which is already inherent in article 271.

Mr. Chairman: How will it be more categorical? When the Constitution itself provides for it, how will this amendment make it more categorical?

Shri V. B. Gandhi: My real object, Sir, is this that this right of the Union Government may not go by default, may not go by oversight or by neglect of consideration of an article which gives this right. And when the country is giving its attention to a very important legislation of this kind, and when this House is considering this legislation, both should have their attention drawn to article 271.

Mr. Chairman: So that the attention is being drawn to this article by this amendment!

Shri V. B. Gandhi: If that is the way you look at it, Sir, I will just finish in a few minutes.

Mr. Chairman: If he wants to speak on any other amendment he is quite welcome to speak.

Shri V. B. Gandhi: I would then speak on the general clause 34, Sir.

It must be said to the credit of the framers of the Constitution that by providing for the collection of Estate Duty by the Union Government and then subsequently its distribution among the State Governments, they have avoided the possibility of a lot of confusion. In other countries where such a provision does not exist, in some of the advanced countries, for instance in the United States of America, where their Constitution did not have such a provision, today the condition is almost one of unthinkable confusion. In the United States, out of forty-eight States which form the Union, there are today forty-seven States having forty-seven Acts levying inheritance tax, death tax, estate tax, individually. And over and above these forty-seven statutes of forty-seven States, there is the Federal estate tax. Then again the Federal estate tax has two separate scales of rates: one scale of rate under which it gives credit for State taxes, another scale of rates under which it collects revenues for the purpose of the Union. All such complicated and confused way of dealing with this legislation we have been spared by the farsightedness, fiscal faresightedness, of the provisions of article 269.

In a House which at present seems to be in a mood to do everything to lighten the prospective burden of the levy of Estate Duty, I may appear as wanting to add to that burden. But that certainly is not my intention. What I am wanting to draw attention to is that we should be conscious of the right that the Union Government does have under article 271 to add or to impose a surcharge when the finances of the Union Government should need such a surcharge. The experience of other countries has been...

Mr. Chairman: I am afraid I have to intervene again. The hon. Member is proceeding as if there was a general discussion on the Estate Duty Bill.

Shri V. B. Gandhi: I am speaking on clause 34, Sir.

Mr. Chairman: Whatever he has said has absolutely no relation to clause 34. I would request him either to speak on clause 34, or to speak on the third reading if he is allowed to do so.

Shri V. B. Gandhi: Very well, Sir since my amendment is out of the picture...

Mr. Chairman: It is unnecessary.

Shri V. B. Gandhi: I will just finish in a few minutes.

Finally one word, about a statement which is very generally made in this House and which is to the effect that we have no right to impose Estate Duties at scales which are proposed under this Bill and to compare our scales with those in the United Kingdom, because in the United Kingdom the Government provides a higher level of social security benefits. This kind of confused thinking requires to be very clearly understood at this stage. We must first begin by granting that we can only expect from the Government a level of service for

[Shri V. B. Gandhi]

which we are paying the Government in the form of taxes. You cannot pay less and expect more. After all, when we are talking of death duties in the United Kingdom and the level of social service benefits in the United Kingdom, let us remember that death duties had been levied in the UK for over 60 years before anything like social security benefits were made available to the people.

Shri Tulsidas: Sir, I have an amendment to the hon. Finance Minister's amendment No. 634. My amendment is No. 726. This amendment is to delete the following words: "and the principal value of the estate does not exceed rupees two lakhs".

The notes on clauses, particularly on this clause of the Estate Duty rates Bill, which has now been included as an amendment to clause 34, says:

> "In order to prevent fragmentation of small holdings of agricultural land, a reduction of 25 per cent. of the duty appropriate to agricultural land included in the estate where the principal value of the estate does not exceed Rs. 200,000, is considered necessary."

I do not understand how fragmentation of land will take place, if this limit is not put in. I can understand, if there is a lower limit, there will be more fragmentation. I do not understand the reason why a maximum of Rs. 2 lakhs has been put in. We have been following in most cases the UK Act. I know we have not been following that with regard to rates because we have, as the Finance Minister said, adopted the slab system and in England it is the step system. Still, with regard to agricultural property, in England, as you know, Sir,—I do not know whether the House knows that —the rebate is to the extent of 45 per cent. Several provisions as to the rate of estate duty payable on agricultural property were introduced by the Finance Act of 1925. Only the purely agricultural value of property was exempted from the increased rate of duty imposed after 1919. In the 1949 Finance Act, completely a new scale of rates in respect of the agricultural value applicable to deaths on or after 30th July 1949, which rate being 55 per cent. of the corresponding rates in the general scale, was provided. Even though they have the highest rates, there is a rebate of 45 per cent. and the rate charged is 55 per cent., whatever the rate is. Here, a reduction of 25 per cent. is allowed for agricultural land and that also if the agricultural land is included in the estate and the principal value of the estate does not exceed 2 lakhs. I fail to understand the justification of this limit. Because, after all, whether the agricultural land belongs to an estate which may be of the value of 5 lakhs or a crore or 50,000, how does that make any difference? I want that, whether this agricultural land belongs to an estate of lesser value or higher value, this reduction should be given. It should be given to every one uniformly.

Besides, here, we always talk about improving the lot of agriculturists and so on. We also say that there should not be fragmentation of holdings. It naturally means that we do not want lands to be divided into small estates. But, if we do not give this rebate and if we keep this limit, my apprehension is that there will be more fragmentation. I am bringing this to the notice of the House and I hope the Finance Minister will consider this point of view.

In have not referred to other points at all because much has been said about them. Though I had my amendments on other points also, I have not moved them. I do not wish to say anything more. My only submission is on the question of agricultural land. I hope the Finance Minister will look into the question and accept my amendment.

Shri Altekar (North Satara): Mr. Chairman, there has been a very sharp difference of opinion with respect to the exemptions that are to be given in connection with the levy of estate

duty. One group wants to have the limit brought down to some extent. There is a very large group which says that the exemptions should be raised in the case of *Mitakshara* from Rs. 50,000 to 75,000 or 1 lakh and in the case of *Dayabhaga* school from 75,000 to 1½ lakhs or 2 lakhs. I beg to submit that before we consider this questibn in the abstract, we should rather look at the proportion between the income and the estate that is to be charged. If we look to the average *per capita* income in India, it is Rs. 250 and an estate to be charged for the purpose of this duty in the case of *Mitakshara* is Rs. 50,000 and in the case of *Dayabhaga* Rs. 75,000, as proposed in this Bill. If we just look at the proportion, it works out to 200 times the annual *per capita* income in the case of *Mitakshara* and 300 times the *per capita* income in the case of *Dayabhaga*. Let us, at the same time, look at the proportion that subsists between the *per capita* income and the estate that is charged in England and the USA. In England, the average *per capita* income is £207 and the estate that is charged is worth £2000. That is less than even 10 times the income of an average individual. In the USA, the average *per capita* income is 1949·6 dollars per year. The estate charged with duty is of the value of 60,000 dollars. That means, the proportion is 30 times of the annual income of the individual. As I have already pointed out, the proportion is 200 times in the case of *Mitakshara* and 300 times in the case of *Dayabhaga* and other systems of inheritance. I beg to point out that we have, at the time of introducing this estate duty for the first time in India, given a very large exemption. I submit that when there is such a proportion between the income and the estate to be charged, there is no room for grievance that the limit laid down by this Bill is rather low. I submit that we should not in any way whittle down the already moderate taxation that is proposed by this Bill and lay down a higher degree of exemption for the purposes of estate duty. If in the case of *Dayabhaga* and other systems of inheritance some sort of concession is to be given, it should be given rather by lowering the rate of taxation on estates ranging from Rs. 75,000 to 1 lakh, by 3 per cent. or so, than by enhancing the limit of Rs. 75,000 to one lakh or so. I would favour a lower rate of taxation than enhancement of the exemption to one lakh or more. While we are levying this tax, we shall have to take into consideration the proportionate wealth of an ordinary individual and the person who has to pay the tax. An hon. Member just said that there will be some sort of harassment of the poor. I would like to ask who is this poor? The person who has to pay this tax has an income of more than twenty times the average income of an ordinary individual. A person who has got a fortune of Rs. 50,000 in this country cannot be called a poor person as compared to others, to the crores of persons who have got absolutely no property or very little property. From that point of view I would like to submit that persons who have got property worth Rs. 50,000 and more can in no way be called poor persons and we should not show them any greater concession than the one already laid down here. The harassment that is being so much stressed upon is not the type of harassment which we notice at the lower levels. Here there are persons who have got means to complain, who can lodge complaints and get relief. In such cases some sort of instructions should be given to the Controllers and others while they are making enquiries, rather than the exemption limit be raised. The exemption limit that is there should be maintained, and for purposes of *Dayabhaga* let it be provided that for the slab of Rs. 75,000 to Rs. 1 lakh there shall be some reduction in the rate of the estate duty. As there should be a sufficiently large number of persons who would be taxed under the Estate duty as compared to the rest of the population in India, the limit should be kept as it is there. I would like to point out that the number of persons who will be liable for taxation under this statute will be

[Shri Altekar]

less than those paying income-tax, because I know many persons who are paying income-tax not having even a fortune of Rs. 25,000. Usually people depending on salaries who pay income-tax find themselves short of funds for their monthly expenses at the end of the month, and they have not got any property worth the name in their hands. So, for the purposes of the estate-duty, the number paying this tax would be less than those who are paying income-tax. There may be others who are having big landed income, but the number of these who are paying income-tax but not liable to pay the estate-duty would not be small.

[MR. DEPUTY-SPEAKER *in the Chair.*]

So, I submit that we should maintain the level of exemption at the stage where it is now, and that there should be no further concession given. Those who have got estates should not look upon the estate duty as a duty on the estate, but rather a duty which they owe to the State, because by paying the estate duty they would themselves be discharging their liability, and they would be preserving their own estate. This estate duty is not one which disintegrates the estates, but rather preserves the estates, and from that point of view, the Bill as it stands, so far as the exemption limit is concerned, should be kept intact as it is.

Shri C. D. Deshmukh: Sir, I have already made a series of observations on this very vexed issue of whether, in fact, there is discrimination as between the two kinds of families, or, if there is, what measure we have available for dealing with it. And every time one takes a fresh example, one comes to a different kind of conclusion. Therefore, one must consider this matter by and large and come to one's individual judgment as to whether generally the scheme that one proposes is equitable or not. I have come to the conclusion, Sir, that as things stand, if one had statistics of the kinds of Hindu undivided families affected and their pattern, it is possible that they have a certain advantage in the present levels, and I do not accept the argument of the hon. Member, Shri Trivedi, who referred to the frequency of deaths in a Hindu undivided family. because I say that if the family is a small one, then the frequency will be small, if the family is a large one, then the frequency will be large. Therefore, if you have a frequency of this order, a death every three years, the family probably contains ten coparceners, and therefore, what you are concerned with is an estate of Rs. 5 lakhs, and I do not see why one should waste tears and sighs over what happens to a family of that size as compared with others. One is really concerned with the ordinary size of an estate which maybe Rs. 1 lakh and so on, and in those estates I feel sure that the Hindu undivided family has a certain amount of advantage.

Now, Sir, there may be cases where this advantage is not so pronounced. where the coparcenary consists not of father and sons, but only of brothers and so on. All kinds of cases can be considered. One should also imagine what sort of property is held, that is to say, whether it is largely agricultural land, and that will differ from State to State. One would have also to imagine what sort of separate property might be held at the same time. and therefore, I think, this is a question that defies any kind of precise arithmetical treatment.

Now, I have given very careful thought to the appeals made by various hon. Members, and although I am charged with having a closed mind and an open mouth on every subject here...

Shri N. C. Chatterjee: Not by all.

Shri C. D. Deshmukh:...I do think that in this particular issue there is a case for raising the limit so far as the non-Hindu undivided families are concerned from Rs. 75,000 to Rs. 1 lakh. Therefore I accept the amendments 282 or.....

Shri T. N. Singh: This amendment has the effect of modifying the Schedule. Can we take it up at this stage?

Shri C. D. Deshmukh: That is a point which the Deputy-Speaker would have to decide. So far as we are concerned here, we are not on the Schedule at all, although what we are doing now has a bearing on what you will have to say in regard to the matter in dispute. But, here you have allowed us to move the amendments and discussion has taken place and you have come to the stage of putting the matter to vote.

Mr. Deputy-Speaker: May I know whether there was this Rs. 1 lakh as the exemption limit in the original Bill?

Shri C. D. Deshmukh: In the original Bill there was Rs. 1 lakh; then it was reduced to...No, Sir. There was no limit in the 1946 Bill with which we are not concerned for the purposes of the Constitution. There was no limit. As you will remember appeals were made to me that I should indicate some kind of exemption limit in the Bill itself, and that is why the Select Committee applied their mind to these particular limits.

Mr. Deputy-Speaker: When it was sent to the Select Committee, there was no limit?

Shri C. D. Deshmukh: No, Sir. The President merely said that the exemption limit...

Shri A. M. Thomas: In fact, when you spoke on the Bill, you pleaded for an exemption limit of Rs. 1 lakh, and also some other Members including Prof. Agarwal pleaded that at least a limit of Rs. 1 lakh should be fixed.

Mr. Deputy-Speaker: I am not on that point. I only want to know whether this provision is now, *i.e.*, Rs. 1 lakh or Rs. 50,000.

Shri C. D. Deshmukh: This provision was not contained in the original Bill, Sir, as introduced in the House,...

Mr. Deputy-Speaker: That is what I wanted to know.

Shri C. D. Deshmukh:...and as recommended by the President, except that the President had in view some exemption limit.

Mr. Deputy-Speaker: Where does that appear?

Shri C. D. Deshmukh: That was in the original Bill. If you refer to the original Bill...

Shri C. R. Narasimhan: All the marked portions.

Shri C. D. Deshmukh: It is 32.

Clause 32 of the original Bill read:

> "*Exemptions, reductions and other modifications*:—The Central Government may, by notification in the Official Gazette, make any exemption, reduction in rate or other modification in respect of estate duty in favour of any class of property or the whole or any part of the property of any class of persons."

Clause 34 of it referred to rates of duty, and read:

> "The rates of estate duty shall be according to such scale as may be fixed by an Act of Parliament."

Mr. Deputy-Speaker: That is the general provision.

Shri C. D. Deshmukh: It was urged there that I should indicate the exemption limits which I had in mind, and it was therefore that we reverted to the provision that was in the old Bill, although in a different form. We recognised the difference between Hindu undivided families and *Dayabhaga* families, and had two exemption limits.

I have come to the conclusion that there is a case for accepting this suggestion and raising the limit. I therefore accept the amendment No. 587, which has been moved by Shri Rohini Kumar Chaudhury.

Shri Barman: Amendment No. 281 was moved first.

Shri C. D. Deshmukh: Amendment No. 281 was moved first, but Amendment No. 587 was argued first. I accept both of them.

I have nothing very much to say in regard to the other points. I have already referred to *bhoodan yagna* and I have given my reasons that the matter is not really on a kind of legislative footing which would justify our incorporating special concessions in regard to these matters.

Then there was the appeal made to me before in regard to further exemption of agricultural properties. There are other amendments which object to any such exemption being given. I have given my reason as to why I thought it was necessary to make some kind of concession to agricultural estates below a certain limit of value, viz. Rs. 2 lakhs.

Therefore, apart from these two amendments Nos. 281 and 587, I oppose the rest, and support my own amendments.

Shri T. N. Singh: Including those amendments which raise the exemption limit, you oppose all the rest?

Shri C. D. Deshmukh: Will the hon. member have a look at amendments Nos. 281 and 587?

Shri T. N. Singh: On a point of order, Sir. You have already ruled that Rule 110 applies, and as such all amendments having the effect of altering the Schedule or modifying the Schedule cannot be taken up at this stage. May I know whether amendments to this clause, which have the effect of modifying or altering the Schedule will be taken up now and be voted upon? (*Interruptions*).

Mr. Deputy-Speaker: So far as the point of order that is raised is concerned, I am afraid I will have to make a difference between amendments relating to the schedule, and amendments relating to clause 34, for this reason that in the original Bill as presented before us, with the President's recommendation embodied on the last page, there was a general provision in clause 32, which read:

> "The Central Government may, by notification in the Official Gazette, make any exemption, reduction in rate, or other modification in respect of estate duty in favour of any class of property or the whole or any part of the property of any class of persons."

It is under this clause, that the Select Committee had given a series of exemptions, which we have passed, yesterday, such as Rs. 2500 limit for household goods, heir-looms, utensils and so on. This is only an expanded form of that. Clause 32 (2) gives a general power, and it still continues in some form in this clause. In addition, sub-clause (1) of that clause enumerates the various clauses and categories. I find that clause 34 also partakes of the nature of an exemption which might have been given under clause 32, but has been put in the appropriate place under clause 34. In view of the general recommendation that has been made by the President regarding the power to grant exemptions from time to time, which was given away to Government, I do not think that any particular recommendation is necessary again in this case. All that is being done now is just to enable Parliament immediately to make some directions regarding particular classes of property, and to leave the rest untouched, as recommended by the President. Under these circumstances, I do not think that any amendment increasing the limit or—it is not a question of increasing or decreasing the limit—exactly specifying the limit is barred; it is allowed by way of the general recommendation of the President to clause 32, and all the objections that have been raised in regard to this matter do not stand.

1 P.M.

Shri T. N. Singh: In the Schedule, it has been shown that from Rs. O to Rs. 50,000, the rate of duty is nil. Now,

Rs. 75,000 will be put in place of Rs. 50,000, and the Schedule will have to be amended. One of the amendments given notice of by the hon. Finance Minister incorporates the Schedule of rates of duty, as the Second Schedule in the Bill. In that the various grades of estates are given, and it has been provided therein that from Rs. 0 to Rs. 50,000 the rate of duty is nil. Now that will have to be amended. That amounts to an amendment of the Schedule itself. Therefore I am saying that under Rule 110, this question can legitimately be taken up only with the Schedule, and not here. That is my point.

Mr. Deputy-Speaker: The hon. Member's argument seems to be very reasonable. An amendment to the Schedule is only consequential to what we do here. This relates to exemptions, provided for under clause 32. So far as rates of duty are concerned, they come under the Schedule, as part and parcel of it. So far as that portion of the Schedule which relates to rates of duty is concerned, the objection that we heard this morning, and the point of order that was raised stand, not that I am accepting the objections, but that we will hear more from the hon. Law Minister before coming to a conclusion.

Shri T. N. Singh: Not being a lawyer myself, I could not place my case properly. Probably the hon. Law Minister will put it properly.

Mr. Deputy-Speaker: So far as that portion is concerned, it is a different matter. This objection does not relate to that. What we are doing now is only consequential to what we have done under clause 32, which we have passed already.

Pandit Thakur Das Bhargava: In the proviso to clause 34, you will be pleased to see that the amounts are given as Rs. 50,000 and Rs. 75,000. That is being changed now, and so this clause is being changed.

Mr. Deputy-Speaker: Therefore the objection holds good, only so far as the other matter is concerned, and it will be heard.

Shri H. N. Mukerjee: May I submit that there is one point which I am not very clear about? It seems from what happened earlier this morning that any alteration in the Schedule is now dependent upon whatever ruling you are going to give later on, but this necessitates an alteration in the Schedule. I do not quarrel with the hon. Finance Minister accepting the amendments which he mentioned a little while ago, but if this necessitates a definite alteration in the Schedule which is presented before us, and if any alteration in the Schedule is precluded by whatever ruling you are going to give on whatever points of order were raised earlier, I do not understand how we can proceed to the extent of saying that we have adopted this clause, and brought about a change which necessitates an alteration in the Schedule.

Mr. Deputy-Speaker: There is a question of law, and another of expediency.

Shri T. T. Krishnamachari: The objection is really in regard to the word 'varies' in Article 274. The word 'varies' had been interpreted in a manner that it also circumscribes the legitimate authority of the executive given in all fiscal provisions that it can vary it to the advantage of the party, and not to the advantage of the State. I think the question may better be solved now rather than be left to the stage when we discuss Schedule. The word used in Article 274 is 'varies'. 'Varies' might mean varying upwards or downwards. It is an acknowledged principle in all matters relating to the power of taxation that an executive is given the right to vary taxes downward, and it cannot be said that this House, even allowing that the interpretation of Article 274 is made very rigidly, is merely a registering authority and cannot do what the executive is empowered to do.

Any legislation brought before this House which will impinge on article 274 can be turned down by this House.

[Shri T. T. Krishnamachari]

The House can reject the Government's Bill, and therefore, it does not mean that the House can be registering authority. It is sovereign in that it can reject the Bill. The only thing is that the provision in regard to Presidential sanction is a limitation on the initiative by any private member. After all, Presidential sanction means that the Government has got to initiate any motion for increasing the rate of duty as mentioned in the Bill.

Mr. Deputy-Speaker: Even Government require the President's sanction.

Shri T. T. Krishnamachari: Sir, the President's sanction is merely a euphemism for leaving the initiative in the hands of the executive. That is the practice obtainable all over the world and that is what we have copied in our Constitution. Sir, I feel that when the House has the right to reject *in toto* a provision for taxation, it has also the right to lower the rate of duty and the word "varies" used in article 274 cannot be rigidly interpreted as not meaning varying downwards. It cannot be varied upwards to the disadvantage of the assessee; it certainly can be varied downwards. And having in view also the fact that there is a residuary power in the hands of the executive to vary the duty to the advantage of the assessee at any time, all that the provisions of articles 117 and 274 are to circumscribe the limit of upward revision, not the downward revision at all. It is both commonsense and the practice obtainable in other countries also. It says that the word 'vary' is intended only to mean that it should not be varied upwards and the mere fact that the interests of the States are involved in this question is completely out of order for the reason that this House can reject the entire Bill. The States are interested in the measure because it will give them a revenue. But the House will see that the States cannot get that revenue because unless the House passes it, it won't become law. I think the whole thing should be looked at from one point of view, namely, the supremacy of the House in regard to giving its *imprimatur* to a Bill for taxing also entitles the House to lower the rate of the taxation . I think the two points had better be dealt with at one time instead of giving a qualified approval to the present clause, as it were, and leaving the point to be argued out once again when the Schedule comes up for discussion.

Shri H. N. Mukerjee: We are interested...

Mr. Deputy-Speaker: Do I understand the hon. Minister to say that this matter also will be put off for the time being?

Shri T. T. Krishnamachari: I do feel, Sir, as my hon. friend, the Deputy Leader of the Communist Party, pointed out—and I think very legitimately—that the one thing cannot be separated from the other. The two things are intertwined. It is much better for the Chair to give a ruling on the whole question instead of separating it as applying only to the schedule. I do think it should apply to the whole question.

Shri H. N. Mukerjee: We are interested in an increase in many of the rates mentioned in the Schedule. So whatever ruling you give is going to help or hinder our interests and that is the point of view, Sir, from which I look at this matter. If this House has a right here and now to bring about certain changes in the body of the Bill which presupposes—which necessitates—a change in the Schedule, then I take it, Sir, that this House ought to be in a position *post facto* to change the Schedule even to the extent of increasing the rates which are mentioned in the proposals placed before the House. That is the point of view from which I approach this matter.

Shri T. N. Singh: Sir, I think the word 'vary' has been used not only keeping in view the rate of duty or tax, but has been used because you may vary the terms and content of

the duty itself, namely, by discriminating one class against another. Now, when varying amounts to a discrimination between one set of people and another, I think—whether it is upward or downward—it is perfectly legitimate that it should not be so easily done, and I think the Presidential approval in such cases, where we are going to discriminate between one set of people and another, becomes necessary. I quite agree that when the rate of duty is going to favour all, namely, a general reduction of the rate of duty, there can be no objection to the House doing it, because it is within the sanction and approval already given by the President. But when we are discriminating between one class of people and another, this Rs. 75,000 and Rs. 1,00,000, then certainly it is varying the terms of the approval given by the President to a particular kind of duty.

Shri K. P. Gounder: The Commerce Minister says that, the House has got the power to reject the Bill, it has also got the power to reduce. If this House rejects the Bill the State legislatures have got to legislate. If you reduce the rates, the State Legislature is deprived of it. That is the distinction.

Mr. Deputy-Speaker: New points are raised and for a text-book writer it would all be interesting. It is not that the House is going to hear the hon. Law Minister at a distant date. I have requested him to speak on the matter before the House at 4 o'clock, that is, this particular amendment. Why should I anticipate things? If he were to address the House on a distant date I would have come to an independent conclusion. Anyhow, let us hear him and let the House have his guidance also before we take any decision.

Let me dispose of other amendments, other than reducing or increasing this Rs. 75,000, that is amendments varying the limit. Are there any other amendments moved by the hon. Finance Minister?

Shri C. D. Deshmukh: 633 and 634.

412 P.S.D.

Mr. Deputy-Speaker: The question is:

In page 20, *for* lines 48 to 50 *substitute*:

"34. *Rates of estate duty on property including agricultural land.*— (1) The rates of estates duty....."

Shri C. D. Deshmukh: Sir amendment 633 has to be put. It merely refers to the schedule.

Mr. Deputy-Speaker: That is what I am placing before the House.

Shri C. D. Deshmukh: 633 states merely what the rates shall be.

Mr. Deputy-Speaker: I am talking of the title to this particular clause, "34. Rates of estate duty on property including agricultural land", in the place of "Rates of duty to be according to Central Act". The Central Act is incorporated in this Act and therefore it requires a change.

The question is:

In page 20, *for* lines 48 to 50 *substitute*:

"34. *Rates of .estate .duty .on property including agricultural land.*—(1) The rates of estate duty shall be as mentioned in the Second Schedule."

The motion was adopted.

Mr. Deputy-Speaker: Amendment No. 634.

Shri Chandak: Sir, there are two amendments to this amendment, amendments Nos. 702 and 704.

Mr. Deputy-Speaker: I will put all the amendments to amendment No. 634 before the House. Now, let me take the amendments to amendment No. 634, namely amendments 702, 703 and 704.

The question is:

"In the amendment proposed by Shri C. D. Deshmukh in part (a) *for* 'one fourth' *substitute* 'half' ".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In the amendment proposed by Shri C. D. Deshmukh, in part (b), *for* "one-fourth" *substitute* "three-fourth".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In the amendment proposed by Shri C. D. Deshmukh in part (b) *for* "one-fourth" *substitute* "half".

The motion was negatived.

Mr. Deputy-Speaker: What is your amendment, Mr. Tulsidas?

Shri Tulsidas: No. 726, Sir.

Mr. Deputy-Speaker: The question is:

In the amendment proposed by Shri C. D. Deshmukh, *omit* "and the principal value of the estate does not exceed rupees two lakhs".

The motion was negatived.

Shrimati Jayashri: I do not press my amendment No. 649.

Shri B. P. Sinha: I do not press my amendment No. 701.

Mr. Deputy-Speaker: The question is:

In page 21, *after* line 19, *insert*:

"(3) Notwithstanding anything contained in sub-section (1) and the Second Schedule, where any property passing on the death of any person consists wholly or in part of agricultural land and the principle value of the estate does not exceed rupees two lakhs, there shall be allowed by way of rebate—

(a) in the case of an estate which consists wholly of agricultural land, a sum representing one-fourth of the estate duty payable; and

(b) in the case of an estate which consists in part only of agricultural land, a sum representing one-fourth of the estate duty payable on that part of the estate which consists of agricultural land, the duty on such part being a sum which bears to the total amount of estate duty the same proportion as the value of the agricultural land bears to the value of the estate."

The motion was adopted.

The House then adjourned till Four the Clock.

The House reassembled at Four of of the Clock.

[MR. DEPUTY-SPEAKER *in the Chair.*]

The Minister of Law and Minority Affairs (Shri Biswas): Sir, I find myself in a position with which every lawyer must be familiar: the more you look into a point, the more confused you become. They say, "Law is an ass", but that description might more fittingly apply to those who practise the law.

Shri C. D. Pande: What about law-markets?

Shri Biswas: I will not say anything about the law-makers, because they are the masters here.

Shri Patuskar: At least here they should be called masters.

Shri Biswas: If I understood correctly the question which had been raised in the morning, it was this whether some of the amendments which have been proposed by non-official Members in connection with the new amendment proposed by the Finance Minister or to the Bill itself,—whether they are in order in so far as they have not been recommended by the President. Two Articles were referred to to show that these amendments require the prior recommendation of the President—*viz.*, Articles 117(1) and 274(1).

Turning, first, to Article 117(1), what is it that we find there? It says:—

> "A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President....."

I am only reading that portion which is relevant. There is an important proviso to this Article, which says:—

> "Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax."

Now, turning to the substantive part of this Article, you will see that it relates back to Article 110 and refers to matters specified in sub-clauses (a) to (f) of clause (1) of that Article. If you look at sub-clause (b) of clause (1) of that Article there you find these words:—

> "the imposition, abolition, remission, alteration or regulation of any tax;".

The word "tax" is used, and it is used with reference to "imposition, abolition, remission, alteration or regulation." The connotation of these words shows that the word "tax" there must refer either to an existing tax, or a tax which it is proposed for the first time to impose. "Imposition" ordinarily means imposition of a new tax, but "alteration" refers to alteration of an existing tax. Therefore, the point I am making is this: the word "tax" as used in this Article refers either to a new tax or to an existing tax. I submit that the same meaning should be attached to the word "tax" when it occurs in the proviso to Article 117. You do not find the word "tax" in the substantive part of that Article, but in the proviso, it is said:—

> "Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any *tax*."

Here, I submit that the word "tax" should be given the same meaning as in Article 110. In other words, the amendment which is referred to in the proviso means an amendment for the reduction either of an existing tax or of a new tax which is proposed for the first time in the Bill, or for the abolition of any such tax.

Having made my ground clear here, I now turn to the other Article 274. You do not have any corresponding proviso in that Article as you have in Article 117. Does that make any difference? Before I proceed further, I may incidentally draw your attention to a difference in the language used in Article 117 and in Article 274. I do not know if there is any significance in it. Article 117, when it refers to the Bill or to an amendment of the Bill, says that the Bill *"makes provision for"* such and such a matter or the amendment *"makes provision for"* such and such a matter. The proviso also uses th samee expression *"making provision for"* the reduction or abolition of any tax. Whereas if you turn to Article 274, you find that the words are somewhat different. Referring to the Bill or the amendment mentioned therein, it is stated:—

> "The Bill or amendment is one which *imposes or varies"* and so on. There are four parts in this Article. The first one deals with imposition or variation of any tax or duty in which States are interested. The second part is, "varies the meaning of the expression 'agricultural income' as defined for the purposes of the enactments relating to Indian income-tax". The third part is, "which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States". The last part is, "which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this

[Shri Biswas]

Chapter." You miss here the expression which you find in the other Article, "provides" or "makes provision for" such and such a matter. It says that the Bill or amendment is one which "imposes or varies" any tax or duty.

Now, the question is whether the tax or duty here is an existing tax or duty, or a new tax or duty proposed in the Bill. The first point to note is that an amendment cannot impose or vary a tax or duty, unless there is a provision for it in the Bill and the Bill is passed and becomes a part of the Law.

Shri N. C. Chatterjee: Unless it becomes an Act.

Shri Biswas: You find two words. "Bill" or "amendment", and they go together. Whatever words are used in relation to a Bill or an amendment in this article must therefore be equally applicable to both.

Then, taking the first part with which we are concerned—we are not concerned with the other parts—"which imposes or varies any tax or duty in which States are interested,"—there can be no doubt that the States are vitally interested in the estate duty as the proceeds go to the States—the question is: what is the meaning of the words "imposed or varies" applied to a tax (or duty)? Does the word "tax" refer to an existing tax or does it refer to a tax which is proposed *for the first time* in the Bill? Now the word "imposes" indicates an imposition, that is, imposition of a new tax. Read in the context of the word "imposes," the tax cannot but refer to a new tax. You do not impose an existing tax. If that is so, is there any reason why we should not give the word "tax" (or duty) the same meaning read in the context of the word "varies"? You see thus, "varies" must also then refer to a new tax, that is a tax proposed for the first time in the Bill. (*Interruption*). Let me not be interrupted. I claim infallibility. I say what may be right or wrong. I do not strikes me.

Mr. Deputy-Speaker: The hon. Minister is entitled to go on uninterruptedly. I have allowed a number of hon. Members to speak simultaneously on the Bill. Now I will not alow any interruptions.

Shri Biswas: I was explaining that the word "imposes" refers to the imposition of a new tax for the first time. It may also include the enhancement of an existing tax. To the extent of the enhancement, it may be a new imposition. Now, if you turn to the word "varies", I submit that in the context of this word also.—

Mr. Deputy-Speaker: The hon. Minister will kindly look at me and speak.

Shri Biswas: Well, Sir, in this context tax also must refer either to an existing tax or to a new tax. You may vary an existing tax or you may vary a tax which is proposed for the first time in the Bill. Therefore, I say, Sir, the word "tax" or "duty" in Article 274(1) must be taken in a general sense, not limited either to an existing tax or to a tax which is proposed for the first time. That is my submission with reference to the interpretation of these two Articles 117(1) and 274(1).

I do not know what are the amendments which are in view and in respect of which the point of order has been raised,—whether they are amendments which seek to vary the rate suggested in the new amendment proposed by the Finance Minister or they seek to impose a new levy by way of amendment to the original Bill. I do not know.

Mr. Deputy-Speaker: The hon. Minister will tell us about both the amendments. The hon. Finance Minister has given a schedule of rates. Another hon. Member has given a diffe-

rent schedule. I may take one amendment by way of illustration. There is an amendment by Mr. R. D. Misra that on the first Rs. 50,000 the rate will be 'nil', that on the next Rs. 50,000, it will be two per cent. We have got another amendment where on the first Rs. 75,000, the rate of duty is nil, and on the next Rs. 25,000 it will be two per cent. So, there are two sets of amendments, one suggesting or varying the rate of duty prescribed for properties mentioned in the schedule and tabled by the hon. Finance Minister, the other suggesting the exemption limit of Rs. 50,000 in the first case and Rs. 75,000 in the other case. The hon. Finance Minister has proposed Rs. 50,000, and he himself has raised Rs. 75,000 to a lakh by way of exemption.

Shri C. D. Deshmukh: That is by virtue of the amendment to sub-clause (2) of clause 34 which we discussed this morning.

Mr. Deputy-Speaker: The hon. Minister forgets that Mr. H. N. Mukerjee said that it is part of the schedule though to that extent it may be consequential. If the House takes a decision on clause 34, so far as that portion of clause 34 is concerned, that portion is barred on account of the previous decision by Parliament, but till then it is part of the schedule also whatever might be the limit. That is why I have deferred consideration until I heard the Law Minister. After I come to a decision I will find out what exactly has to be done. I may, at this stage, put a question to the Law Minister. For a part of the schedule, there are two kinds of amendments—one relating to the duty and another relating to the exemption limit.

Shri Biswas: I was present when Mr. Mukerjee raised that question and I know that you have reserved your decision regarding the amendment to clause 34 till this point is settled. I shall deal with this also. Sir, before I do so, may I just stop for a minute to explain the position regarding the amendments which have already been accepted by the House. Whether they require the President's recommendation or not, they have been accepted, and I do not think there is any necessity to reopen that again.

Mr. Deputy-Speaker: It is unnecessary to go into that matter now. If they require the recommendation of the President, it is open to the President to accept them or not accept or remit them for reconsideration. It is not now a live issue.

Shri Biswas: Then, Sir, I draw attention to the various amendments which have been proposed regarding the rates. I find that from page 19 onwards in the last consolidated list (List No. 4) a number of non-official amendments have been tabled altering the rates suggested by the hon. Finance Minister. The changes which were effected in consequence of the amendment which was moved regarding clause 34 will affect the first two entries in part II of Shri Deshmukh's amendment.

Mr. Deputy-Speaker: I am sorry I forgot to mention one other point. There is a third set of cases where the rate of duty is sought to be enhanced, as for instance, in the hon. Finance Minister's amendment on the balance of the principal value of the estate, it is 40 per cent. Here, Mr. R. D. Misra's amendment is, on the balance of the principal value of the estate, it should be 80 per cent. So, in some cases, there is a reduction. In some other cases, there is an enhancement. In a third set of cases, there is the exemption limit.

Shri T. T. Krishnamachari: There, the provisions of article 111(1) will apply.

Mr. Deputy-Speaker: Let us hear the hon. Minister of Law.

Shri Biswas: I say, Sir, not having examined the various amendments in detail, that the principles which I have ventured to enunciate should apply to the amendments and their contents. However, as I have pointed out, I notice that generally, some of

[Shri Biswas]

the amendments retain the maximum limit of the rate of duty at 40 per cent. as proposed on behalf of the Government. Others have out-Heroded Herod, and raised the limit above 40 per cent. to 50 or 80 per cent. I suppose it is agreed, and I understood it is the sense of the House, so far as I could gather from the discussion, that it is not possible by way of amendment to increase the rate of duty suggested by the Government unless the President gives his recommendation. Without the President's recommendation, you cannot in facts introduce any amendment which will have the effect of increasing the burden on the tax-payer. That principle is well recognized, and it was referred to by my hon. friend, Shri T. T. Krishnamachari. Both on the language of the Constitution and on general principles, I submit, therefor, those amendments cannot be moved unless they were recommended by the President.

So far as reduction of rates is concerned, reduction may be effected either by increasing the exemption limit or by simply making the reduction without any reference to the exemption limit. The changes made in clause 34 affected the exemption limit, and as you say, Sir the exemption limit was raised from Rs. 75,000 to Rs. 1 lakh.

Mr. Deputy-Speaker: Nothing yet.

Shri Biswas: I do not say it was put to vote and accepted. I mean the discussion was there. It will be put to vote, if it is not out of order. What the House suggested was that Rs. 75,000 should be raised to Rs. 1 lakh without the matter being put to vote. If Rs. 75,000 is raised to Rs. 1 lakh, that means the rate is correspondingly reduced. Therefore, in so far as it involves a reduction, such an amendment would be in order, and would not require the recommendation of the President. I will put a simple illustration. If you sanction a ceiling of one lakh of rupees, does not that mean that you sanction everything which is below that ceiling—50 thousand, 60 thousand or 70 thousand? After all, what is the principle behind it? Why do you require the President's recommendation in respect of a tax in which the States are interested? The President wants to make sure—President means, in effect, the Government—that the ceiling is not raised. After mature deliberation, they have come to the conclusion that a certain figure should represent the ceiling. Right or wrong, that is there, and it is not right that that ceiling should be raised by an amendment moved by a private Member. In other words, since the Government have the initiation in the matter, they cannot allow it to pass out of their hands. That is why the President's assent is required.

Shri H. N. Mukerjee: Sir, a point of order. Does the Law Minister's statement imply that the opinion of the House, as voiced by a majority after a resolution or an amendment by a non-official Member, is not to be given precedence over whatever the prior intention of the Government might be? The Law Minister just now said that there is plenty of difference between whatever proposal the House may bring forward and whatever changes might be incorporated in those sections by voting on a motion brought by a non-official Member. He is trying to differentiate, qualitatively, between proposals by Government and proposals by non-official Members. I should suggest it is not at all proper.

Shri Biswas: My friend has totally misunderstood me, if I may say so with respect.

Mr. Deputy-Speaker: I did not understand the hon. Law Minister to make any invidious distinction between a non-official Member and an official Member. A non-official Member if he has sufficient numbers can change over into an official Member! The Constitution does not make any difference in the duty, and both Government and non-official Members have got the duty to obtain the recommendation of the President. There-

fore there is no difference. It ought not to be understood that he made any such discrimination or difference.

Shri Biswas: I am sorry if I had given that impression. Nothing was farther from my mind. Here the initiative lies with the Government. Therefore when a non-official Member seeks to raise the ceiling, it is just as well that the Government should have an opportunity to consider the matter. That is why in regard to such an amendment the President's recommendation is wanted. When it is said that the President's recommendation is necessary it does not mean that respect is not to be paid to opinions expressed by non-official Members. Government also requires the President's recommendation to any such amendment it may move. As a matter of fact there is no difference. The final decision rests with the Legislature. If they say 'we shall reject the Bill' their word is final. Not one pice can be levied, recommendation or no recommendation. Therefore Government cannot be oblivious of the supremacy of Parliament in all such matters.

Mr. Deputy-Speaker: We are on the question of recommendation.

Shri Biswas: I am not for one moment suggesting that any opinion expressed by any Members of any amendment moved by them is not worthy of the utmost consideration.

Mr. Deputy-Speaker: He need not labour that point any more.

Shri Biswas: And you, Sir, are the custodian of the rights of the House and hon. Members might leave it to you.

Mr. Deputy-Speaker: The hon. Minister is equally a custodian.

Shri N. C. Chatterjee: May I put one question to the hon. the Law Minister. If he has got the Estate Duty Bill as reported by the Select Committee, would he kindly look at page 21? In page 20 the last paragraph deals with clause 34 "Rates of duty to be according to Central Act." Then if the hon. Law Minister will turn to page 21, there is a proviso:

Provided that no such duty shall be levied upon (a) co-parcenary property in which the value of the estate does not exceed Rs. 50,000 and (b) property of any other kind, to the extent to which the principal value of the estate does not exceed Rs. 75,000.

I do not know if the hon. Law Minister has got the Order Paper before him. If he has, on page 2 of List No. 16 of the List of Amendments he will find amendment No. 587 moved by Mr. R. K. Chaudhury that—

In page 21, line 7, *for* "seventy-five thousand" *substitute* "one lakh".

Mr. Deputy-Speaker: The hon. Member will kindly state the point.

Shri N. C. Chatterjee: That is, he wanted to raise the exemption limit in the case of non-coparcenary property, and therefore it was only a question of lessening the duty. That is the only thing that was before the House this morning, and the hon. Minister was good enough to accept that amendment. I take it this portion is in order.

Shri Biswas: I have already said so.

Mr. Deputy-Speaker: What is it that the hon. Member wants to say?

Shri N. C. Chatterjee: I want a specific answer.

Mr. Deputy-Speaker: He has answered specifically. There is no purpose in once again referring to Mr. R. K. Chaudhury's amendment.

Shri Biswas: And generally also if you increase the exemption limit you correspondingly reduce the duty, you ease the burden on the taxpayer. That I have said.

Mr. Deputy-Speaker: If hon. Members had followed him he said that any enhancement of the duty is not permissible except with the previous recommendation of the President.

[Mr. Deputy-Speaker]

Secondly, enhancement of the exemption limit is indirectly a reduction of duty, and accordingly any reduction of duty does not require any sanction of the President.

But I was about to put this question. If reduction of duty does not require the sanction of the President and it is based on the general principles that only when a burden is sought to be imposed sanction is necessary, that otherwise the rate that is placed before the House is only a ceiling and therefore up to that ceiling it is up to the House to accept it or anything lesser than that, if it is based on that general principle, why, I ask, is there a specific provision by way of a proviso to article 117? Does the hon. Minister contend that without that proviso, (now it stands with the proviso) it will be possible for any hon. Member here to move even a reduction without the President's sanction The hon. Minister will kindly refer to the Proviso and tell us what the need for that Proviso is, if it is an accepted proposition that for reduction no recommendation is necessary.

Shri Biswas: If I understood you aright, Sir, the question you put is: why is there a proviso in article 117 and no corresponding proviso in article 274 and yet the same results are supposed to flow? There is no doubt that there is this proviso in article 117, and it gives effect to a well-recognised principle which should be of general application. Why is the President's prior recommendation wanted? The question is, whether there is any difference intended because of the absence of any such express provision in Article 274. I was trying to explain the scope of Article 274. Because there is no express provision, it does not follow that that principle should not apply. I was referring, for instance, to the difference in the language between Articles 117 and 274. Article 274 uses words like these—

"impress or varies any tax....."

Mr. Deputy-Speaker: In Article 110, the words "imposition, abolition, remission, alteration....." are used. For the word 'alteration', 'varying' is used in Article 274. We are not concerned with abolition now. These two expressions 'impose' and 'alteration' which find a place in Article 110 are also found in Article 274. This is a variation. The Law Minister has obtained the recommendation of the President for 5 per cent.; and now it is 2 per cent. and here when it affects the States, the President ought to be consulted under Article 274. Therefore, there is a special provision that is needed under Article 274 as the States' interests are affected, over and above the general provisions relating to money bills under Article 117. I have got this doubt. Will the Law Minister kindly remove it?

Shri Biswas: The words "except on the recommendation of the President" are very clear. The question is whether you should waive that recommendation under Article 274 in such cases as are provided for in the proviso to Article 117.

Shri U. M. Trivedi: Does it not come within a point of order that the Law Minister consults the lay-man Commerce Minister in the House?

Shri Biswas: As a matter of fact, that is the general principle, and there is no reason why it should not be applicable under Article 274. There was a special reason why it was expressly enacted as a proviso in Article 117. Article 274 relates to matters affecting taxation in which States are interested and, therefore, it is clearly laid down that such amendments or Bills cannot be moved except with the prior recommendation of the President and construing these words and construing this Article in the light of the recognised constitutional principle, it follows that if the object is to alleviate the burden on the tax-payer, no recommendation is required. In the other case, specific provision has been made, because it is applicable to money bills which stand in different class altogether, and we know how

strictly Money Bills are regarded. As regards Money Bills, there are various questions involved; not merely the question of the President's previous recommendation, but other questions as well like the relative rights of the two Houses and so on. As regards money bills there was this express provision, but that does not mean that the principle which underlies that provision does not apply also under Article 274

Shri T. N. Singh: The hon. Law Minister has drawn a difference in Article 274 between the words 'imposition' and 'varying'. These two words were not referred to by him in the preliminary introduction to his speech. He referred now to the distinction between the two Articles and I thought that there was some special significance attached to these two words. I would now like to know the special significance attached to the words in Article 117 as distinct from the amendment.

Shri Biswas: I referred to the difference only for the purpose of explaining in what sense the word 'tax' should be taken, and my view is that the word 'tax' as used in Article 274 refers both to existing taxes and to new taxes which are intended to be imposed.

Shri S. S. More: The exposition which the Law Minister has been pleased to give us about Article 274 raises the question about the validity of the acceptance by the Finance Minister of the raising of the limit, because the question will be, as the Law Minister says, that even variation of the proposals as contained in the original Bill would need the recommendation of the President.

Mr. Deputy-Speaker: Even in 117, no proviso is necessary. It is by way of abundant caution that it has been introduced. I am only putting to you what the Law Minister said.

Shri S. S. More: Now in the original Bill which has been amended, the exemption limit is Rs. 75,000. Now there is an amendment seeking to raise this to Rs. 1 lakh. Now, will that amendment be allowed to be moved, much less accepted?

Mr. Deputy-Speaker: That is what we have been discussing.

Shri S. S. More: I know that we are discussing this, but my point is that if we accept the interpretation given by the Law Minister to Article 274, then this question becomes very much relevant as a matter of fact and the Finance Minister is not competent to raise it.

Shri Raghuramaiah: There is a good reason for this proviso being in Article 117. Article 117 deals with the situation where for the first time we either impose or alter or vary a tax. The initiative then is with the President and with his previous sanction the Bill or the amendment is mooted in this House. If the President desires that a certain tax should be levied, altered or abolished, the Bill comes here. Since reduction or abolition of a tax is favourable to the subject, it is left to the House thereafter to decide whether or not it should go ahead with the amendment. The President need not be consulted again as the interests of the citizens are protected. It is made clear in the proviso that any amendment seeking reduction or abolition does not require the consent or previous sanction of the President. In the case of Article 274 however we are on a totally different ground. It deals with an Act in which the States also have an interest. It presumes that the President has consulted the States or he has other means to ascertain the views of the States. We do not know whether reduction or abolition will be something by which the States would be adversely affected. It is not a matter initiated by us, it is initiated by the President and it is only the President who will be able to judge by his own means how far any reduction or abolition would be beneficial. Therefore, when it is a matter in which the States are interested, any amendment or Bill which seeks to reduce or abolish a tax must be referred to the President before it is moved here or

[Shri Raghuramaiah]

introduced in this House. You can't read the proviso under Article 117 into Article 274. The non-official amendments to the Government amendment which are now moved are amendments imposing a tax under Article 274. I respectfully submit that for a very simple reason. It is not as though the taxation clause—the clause levying and fixing the rates of duty—is in the original Bill itself. If it is in the Bill, then, any amendment to it would be an amendment varying the tax. If it is not in the Bill and the rate of duty itself is sought to be introduced in the Bill by the Government by an amendment, then, the amendment by the Government is the first amendment and the amendments of hon. Members to vary the figures in the Government amendment are amendments to the amendment. In so far as they are amendments to Government amendment, and the Government amendment, itself is not a part of the Bill, they are, in substance, amendments for the first time trying to introduce in the Bill a clause imposing a tax. Even if we assume for a moment that the amendment now moved by the Government is already in the Bill, even then, these amendments must amount to a variation of a tax type even then they fall under Article 274. But because there is no tax, there is no rate of duty specified in the Bill now the Government amendment and the other amendments seek to introduce for the first time in the Bill a new tax; they are all amendments which must be deemed to impose a tax under Article 274. This is a special provision which has been specially introduced to safeguard the interests of the States who are interested in the tax. When a special provision of this nature is introduced in the Constitution, we cannot go behind it and take shelter under article 117 which is an omnibus general provision which relates to all Money Bills. A Money Bill does not mean only a Bill imposing a tax or abolishing a tax. It is a very wide provision. If the special provisions in article 274 only apply to this case any amendment which, for the first time, seeks to introduce a rate of levy into the Bill is an amendment which seeks to impose a tax and the fact that it is an amendment to another Government amendment cannot place it on a better footing than the Government amendment itself. I, therefore, respectfully submit that article 274 applies to this case and the amendments which have been moved here, imposing or altering the rate of levy and for the first time seeking to impose the tax are all amendments which are barred because the President's recommendation has not been obtained.

Shri Biswas: I forgot to draw attention to clause 32. As a matter of fact, in the original Bill as recommended by the President, you find it is said:

> "The Central Government may, by notification in the Official Gazette, make any exemption, reduction in rate or other modification in respect of Estate duty in favour of any class of property or the whole or any part of the property of any class of persons".

Is it wrong to assume from the fact that the President has given his recommendation to the Bill in this form that he has also recommended any possible reduction in the rate of duty?

Shri A. M. Thomas: That has been already referred to.

Mr. Deputy-Speaker: I have heard in detail the points for and against the points that have been raised as a point of order.

Shri Telkikar (Nanded): May I say a word, Sir,.....

Mr. Deputy-Speaker: Nothing more.

Shri Telkikar: On a point of clarification, Sir,.....

Mr. Deputy-Speaker: Order, order.

Shri Telkikar: Five minutes, Sir.

Mr. Deputy-Speaker: Order, order. Hon. Members cannot go on endlessly like this.

Three points have been raised so far as the amendments to clause 34 and the Schedule are concerned. Normally, inasmuch as I have given a ruling already that the Schedule will be taken up for consideration after the Clauses are over, I would not have been called upon to give any ruling in regard to this matter that has been raised. Because, it has yet to come and when the matter comes up, I will have time to deal with it. All the same, if per chance I should come to the conclusion that under article 274 the recommendation of the President is necessary for all the amendments tabled so carefully by hon. Members, they may have sufficient time to communicate and obtain sanction from the President. It is only for that reason that I have allowed arguments to be addressed one way or the other.

At any rate, the objections that have been raised under article 274 by Shri Gounder relate to three distinct categories of amendments. One set is amendments where there is a reduction in the rates that have been suggested by the hon. Finance Minister in his amendment No. 637, suggesting particular rates in the Schedules as Second Schedule to the Bill. The other amendments that have been tabled are in the nature of reduction of some of the rates or enhancing some of these rates, and enhancing or increasing the exemption limit that is provided in the first para of that Schedule. That is to say, it is 'Nil' up to Rs. 50,000. Some want it to be 'Nil' up to Rs. 75,000 while others want that up to 1 lakh it should be 'Nil', that is, not to be charged at all. This last item refers to the specific provision in clause 34. Thus, there are three objections raised: that there ought to be no reduction without previous sanction of the President, no enhancement without previous sanction and no alteration by way of exemption, which will also lead to reduction incidentally, and so that must also be preceded by the recommendation of the President. I have heard all sides including the Law Minister, who has carefully analysed the position and placed it before the House.

So far as enhancement is concerned, there is unanimity of opinion here that without prior sanction of the President, no additional burden can be imposed on the tax-payer. There does not seem to be yet a single instance quoted where that has been done.

Shri S. S. More: I have challenged that position.

Mr. Deputy-Speaker: I said, no instance has been quoted: not that no hon. Member has spoken. No precedent has been quoted before me. Regarding reduction, my attention has been drawn to article 117 where under the proviso in particular cases reductions can be made even without the recommendation of the President. The absence of that proviso in article 274 is explained by the fact that a ceiling only is fixed by the President and up to that ceiling, any reduction is possible: the bigger includes the smaller: that is in accordance with general principles of policy. Objection is equally raised to the effect that if that is the general principle of policy, there is no need for a proviso in article 117. This is met by the argument that this proviso is by way of abundant caution and is unnecessary, and therefore it is that in article 274 this proviso has not been added as being superfluous. As against this, Mr. Raghuramaiah says that there is an essential difference between articles 117 and 274, that so far as article 117 is concerned the matter is entirely in the hands of this House either to enhance or reduce, that we are dealing here with a matter which is peculiarly within the jurisdiction of the House where the States are interested, as in this case, that the special provision in article 274 has been necessitated for this

[Mr. Deputy-Speaker]

purpose, that in the one case the President is bound to consult his Ministers in so far as it relates to Central revenues, and that this provision in article 274 that the President's sanction is necessary where the States are concerned, is possibly for the reason that wherever the States are concerned, the President must consult the States also though it has not been said so in so many terms.

Shri T. T. Krishnamachari: May I point out, Sir, before you elaborate this point, one difference—it is a very important difference—between the Government of India Act and the Constitution? Whereas in the Government of India Act, in the analogous provision to article 274, which is section 141, the provision which my hon. friend Mr. Raghuramaiah has in mind says that the Governor General in Council, in his discretion, shall have to give sanction, in article 274 that provision is completely dropped, and the President acting in the matter of giving sanction to any piece of legislation act only in consultation with his Ministers. Therefore, the orbit of his initiative is circumscribed by consultation with his Ministers and nobody else.

Shri N. C. Chatterjee: Sub-section (2) of section 141 has been completely obliterated. Under section 141(2). it is not merely individual judgment. It was mandatory that the Governor General, before allowing introduction of any Bill or the moving of any amendment, shall satisfy himself that all practicable economies and all practicable measures have been taken. This has been deliberately omitted in our Constitution.

Shri Raghuramaiah: May I suggest, Sir, that this omission does not prevent the President from so consulting if he wants. The real difference is this. This is a matter in which the States are interested. It is open to the President to consult or not to consult. That special consideration he will bear in mind in determining and giving his sanction.

Mr. Deputy-Speaker: This argument is met by the fact that 274 in this Constitution has a corresponding provision section 141 in the Government of India Act, 1935. Where it was open to the Governor-General in his discretion to grant sanction, discretion always meant he need not consult even his own Ministers. Then in the second portion of section 141, it was definitely said that where the States were interested, the Governor-General was bound to consult the States. That provision is absent here. Now, equally, the word 'discretion' has been taken away. It is true under the new Constitution the President is bound to consult the Council of Ministers in all matters, even including a matter where the States are concerned, and the absence of a specific provision that the States should be consulted does not impose any obligation on the President to consult the States. Even without any such obligation, the President can give sanction, but in the ordinary course, nothing is sanctioned by the President without consulting his Ministers. Under these circumstances, it is rather difficult for me immediately to come to any conclusion as to how far the absence of a proviso is not deliberate but is only casual; the presence of a new article 117 does not make any difference on the existing law and, therefore, notwithstanding the fact that a similar proviso is not there in 274 it ought to be treated as introduced here in 274 or as being deleted in 117, which mean both the same thing.

Now, I shall take time to consider this matter, not only for the present but for the future also. There is enough time. That way I propose. This will apply to the amendment raising the limit from Rs. 75,000 to Rs. 1,00,000. This will stand over along with the consideration of the various amendments to the Schedule. We will take them up later. I am not going to hear any more arguments regarding this matter. I will only give my decision after consulting the various authorities.

Shri S. S. More: Sir, one argument may be heard.

Mr. Deputy-Speaker: It is not necessary.

Shri S. S. More: This is only a clarification. What would happen to this sub-clause (b) of clause 34 on page 21? (*Interruptions*). My friends are telling me that you deferred a final decision on this.

Mr. Deputy-Speaker: Yes, yes.

Now, I hold over the decision regarding this matter, as to whether this raising of the limit from Rs. 75,000 to Rs. 1,00,000 does also require sanction. Of course, it will require sanction only when a reduction under 274 requires sanction; otherwise it may not.

Shri H. N. Mukerjee: May I make a submission, Sir?

Shri C. D. Deshmukh: I was going to request you to consider this point which you mentioned in the morning, and that is the language of clause 32 as it stood in the original Bill.

Mr. Deputy-Speaker: Comprehensive?

Shri C. D. Deshmukh: That is to say, I would request you to apply your mind to this, whether what we are now considering under section 274 is any amendment varying tax, however we may define the tax. If we come to the conclusion that it is not a variation, because nothing was fixed, the whole field being open, there was no specification and.....

Mr. Deputy-Speaker: The Law Minister differs on this.

Shri C. D. Deshmukh: I am only suggesting. You did not refer to this when you were speaking. I only say that you would recall that.

Mr. Deputy-Speaker: Yes.

I am in a conflict. There is a conflict of opinion on the Government side. I heard the Law Minister say that variation applies not only to a tax which is already in existence, but even with respect to the imposition of a new tax. That is what the hon. the Law Minister said. Of course, I had a doubt until I heard the Law Minister whether tax means any existing tax or any variation can apply, and Mr. Raghuramaiah was saying it was no tax at all. The hon. the Finance Minister has only proposed an amendment by way of a Schedule. Now there is no tax at all either for him or any others. Therefore, if I overrule the objection regarding the one, I will equally overrule the objection regarding the other. There is no tax now. Let me consider it. This is a very serious matter and we have spent some time over this which is of importance not only to the present but also to the future.

Shri Biswas: What I said was that the word 'varies' applies both to an existing tax and a new tax proposed for the first time.

Mr. Deputy-Speaker: That is different from the other interpretation.

Shri Tek Chand: May I make a submission?

Mr. Deputy-Speaker: No more arguments on this matter. I will now proceed.....

Shri H. N. Mukerjee: May I draw your attention to one little aspect which appears to have very important implications for the development of our parliamentary freedom. You, Sir, have said that the President's recommendation amounts to a sort of ceiling fixed by the President on the advice of the Ministers and that you took it to be the general idea in the House also. Now, I think it is common ground that the President gives his sanction on the advice of the Ministers and the Ministers are responsible to this House for whatever happens as a result of their proceedings. Now, they bring forward a certain measure with the recommendation of the President as far as certain figures are concerned. Now, Sir, if.....

Mr. Deputy-Speaker: What is the objection? I am a little dull of understanding. The hon. Member will first of all say what is his point and then develop the point. Otherwise, I am not able to concentrate my mind at all upon any matter and it may go on endlessly. What is his point?

Shri H. N. Mukerjee: The point, to my mind, which needs clarification is that a ceiling is not necessarily being fixed by the President when quite easily Government could gauge the opinion of the House and secure the sanction of the President, if certain other figures than the ones recommended by the President are, in the opinion of the House, to be accepted by Government in the legislation. That being so, Sir, if our hands are bound all the time because of a ceiling allegedly laid down by the President, we cannot properly discuss the proposed legislation.

Mr. Deputy-Speaker: I am afraid the objection is due to a misunderstanding. Even if 117 in its language is accepted, it says that for a reduction no sanction is necessary. In regard to the earlier portion, that is an amendment by way of increasing the burden, sanction is always necessary. Therefore, without the sanction this is the ceiling. Now that is what was contended. Now, it is agreed—there is no dispute about that—as to what is the position when the rate that is recommended by the President is sought to be increased. Even now I am prepared to hear a single case where it can be done without the previous sanction of the President. Therefore, call it 'ceiling' or by any other name. It may be reduced. The only difference has been whether that cannot be reduced without sanction. That is the only point.

Shri H. N. Mukerjee: My submission is that Parliament's opinion in regard to what should be the ceiling might be collected by Government in the course of the proceedings as far as this piece of legislation is concerned and then they can give advice to the President and secure his sanction. Because otherwise we are precluded from considering whatever figures.....

Mr. Deputy-Speaker: We are going into the general merits. The ceiling is not sacrosanct. Parliament's opinion will be gathered by the Finance Minister and he will go to the President next door and then say this must be increased. I am not disputing that proposition. Nobody disputes that. (*Interruptions*).

Shri H. N. Mukerjee: Will he go to the President and try to put our case against his ceiling, which appears to us to be rather low in the proposed legislation?

Mr. Deputy-Speaker: We are now arguing a question of law arising out of the Constitution,—on the ceiling. If the hon. the Finance Minister should be persuaded by a majority of 99·99 per cent. (recurring) of the Members of this House, still would say he can go next door to the President and obtain his permission for increasing the ceiling. That is definite. I have not seen any ruling or precedent to the contrary.

Now, the only point raised was that the rate that has been recommended by the President may be taken to be the ceiling and then it may be reduced, for which no sanction is necessary. That is the contention on the part of Government. (*Interruptions*). It can be reduced without any prior sanction. My difficulty is that, if that is so as a general principle, why there should be a proviso in the one case and no proviso in the other? That is the simple point that I am considering. Evidently, there are sections in the House who seem to think that the rates of duty that have been placed before the House by the hon. the Finance Minister are not sufficient and, therefore, they must be increased. Let them make out a case and then force the hands of the Finance Minister. He will go and obtain the sanction of the President.

Shri S. S. More: Does that mean that we can move amendments prescribing a rise in the tax?

Mr. Deputy-Speaker: No.

Shri S. S. More: How can we convince the Finance Minister about the will of the House?

Mr. Deputy-Speaker: They can talk here, they can say, 'this is not enough' and so on.

Shri S. S. More: Shouting? (*Interruptions*).

Mr. Deputy-Speaker: Order, order. I have heard Members say the Finance Minister is conservative and all that therefore, he must be liberal and he must tax cent per cent. and so on. Hon. Members are saying all that.

Now, I will defer judgment on this.

Shri U. M. Trivedi: May I give one point of information, Sir? You may keep in mind the marginal note. That is the only thing. (*Interruptions*).

Mr. Deputy-Speaker: Order, order. What I would urge is this: we have heard for nearly 3 hours now on this. If any hon. Member has still got any points for or against he will kindly write to me. I will go into the entire matter before I make up my mind and state what I have to state as the final decision.

5 P.M.

So, this Government amendment will be kept over. So far as the other amendments not relating to enhancement of the rate from Rs. 75,000 to Rs. 1 lakh or over or to reduction thereof are concerned, I shall put them to the vote of the House.

The question is:

In pages 20 and 21, *for* clause 34, *substitute*:

"34. *Rates of Estate Duty on Property including agricultural land.*

(1) The rates of estate duty shall be as mentioned in the Second Schedule:

Provided that no such duty shall be levied upon the property to the extent to which the principal value of the estate does not exceed rupees fifty thousand:

Provided further that where the property consists of an interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law, duty shall be payable on the principal value of the estate calculated on the basis as if the Dayabnag law of succession applied to the family at the time of death.

(2) Notwithstanding anything contained in sub-section (1) and the Second Schedule, where any property passing on the death of any person consists wholly or in part of agricultural land and the principal value of the estate does not exceed rupees two lakhs, there shall be allowed by way of rebate—

(a) in the case of an estate which consists wholly of agricultural land, a sum representing one fourth of the estate duty payable; and

(b) in the case of an estate which consists in part only of agricultural land, a sum representing one fourth of the estate duty payable on that part of that estate which consists of agricultural land, the duty on such part being a sum which bears to the total amount of estate duty the same proportion as the value of the agricultural land bears to the value of the estate".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 20, line 49, *after* "duty" *insert* "shall vary with the amount of property left and also with the remoteness of relationship with the deceased and they".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 21, *for* lines 1 to 7, *substitute*:

"Provided that no such duty shall be levied in case where the estate left by the deceased—

(a) includes a dwelling house provided that other chargeable property left by the deceased in addition to the house do not exceed in value the sum of rupees fifteen thousand;

(b) consists of an interest in the joint family property of a Hindu family governed by Mitakshara, Marumakkattayam or Aliyasantana law provided that value thereof does not exceed rupees thirty thousand;

(c) consists of property of any other kind provided that its value does not exceed rupees fifty thousand".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 21, line 5, *for* "rupees fifty thousand" *substitute* "rupees thirty thousand".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 21, line 5, *for* "fifty thousand" *substitute* "seventy five thousand".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 21, *after* line 5, *insert*—

"(aa) Property of any other kind, if belonging to the father absolutely to the extent to which the principal value of the estate does not exceed the sum equivalent to the sum obtained by multiplying seventy five thousand rupees by the number of heirs who succeed him as per will, if any, or on intestacy if there is no will specifying the heirs".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 21, *after* line 7, *add*:

"Provided further that no successor shall have the right to inherit property of the value of more than rupees five lakhs and the excess if any left will be charged as Super-Estate Duty."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 21, *after* line 7, *insert*:

"(IA) The rates of estate duty may be increased by a surcharge for purposes of the Union according to such scales as may be fixed by an Act of Parliament".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 21, *for* lines 8 to 19, *substitute*:

"(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 (I) and partly of the nature described in clause (b) of the said proviso, no duty shall be levied upon—

(i) the amount bearing the same proportion to the exemption limit prescribed under clause (a) of the proviso to sub-section (I) as the property of the nature described in clause (a) of the said proviso bears to the value of the estate, plus

(ii) the amount bearing the same proportion to the exemption limit prescribed under (b) of the proviso to sub-section (I) as the property of the nature described in clause (b) of the said proviso bears to the value of the estate".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 21, *after* line 19 *insert*,—

"Provided also that where necessary, the amount of the duty payable on an estate at the rate applicable thereto is reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the next lower rate".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In the amendment proposed by Shri C. D. Deshmukh, after "estate duty" *insert*—

"graduated on the basis of firstly the amount of value of the estate and secondly on the number of successors of recipients,"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

(i) "In page 20,—after line 50, *add*:

"Provided that the amount of the estate duty payable shall be reduced to one-third where the property passes to the following relatives of the deceased: widow or widower, lineal ancestors, lineal descendents, adopted children and their issue and adopted parents; and to two thirds where the property passes to the following relatives of the deceased: illegitimate and step children; brothers and sisters and their descendents including those of the half blood and their spouses."; and

(ii) In page 21, line 1, *after* "Provided" *insert* "further"

The motion was negatived.

412 P.S.D.

Mr. Deputy-Speaker: The question is:

In page 21, line 9, *after* "clause (a) of the" *insert* "second"

The motion was negatived.

Mr. Deputy-Speaker: So only the amendments relating to increase of exemption limit or decrease thereof in clause (b) remain to be disposed of. After consideration, if the President's sanction according to me is not necessary, I shall place it before the House; otherwise that will stand over until the President's recommendation is obtained.

Shri S. C. Mishra: According to the time-table set, if we finish clause 34 we are disperse.

Mr. Deputy-Speaker: Hon. Members need not stick to that programme. The schedule has been adjourned on account of this technical difficulty. There are a number of other clauses which are not contentious. So far as this Bill is concerned, I do not want any impression to be created in any part of the House that I am trying to hustle it through. Let there be as detailed a discussion as possible. I do find that Government are willing to have a full-dress debate on this matter.

Clause 35.— (*Principal value etc.*)

Shri H. G. Vaishnav: I beg to move:

In page 21, line 22, *after* "property" *insert* "except agricultural lands".

Shri Pataskar: I beg to move:

In page 21, lines 22 and 23, *omit* "in the opinion of the Controller".

In page 21, lines 23 and 24, *for* "of the deceased's death" *substitute* "when the duty is determined'.

Shri T. S. A. Chettiar: I beg to move:

In page 21, line 24, *add* at the end,

"after taking into consideration that the whole of the property

[Shri T. S. A. Chettiar]

may have to be placed on the market at one and the same issue."

Shri H. G. Vaishnav: I beg to move:

In page 21, *after* line 24, *add*,

"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".

Shri Lokenath Mishra: I beg to move:

*In page 21, *after* line 24, *insert*:

"Provided that in case of property or properties the value of which is likely to be estimated at one lakh or less, the market value shall be made at ten times the annual net income derivable from the same."

Shri H. G. Vaishnav: I beg to move:

In page 21, *for* lines 25 to 34 *substitute*:

"(2) The principal value of the agricultural land will be estimated at the fixed rate of twenty times the land revenue as value chargeable thereof for the purpose of levying estate duty".

Shri T. S. A. Chettiar: I beg to move:

In page 21, *omit* lines 25 to 30.

Shri Tulsidas: I beg to move:

In page 21, *for* lines 25 to 30, *substitute*:

"(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 make reasonable reduction in the estimate, on account of the fact that the whole property is to be placed on the market at one and the same time and further 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, such depreciation shall also be taken into account in fixing the price."

Shri Pataskar: I beg to move:

In page 21, line 27, *for* "deceased's death" *substitute* "determination of duty".

Shri C. R. Mudaliar: I beg to move:

In page 21, lines 27 to 30, *omit* "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."

Shri T. S. A. Chettiar: I beg to move:

In page 21, line 31, *for* "Provided that" *substitute* "and".

Shri B. P. Sinha: I beg to move:

In page 21, *after* line 34, *insert*:

"(3) Valuation for the agricultural land for estate duty shall be ten to twenty times of its rental value."

Mr. Deputy-Speaker: All these amendments are now before the House.

Shri T. S. A. Chettiar: Sir, I am having in mind certain cases of middle class people possessing property in small towns. There are some large families which are permanent in certain towns and whose property is concentrated in that particular place. Large property owners, who have properties all over the province, business and agricultural property, will not be affected by this clause. But in the case of middle class property owners all their properties are concentrated in particular towns. There are first class municipalities, second class municipalities and third class municipalities depending on their population. In

*Deemed to have been negatived in view of the adoption of Clause 35.

these last places for all when somebody dies and all the property in the place comes at the same time, then the value of the property is suddenly affected, and there is a sudden drop in its value. This should not be allowed to happen; hence my amendment No. 146. The other two amendments are consequential. Sir, I move.

Shri Tulsidas: Sir, my amendment reads:

In page 21, for lines 25 to 30, *substitute*:

> "(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 make reasonable reduction in the estimate on account of the fact that the whole property is to be placed on the market at one and the same time and further where it is proved to be to the satisfaction of the Controller that the value of the property has depreciated by reason of the death of the deceased, such depreciation shall also be taken into account in fixing the price."

Sub-clause (2) of clause 35 as it stands reads as follows:

> "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:"

There is no reason why this should be so. The clause recognise the fact that realisation by sale will be much less when the whole property is sold in the market at one and the same time. Sir, in the United Kingdom—I am sure Finance Minister knows it—a number of small concerns which are supposed to be family concerns have had to face a lot of difficulties on account of a similar provision and the National Manufacturers Association of England made a representation to the Inland Revenue authorities that on account of this Section the Controller does not take into account the price that would be realised if a particular business is put on the market. It so happens that the duty which a small businessman has to pay will be so much that he will have to sell the business. Therefore, I feel that instead of giving this positive direction that he shall not make any reduction even if the price realizable is lower—I can understand the market price being considered—I have made it positive the other way about, that he should take into consideration the depreciation if the business is to be sold in the market at one and the same time. That is the difference between the amendment and the actual Bill. The Bill as it stands would, instead of helping, create more difficulties, and particularly I feel that it would create much more difficultios for the smaller business houses which are run as a one-man show, deveolped by one man in his life time and which flourishes only because of that one man. I feel very strongly about this, and therefore I have put in my amendment.

Shri Pataskar (Jalgaon): Clause 35 consists of two clauses. My amendment to the first clause which is exactly word for word the same as in the English Act.....

Mr. Deputy-Speaker: Amendment Numbers?

Shri Pataskar: Amendment Nos. 560, 561 and 562. Amendment Nos. 561 and 562 form one group.

Clause 35(1) reads:

> "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."

I want the words "in the opinion of the Controller" to be dropped. The

[Shri Pataskar]

reason that I would like to advance to the hon. Member is this. As a matter of fact, there is again Clause 39 where this valuation has to be made by the Controller. Now, here this Clause (1) is, except for the word "Controller" instead of the word Commissioner", taken word for word from the English Act,

> "The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioner it would fetch if sold in the open market at the time of the deceased's death."

And now it may be argued, why do I want these words "in the opinion of the Controller" to be dropped from this Clause? The reasoning, Sir, is clear. As probably you are aware at the time when the Defence of India Act was in force, there were so many other rules and regulations issued which laid down that if in the opinion of a certain officer there was danger to peace, he could do certain things. when it is left only to the opinion of a particular officer, then the Courts or anybody else has merely to ascertain whether that was his opinion. Similarly, if once we come to the conclusion that we want the opinion of the Controller. then naturally, even if you provide for an appeal or any other remedy, no relief can be had. Therefore, to my mind, these words "in the opinion of the Controller" are likely to be misused hereafter. Supposing a man to whom you have given this right to appeal in another Section goes to appeal, it would be said: "This provision in Clause 35 lays down that the price shall be estimated to be the price which, in the opinion of the Controller, it would fetch. And this is the opinion of the Controller." If once that thing is there, I thnik it becomes a matter which cannot be dislodged, unless, of course, you can say "this was not his opinion", which is very rare.

This has been due to the fact that we have borrowed this Clause from the English Act without seeing whether it would have any proper or improper effect in the conditions that exist in our country and the state of law here. Supposing we drop it, then it would be:

> "The principal value of any property shall be estimated to be the price which it would fetch if sold in the open market at the time of the deceased's death."

Then, Sir, in the English Act ...

Shri Gadgil: Who will do it?

Shri Pataskar: There is another Section which says it has to be done by the Controller. I do not say that the Controller should not do it. The point is it is not his opinion that should be final. After all, it may be his opinion, but now you define the value itself as one which, in his opinion, it would fetch, meaning thereby that if that is once his opinion then, of course, it cannot be dislodged. As a matter of fact, I do not know how that crept in in the English Act also, but in the English Act there is a further provision. Section 10 of that Act gives a specific power to the district Courts and the High Court to intervene, and the whole structure of that Act is different. We cannot take out a Clause or a part of that enactment and say because it is there, it must be all right. The point is that though there is a similar provision there in that Act, the whole scheme is different. As soon as a man dies, the High Court is given so many powers, and appeal is, even with respect to valuation, to the County Court in certain cases, and to the High Court, in certain cases. Therefore, I think nothing would be lost if we drop the words "in the opinion of the Controller". On the contrary, if we retain the words, they are liable to be misused and particularly in this case where you are not giving any right of appeal to any judicial authority in the Act itself. He can only go to a superior officer. He would say: "Well, I don't

bother. That is the opinion of the Controller, and it is final", because under the Act itself it is his opinion which has to be accepted.

Then, there is another thing which probably would be more in the interest of the Government, but in view of the equity underlying it, I have suggested the other amendment. Clause (2) mentions:

> "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....."

I am not bothered with the latter portion. Instead of "at the time of the deceased's death", I have suggested "at the time of the determination of the duty". Take a concrete case. A man dies in 1954. At that time the Estate duty is applicable. There is another Section which say within 12 years we can initiate proceedings for the recovery of the estate duty. Those proceedings may go on for a year or so. So, after 13 years what has to be decided?—the price which it would have fetched or would not have fetched 13 years before, which is a very difficult task to be performed. Therefore, I would suggest that when you are going to ask him to pay the duty, when you determine the levying of the duty, at that time take the value of the property. I know it might work hard against the taxpayer as well, but even he should look upon it as a matter of equity, because, supposing today the price is Rs. 1,000, after 12 years it may become Rs. 2,000, it may become Rs. 500, we do not know what it would be. What is the basis? On what shall the tax be levied?—on the value as it was 12 years before at the time of the death of the deceased, or at the time when the tax is levied and the duty has to be paid? It would be much fairer even if it goes down or increases.....

Shri Gadgil: The Controller should form his opinion after exhausting the work under clause 39, not before.

Shri Pataskar: May be. The point is:

> "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 ... "

I will take a concrete case. A man dies in 1954. The proceedings are started ten years afterwards, and then you will fix the price which it would have fetched at the time of the man's death, which means about 12 years before. It would be certainly very difficult for anybody to find out what the market price would have been some 12 years back. On the contrary, even from the point of view of the Government or from the point of view of the taxpayer, it is equitable that at the time when the tax comes to be levied you fix the price. "This is the price of the property". If it is reduced, naturally he will have to pay less; if it is increased, he may have to pay more, but at the same time, there is nothing inequitable in it. The whole basis of trying to fix the price which the property would have fetched several years before, and then putting a tax on that is not fair. In the days—in 1910—when first the tax came to be levied in England, the economic conditions were rather stable.

In India we find, along with the rest of the world, the economic conditions are changing vastly. We do not know whether ten years hence the prices will go down or will go up and what will happen. As you know, the whole economic structure is in a ferment everywhere. Under those conditions, what they did in England at the time of the passing of the Act in 1910 need not always be imitated and we should look to the present conditions as they are. Therefore I would suggest that even with respect to clause (2) it would be more fair and equitable to all concerned, to the Government as well as to the tax-payer that the price should be what it would

[Shri Pataskar]

fetch at the time when the tax is going to be determined.

Shri S. S. More: Who is to decide the principal value?

Shri Pataskar: The Controller is to decide. What I say is that his opinion should not be final. There must be some authority to fix it. The point is when we say that the principal value of any property shall be estimated to be the price which, in the opinion of the Controller it would fetch, I apprehend some difficulty.

Shri S. S. More: The machinery you prescribe is the Controller.

Shri Pataskar: I do not object to the machinery at all.

Shri S. S. More: Sir, this has to be read with clause 4, sub-clause (3). Under sub-clause (3) of clause 4, the Central Government has to appoint a set a valuers who are expected to be independent of government control and the Controller, on occasions where the case is complicated may refer the matter to the valuers and obtain an opinion.

Shri Pataskar: I have not probably made my point clear. I do not object to the controller fixing the price. I think one can interpret this clause as meaning that his opinion in the matter will be final. I gave you an instance of the Defence of India Act, where it was not properly worded; it stated, if in the opinion of such and such officer such a state of things arise, and so on. In appeal they said, 'we are not going and cannot go beyond his opinion, but so long as they could come to the conclusion that it was such-and-such officer's opinion, that there was likely to be a breach of the peace, they were not concerned with anything else.' Therefore this clause (1) is capable of being interpreted in a manner to which I have taken objection. I do not object to the machinery at all. Let the Controller decide it. You put it as 'the principal value of any property shall be estimated to be the price which it would fetch.....'. Now, what is the principal value? It is one which, in his opinion, it would fetch. That is the way in which it is worded.

Pandit Thakur Das Bhargava: Nothing would be lost if these words are taken out.

Shri Pataskar: If you keep these words they are more capable of harassment, particularly when we are excluding the jurisdiction of courts. I am not quite sure that it will always be properly used when it is in the hands of the executive.

Shri Tek Chand: Sir, I wish to endorse everything that has been stated by my hon. friend Mr. Pataskar and I wish to illustrate his point of view by saying this. There will be great danger before the Government, greater danger before the Government and perhaps lesser danger before the citizen if the entire matter of the decision of the market price is left to the caprice of the Controller. The question at issue when there is a dispute as to what ought to be the market price will not be what should be the market price or has the correct market price been assessed, but the question at issue will be whether in the opinion of the Controller that was the market price. Therefore the issue will be narrowed down. Not only this; absolute power is given to the Controller and it is denied to the Central Board of Revenue.

Take, for instance, a house worth a lakh of rupees according to the market value. Somebody goes and greases the palm of the Controller, and he fixes the market price at Rs. 40,000. The Government is a loser to that extent. Supposing the Government goes in appeal before the Central Board of Revenue, it will not be open to the Government to say, 'Please find out the actual market value; it is a lakh of rupees and not forty thousand rupees!. The Central Board of Revenue will say, 'We have not got the power to fix the market value. The authority to determine the

market value is the Controller'. Therefore an artificial distinction can be made. It is only paying lip-homage to the words 'market value', by saying that the market value is something which in the opinion of the Controller is the market value. Therefore you are not permitting the assessing authorities to find out what the market value is. The rule of supply and demand is not being considered but the artificial yard-stick is the fancied and capricious opinion of the Controller. Therefore any judicial-minded member of the Board of Revenue conversant with the law of framing the issues and the pleadings will say what is the issue. The issue is, whether in the opinion of the Controller so much is the market value, not whether in fact so much is the market value. The result will, therefore, be that on that issue it will not be possible for the Central Board of Revenue, where the market price has been put deliberately or ridiculously at a low figure or at a ludicrously high figure, to find out what the actual market value is.

Shri S. S. More: Why not?

Shri Tek Chand: Every time the issue will be whether the Controller has exercised his opinion. What is his opinion?

Shri S. S. More: Read clause 61.

Shri Tek Chand: Then, Sir, there is a second matter. In my humble opinion, sub-clauses (1) and (2) are mutually contradictory. In sub-clause (1) importance is given to the fact that the price is to be determined according to the open market at the time of the deceased's death. If it is an open market, it must be an unhampered market, a market which is not in any way to be prejudiced by any one's opinion. But, when you come to sub-clause (2), you say that the entire property is to be placed in the market at one and the same time. My submission is that when you are saying open market you should not obliterate it by saying, though we say it is open market it is not going to be open market, it will be closed market. That very important consideration which determines the value for the purposes of an open market will not be taken into consideration because the entire thing has been placed on the market at one and the same time.

Apart from this contradiction, kindly take into consideration three illustrations. First, supposing there is a property in a village. The village is populated with one propertied man with substance and others who are absolutely poor people. When the entire property is placed on the open market, so far as his other co-villagers are concerned, they are not in a position to buy it for they are in no position to pay the price. The result will be that the open market price will not be fetched by the property because in the village nobody would be there to buy. People in the towns and the neighbouring villages are not interested. Therefore when the whole property is in a small village and there are no competitors the price will fall like a stone.

The second illustration is this. Take for instance, in a small town there is an epidemic and a large number of persons are liquidated. The result will be that property will be thrown on the market and the prices will come down and yet you will not consider these circumstances.

Take the third instance. Let us hope, God willing, that it is a rare instance. Take a happening like the Quetta earthquake where a large number of people died. The result will be that there are no purchasers and the prices fall because the entire lot is to be thrown in the market. It is not going to be taken into consideration. What you are fearing and what is actually behind your mind is not likely to occur. It will be the smaller men who will suffer. In the case of a big city like Bombay, even though a multi-millionaire were to die with lots of property, there are other millionaires to purchase it. Therefore the drop in the price that you fear is not likely to happen in case of big towns like Calcutta, Delhi or

[Shri Tek Chand]

Bombay. But, it will be in the smaller towns that this difficulty will be realised. Therefore, if you really mean what you say, if the Legislature means what it says, if you are using the language 'open market', why are you clamping on it all sorts of conditions and doubts—"which in the opinion of the Controller is going to be the open market price". The open market will not be deemed an open market if the entire property is put up for sale. Therefore if you want to leave everything to the caprice of the Controller then, I pray do not pay lip-homage to the words 'open market' because it is not open at all.

Shri H. G. Vaishnav: Mr. Deputy-Speaker, Sir, my amendments Nos. 390, 391 and 392 relate to a practical matter, *viz.* the valuation of agricultural lands.

Shri C. D. Deshmukh: That seems barred.

Shri H. G. Vaishnav: It is stated in clause 35 that —

> "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."

My submission is that if this principle of market value is applied to agricultural lands, it would be very difficult, almost impracticable, to assess land values, because the value differs from village to village, on various occasions, owing to circumstances, the conditions in the village and so many other factors, which we find are fluctuating in the villages where the lands are situated. That is why I have suggested by means of an amendment that the land value should be assessed on the basis of the revenue assessed by Government for these lands. I have suggested that the value may be 20 times the revenue which the cultivator is required to pay to Government, so far as the estate duty is concerned. The idea is that there should not be frequent changes in the value, after the first, second, third deaths and so on. Moreover, this kind of valuation will be very convenient, for administrative purposes also.

An Hon. Member: What about freehold lands?

Shri H. G. Vaishnav: If the lands are freehold lands, the revenue is assessed by Government, though it is not collected by them. There are inam and other lands on which revenue is assessed by Government for their purposes, but is not collected by them. So this principle that I have suggested is not a new one, and it is convenient from the administrative point of view. Seeing the practical difficulty in the valuation of the field, I have suggested that the value might be estimated on the basis of the revenue paid on those lands. Even under the Court Fees Act, the land value is fixed for court fee purposes, on the basis of the revenue paid on the lands, so far as agricultural fields are concerned. In the case of houses, gardens etc. they have got the market value as the basis of court fees, and in this case, the market value can be very easily assessed. In my amendment, I have suggested that in the case of agricultural lands, the maximum value, for purposes of estate duty, of these lands, should be fixed at 20 times the land revenue which the cultivator is required to pay.

The main reason why I have suggested this method is that generally the property in villages, especially lands, cannot be valued in the proper perspective. The valuers who will be appointed by the Government or the Controller will be mostly from the urban area, and many of them may not at all be familiar with village conditions, and will not therefore be in a position to assess properly the value of the lands. Possibly they may go to the villages and see the lands, but it will be Greek and Latin to

them how to assess the market value of those lands. Moreover, the market value will not lend itself to easy estimation. For instance, in one village, suppose there is a big landholder, owning some 50 to 70 fields, and he dies, and his property is put on the open market, who will be there in the village to purchase his lands? It is not like a city house for which many people would be coming forward, and which many people will be eager to purchase. In the village, I am afraid, there will be none to purchase even a single acre, even for a damn cheap price. If the valuers will assess the value of the lands on the basis of the price offered by some purchaser, then an extent of land to the tune of about 20 acres will fetch only about Rs. 200, and even this may not be realisable, for there will be no purchaser.

Mr. Deputy-Speaker: I think this point has been sufficiently stressed by other hon. members. If suddenly a large extent of land or other property is thrown into the market, naturally the value will be depressed, and there may not even be purchasers.

Shri H. G. Vaishnav: I am speaking particularly of village lands. Moreover, the valuer will have no standard to value the lands, and it will be impossible for him to assess the value. On the other hand, if the value is fixed on the basis of revenue, it will be a very easy process, for administrative purposes, and it will also help in stabilising the price of all lands.

There is one other difficulty. In many of the States, land reforms have been carried out. According to these land reforms, the Government will fix up some ceiling, in respect of holdings, and lands above that ceiling will be taken over by them, after paying some compensation. But what is the compensation that the Government are going to pay? As far as I know, according to the Hyderabad legislation, the Government of Hyderabad are going to pay compensation which will be only 10 to 15 times the land revenue. If the revenue for a particular piece of land is Rs. 20, the compensation that will be paid will be only Rs. 300. If, however, it is valued by the valuer or assessor, on the basis of market value, it will come to about Rs. 1000 per acre ...

Mr. Deputy-Speaker: It has not been brought to my notice earlier. Amendment No. 390 is barred by our having passed clause 5, wherein we find:

> ".....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...."

The House has taken a decision on that matter. By his amendment No. 390, the hon. Member wants to exclude property other than agricultural land. How can that be done? Is it not contrary to what we have passed already?

Shri H. G. Vaishnav: The property is there, and it is not touched at all. I am only saying how it should be valued.

Shri S. S. More: The exclusion that he seeks is not from levy.

Shri H. G. Vaishnav: I have indicated how it should be valued. Instead of valuing at every time, I have suggested that it should be valued at a fixed rate, on the basis of the land revenue. This land revenue also is assessed by Government officials, in the light of the quality of land. I have suggested that about 15 to 20 times the land revenue should be taken as the basis of the valuation.

Mr. Deputy-Speaker: In the earlier portion he wants the omission, but in the later portion, he is incorporating it by means of a subsequent amendment. He is seeking to indicate a method for estimating the principal value of the agricultural land.

Shri H. G. Vaishnav: My suggestion is that land value should be fixed up on the basis of the revenue assessed

[Shri H. G. Vaishnav]

by Government on that land, and if that is done, the main administrative as well as practical difficulties will be solved. If it is done for court fee purposes etc., I do not know why it cannot be done now for the purpose of assessing the estate duty as well. That will be a further thing just to avoid hardship to the agriculturist. If on every death new value is to be put up for that field it will be very hard to the average agriculturist who may not be in a position to know what and how his field will be valued especially by persons who do not know anything of the land as well as anything of the agriculture.

Again as stated just now there are tenancy laws in almost all the States where the owner cannot enjoy his agricultural land to the full extent because when once he gives his land on lease to a particular tenant he is barred from ejecting the tenant under specific laws and rules. If that is so the owner only gets whatever remuneration or compensation the tenant pays by fixed rate by such agreement which is also subject to some rules under the Tenancy Act. Especially under the Hyderabad Tenancy Act the annual revenue or annual compensation or the profit which the owner is required to get is only about five times or at the most eight times of the land revenue. If the land revenue of a particular field be Rs. 10 and if the owner gets about Rs. 50 or Rs. 80 per annum as the profit of the land, and if that land is assessed according to the market rate it may be worth about Rs. 10,000 or Rs. 15,000 or even more. My submission is that valuation will be altogether injurious or even harsh to the owner because he is getting only Rs. 100 at the most or Rs. 50 or Rs. 80 per annum on that property. Of course, he is supposed to be the owner of some Rs. 15,000 worth property. After his death the property is to be assessed at Rs. 15,000 giving a nominal profit of Rs. 100 per year. So this will be another difficulty because under the tenancy laws the owner cannot enjoy the agricultural land to the full extent and, therefore, some concession in this respect as regards the valuation of agricultural fields is very essential.

Thirdly, Sir, the price of an agricultural field, even in everyday experience, cannot be assessed by even persons who have spent their whole life in agricultural business. On particular occasions the field measuring ten acres is valued at Rs. 10,000 if there are good purchasers but the same field cannot fetch even Rs. 1,000 if the owner is in difficulty and wants to dispose of the property. In this way there are very many difficulties as far as the valuation of the agricultural land is concerned. For that reason I have suggested that instead of undergoing all these difficulties will it not be in the interest of Government to avoid all troubles and to have the land value more stabilised, i.e., to put the assessment value of the land at twenty times the revenue of the land for the purpose of estate duty? If it is done that way, I think, everything will be in favour of the poor agriculturist and the administrative difficulties of the Government will be solved as well.

Again my third amendment is 391 which relates to the fact that it is provided in Clause 35 that though by the death of the owner the property value diminishes, still that lowering of the value will not be taken into consideration for the purpose of assessment. My submission is that that is also a very unjust thing; it is not at all equitable especially in connection with the agricultural fields. So long as a big landholder, owning about 10-15 lands was alive people were demanding some of his fields giving him good price but immediately after his death people think that because there are no proper persons after him to manage the agricultural land, certainly they would be put in the market. The field valuing Rs. 5,000 cannot fetch even Rs. 1,000 after his death. In this way the value of the agricultural field or property is diminished because of the death of

the owner. That factor must be taken into consideration for the purpose of assessment of the estate duty.

Shri M. S. Gurupadaswamy (Mysore): Mr. Deputy-Speaker, Sir, I support some of the views expressed by my hon. friend Mr. Pataskar and I want to elaborate that point still further.

Sir, he pointed out that the words "in the opinion of the controller" should be deleted because that might prove to be a harassment to the assessees. Sir, we know that the incidence of the estate duty will not fall on the dead but it will fall on the living. It is the living who have to pay the estate duty from the property left by the deceased. We must understand in this connection that there is always a time-lag between the levy of the duty and the death of the deceased and during this interval many new factors may come in. I take a concrete instance. Suppose a man dies during the period of inflation. After his death there may be a time-lag for the assessment of duty. In that interval the inflationary conditions may change and a period of depression may start. At that time naturally the value of the property will come down. So it is very complicated to ascertain the market value of a certain property. Suppose it is ascertained at the time of the death of the person, certain other difficulties also may crop in. Suppose in a village a man possesses a fairly large amount of land. If all the villagers deliberately combine with a view to bring down the market price of the land of the deceased, what will happen? So it is very difficult to depend only on the market value of the land at the time of the death of the deceased. The better thing would be to ascertain the market value or the price at the time of the levy. That would be also more equitable. Further there is a proviso to sub-clause (2). I feel that that proviso is unnecessary. When a person dies, the proviso says, the value of the property may, in certain cases, depreciate. I cannot understand how the value of a property can depreciate on the death of a person. The value will depend more upon the trends in the market; the demand for that particular property; the inherent value of the property; and, if the property is land, the fertility of the land and so on.

Shri A. M. Thomas: What about a business concern?

Shri C. D. Pande: What about share in a business concern?

Shri M. S. Gurupadaswamy: The value of a business concern depends, not on the person who runs the business, it depends upon the kind of business done and the nature of the goods sold by that concern. The value does not depend upon the person. The person is merely an instrument of business. Therefore, I feel that the proviso should be deleted.

Then, Sir, there are the words, "satisfaction of the Controller". I think that these words are completely unnecessary. We know how it is very easy in this land for rich people to prove things to the satisfaction of Controllers by offering money or persuasion. If you retain these words, the result will be that it will lead to corruption. Moreover, the Controllers may use their discretion in favour of rich people, and if these words, "satisfaction of the Controller" or "in the opinion of the Controller" are retained, the rich people will get the benefit by indirect ways.

Shri S. S. More: What is your alternative suggestion?

Shri M. S. Gurupadaswamy: Let me finish my statement. Rich people will benefit by indirect ways and the middle classes will have to suffer in the long run, because they cannot afford to bribe these Controllers. Now-a-days, bribery has almost become a part of the administrative system, and so I feel that these words are unnecessary, and if they are retained they may prove a positive harm in the long run. So, they should be deleted.

The Deputy Minister of Finance (Shri M. C. Shah): Sir, I move that the question be now put. There has been enough discussion and it is more than an hour since we have been discussing this matter.

Shri C. D. Pande: My amendment has not been taken up.

Mr. Deputy-Speaker: I am going to put the question. The question is.....

Pandit C. N. Malaviya: May I explain my amendment, Sir? I have not expressed my views.

Shri C. D. Pande: My amendment has not been moved by me, Sir.

Shri Dabhi: I do not want to speak, but I want to have a clarification.

Mr. Deputy-Speaker: Later on.

Shri M. Khuda Baksh: I want to oppose an amendment.

Mr. Deputy-Speaker: I have looked into the amendments. All points of view have been expressed sufficiently before the House. At the same time, I leave it to the House to decide whether we ought to go on with the discussion, or whether closure may be accepted. (*Interruption*). I am going to put the question. The question is:

"That the question be now put."

The motion was adopted.

Mr. Deputy-Speaker: I am calling upon the Finance Minister to reply.

Shri C. D. Deshmukh *rose*—

Shri C. D. Pande: What will happen to my amendment? It has not been moved.

Mr. Deputy-Speaker: His amendment was received only just now and I am not waiving notice.

Shri C. D. Pande: This clause was scheduled to be taken up only tomorrow and hence the notice is in time.

Mr. Deputy-Speaker: Certainly not.

Shri B. P. Sinha: What about my amendment?

Shri Lokenath Mishra: What about my amendment, No. 650?

Mr. Deputy-Speaker: Has he given notice?

Shri Lokenath Mishra: It is there in the printed list.

Mr. Deputy-Speaker: The closure has been accepted, and I am now calling upon the Finance Minister.

Shri Dabhi: I do not want to speak, but I only want a clarification.

Mr. Deputy-Speaker: That is another form of speech. The Finance Minister.

The Minister of Finance (Shri C. D. Deshmukh): Mr. Deputy-Speaker, we have taken this provision from the U.K. Act. What we are concerned with is the value of the property at the time of death. There are some rules here, and I may quote to you from page 560 of Dymond, where he says:—

> "Where the property has actually been sold within a short time after the death of the deceased under open market conditions, the gross sum realised may generally be taken as the principal value."

Now, in regard to the difference made by the death of the deceased, there is this paragraph here on page 235:—

> "When it is proved to the Commissioners of Inland Revenue that the value of the property has been depreciated by reason of the death of the deceased, they are required in fixing the price to take such depreciation into account. For example, some depreciation might be expected to follow from the loss of the outstanding personality of a deceased person or of the exceptional services given by him to the company or to the property."

So, this is the kind of case that was contemplated when we made that provision.

Now, Sir, I have been wondering if all the speeches would have been made in this strain if we had been dealing with the case of valuation for the purposes of acquiring property, in the case of nationalisation and so on. Then, I think, the very opposite arguments would have been used, that is to say, every one would have enthusiastically supported this sub-clause (2). Now, if it is right in certain circumstances, I think it is all right in these circumstances. Most of the hon. Members who have supported these amendments—all of which I oppose—have drawn upon the exceptional case. Someone has imagined thirteen years after death. Someone has imagined an earthquake which flattens out all the houses and kills all the residents, and then he has asked the question, "What is then the value of the property?" I say, "In that case, there is no property; so no question of value can arise in such cases." Therefore, to restore perspective, I think we must confine ourselves to the ordinary case, and the ordinary case is certainly not a case of an epidemic or an earthquake or extraordinary delay. The ordinary case is where there will not be a very large interval of time between the death and the determination.

The next point I would like to make is that, somehow or other in spite of the decision by the House on the relevant point, hon. Members seem to harp back on the idea that there ought to be some kind of appeal against valuation to a court of law. I cannot see how you can get over determination, as a matter of fact, by the Controller. It has to be determined by him, whether you say it is his opinion or to his satisfaction. The moment you say that it will be as it is, then you take away the power of determination by the Controller. You let the matter open for appeal to a court of law. Now, in the clause which deals with appeals—clause 61—these words are used: "As determined by the Controller." Therefore, it seems to me that the initial step is a determination by the Controller by applying his mind —because there is no other mind that can be applied—subject of course to what I am going to say about valuation. And that, I think, answers the objections raised by the hon. Member there.

6 P.M.

So far as valuation is concerned, the last Member who spoke said there was a danger of property being undervalued. That is a danger which one would have to take into account, particularly the Finance Minister, but I doubt if the frequency of such cases is going to be great as to induce the Finance Minister to accept an amendment which goes to the root of the matter.

Now, coming to this question of valuation, in the original stage the valuation is made by the valuer and the Controller, and the Controller may ask for a valuation by a valuer. Then if the party has any grievance the matter has to be referred to the valuers in the particular manner prescribed. Therefore, it seems to me that in the large majority of cases, the matter will have been taken out of the hands of either the controller or the Board even, and the final determining voice will be the voice of the valuers. Now, whether that should be final or whether there should have been an appeal on facts to courts is a matter which we discussed, and we came to the conclusion that at least in the initial stages we might be content with accepting the valuation as determined by the valuers.

One hon. Member said there was some inconsistency in the use of the word 'open' market, and he said that clause (1) obliterates.....

Shri Tek Chand: They are mutually contradictory.

Shri C. D. Deshmukh: They might be. The Legislature has the power to qualify any word which is used in a certain sense. In other words, it is only a dialectical point. We may use the word 'just' market. We may merely say 'market value.' It is only made clear that the market value is that in

[Shri C. D. Deshmukh]

which the conditions are free and open, but we have in clause 2 prescribed an exception. Therefore, it is not a question of any contradiction in terms.

Now, Sir, I shall come to the amendments moved by the hon. Members. I think it would be best if I dealt with the last ones because they deal with agricultural property. Now, the hon. Member behind me, Shri Vaishnav, referred to a large number of possible difficulties and therefore he said it would be much better if we had a formula which will save trouble all round. I think, Sir, that these arguments point exactly to the opposite conclusion. If the matter is so complex as that, if the matter is liable to vary in this manner, then is it right either by the potential assessee, that is the estate, or the community, that is the State, that we should have a rigid formula? Any attempt to stereotype or conventionalize a valuation at this stage, Sir, would be particularly unfortunate, because we are in the midst of putting through a great many measures of reforms of land tenure. It is not as if only a single kind or category of interest in the land is going to pass. All over the country there are diverse interests in land which will be passing and these very interests are in process of being changed by current legislation. That seems to me to be a conclusive argument why we should not accept any rigid formula. For instance, yesterday while trying to justify the exemption of a small agricultural estate or in connection with the general exemption limit, an hon. Member argued that in some parts of India land may be worth Rs. 15,000. I cannot say how a formula which takes the value of land to be twenty times the land revenue could ever meet cases of this kind. One cannot have it both ways. My own impression is that land values differ enormously from State to State, from tract to tract. If you go to the deltas, whichever delta it may be, land values are fantastic. Therefore it would be most inadvisable to accept any rigid formula as has been proposed by the hon. Member there or the hon. Member who wanted to speak.

Now, Sir, the other amendments are these; one is 146. Now, as I said, this provision has been taken from the United Kingdom Act, and it is necessary that we should not take into account any possible result of a sudden placing on the market of any estate which was concerned with what was the genuine value of the estate at the time of the possessor's death. Then there was an amendment—No. 148 by Shri Tulsidas. As I said, in actual practice I doubt whether any large blocks of property would really be placed on the market simultaneously for sale. The clause provides that in estimating the principal value the Controller shall not make any reduction. And in this respect, although we have followed the U.K. law, we shall take note of the U.K. practice. As we understand it, the practice of the Commissioners in U.K. is to make some allowances when the deceased's holding of a particular kind of property was so large that in fact the market is depreciated through a forced realization by the executors shortly after death. And except to this extent, I do think it will be fair to every one concerned to keep the clause as it is.

I have dealt with all the four amendments. I am sorry I am not able to accept any of them.

Pandit Thakur Das Bhargava: May I know if the Board will be able to have their own valuation in appeal if they do not accept the valuation made by the Controller, to be correct. Secondly, will the Board be able to give relief, in cases of *'vis major'*. Or, in cases where the law of the land is changed during the interval.

Shri C. D. Deshmukh: This is a matter of interpretation of clause 61. I mean it is really what is the scope of the Board's powers under clause 61.

Shri Pataskar: Read with clause 35.

Shri C. D. Deshmukh: That is right, but until we come to clause 31, I do not think it will be right for me to interpret it.

Pandit Thakur Das Bhargava: The words, "In the opinion of the Controller." must be interpreted in their ordinary meaning.

Shri C. D. Deshmukh: I have made a reference to clause 61.

The clause reads like this:

> "Any person objecting to the valuation made or the estate duty determined by the Controller"—

Actually, the words used are "valuation made."

> "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."

Then the Board may, in disposing of an appeal hold or cause to be held such further enquiry as it thinks fit, and after giving an opportunity of being heard, pass, subject to the provisions of sub-clause (4), such orders thereon as it thinks fit. In other words, if there is no appeal, then the valuation as it appears in the opinion of the Controller will be final. But if there is an appeal, there is power given to the Board to pass such orders as it thinks fit, subject to sub-clause (4). Clause (4) says when 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—and it must be a question of disputed value, if there is to be an appeal—to the arbitration of two valuers, one of whom shall be nominated by the Board.

Pandit Thakur Das Bhargava: I take it, in the opinion of the Finance Minister the Board will be able to give relief in proper cases.

Shri C. D. Deshmukh: I think so. Clause 61 also provides for it. I should say that undue significance should not be attached to the word "in the opinion of" merely on the analogy of other Acts the object of which is to exclude the jurisdiction of courts and that is why the safeguard is used, for instance, "in the opinion of so and so". Here the whole process of valuation is such that someone has to apply his mind and determine the value. The scope of clause 61 is wide enough to allow the Board to make a valuation subject to sub-clause (4).

Shri Pataskar: So, in the opinion of the Finance Minister, they will not be bound by the opinion of the Controller.

Shri N. C. Chatterjee: "Subject to the satisfaction or opinion of a particular officer" is not final; it has got to be decided according to actual market value.

Shri C. D. Deshmukh: For instance, if the Controller merely says "I determine this value" and does not refer to anything. Then the law does not say that the valuation shall be as it is in the opinion of the Controller. If that was so, it would be a very objectionable provision.

There are certain facts to which he must direct his attention and there are certain conditions subject to which he should apply his mind. It is only he who can come to a conclusion and that is all that is signified by the word "in the opinion of".

Shri Tek Chand: If after taking into consideration all these various facts he forms an opinion which in the judgment of the Central Board of Revenue happens to be perverse, will it be possible for the Board to upset his opinion?

Shri C. D. Deshmukh: Yes.

Shri Dabhi: May I ask one question? I am doubtful about sub-clause (2). On what basis will the controller make the valuation—on the basis that the whole property will be placed on the market at one and the same time. If that be so, where is the necessity of saying that the Controller shall not make any reduction on

[Shri Dabhi]

the assumption that the whole property is to be placed on the market at one and the same time? On the other hand, if the estimate is to be made by somebody else there is no such provision in the bill.

Mr. Deputy-Speaker: One need not assume that the moment a man dies all his property must be sold away. Why should every item of property be sold away? We need not proceed on the assumption that all the shares and all the lands in the world will be sold. In that case there will be no purchasers.

Let me now dispose of the amendments.

Shri H. G. Vaishnav: I beg leave to withdraw my admendments No. 390, 391 and 392.

The amendments were by leave, withdrawn.

Shri Pataskar: I beg leave to withdraw my amendments No. 560, 561 and 562.

The amendments were by leave, withdrawn.

Shri T. S. A. Chettiar: I beg leave to withdraw my amendments No. 146, 147 and 150.

The amendments were by leave, withdrawn.

Shri C. R. Mudaliar: I beg leave to withdraw my amendment No. 657.

The amendment was by leave, withdrawn.

Shri B. P. Sinha: I beg leave to withdraw my amendment No. 603.

The amendment was by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

In page 21, *for* lines 25 to 30 *substitute*:

"(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 make reasonable reduction in the estimate on account of the fact that the whole property is to be placed on the market at one and the same time and further 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, such depreciation shall also be taken into account in fixing the price."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 35 stand part of the Bill."

The motion was adopted.

Clause 35 was added to the Bill.

Clause 36. (*Valuation of shares etc.*)

Mr. Deputy-Speaker: There is an amendment (No. 151) standing in the name of Shri Tulsidas Kilachand. But the Articles of Association of the Company do not seem appropriate there. How can the value be ascertained by reference to Articles of Association?

Shri Tulsidas: I shall explain it, Sir. I beg to move:

In page 21, line 38, *after* "reference" *insert* "to the Articles of Association of the Company or".

According to the Companies Act, which is now going to be amended by the companies Bill the auditors have to value the shares every time the balance sheet is signed by them. So according to the Articles of Association the value is ascertained every year. A private company prescribes in the Articles of Association the method of valuation of shares and fixing the prices of shares. It should be binding for purposes of valuation. That is my

point. With so many restrictions on a private company it is difficult to value shares on the basis of the assets of the company. It has to be valued from a different angle. Therefore, there is a provision in the Articles of Association that at the time of passing the balance sheet the shares should be valued.

Shri C. D. Deshmukh: I think it will be a very artificial determination of the value. After all there are good auditors, indifferent auditors and poor auditors and they are subject to various degrees of influence, might be of the companies, and we could not accept this as the conclusive determination of value.

Mr. Deputy-Speaker: The question is:

In page 21, line 38, *after* "reference" *insert* "to the Articles of Association of the Company or".

The motion was negatived

Mr. Deputy-Speaker: There are no amendments to clause 37 and I therefore put clauses 36 and 37 together.

The question is:

"Clauses 36 and 37 stand part of the Bill."

The motion was adopted.

Clauses 36 and 37 were added to the Bill.

New Clause 37A.

Mr. Deputy-Speaker: Let us now proceed to clause 37A. Will the Finance Minister start with this clause?

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

Shri C. D. Deshmukh: I beg to move:

In page 22, *after* line 9, *insert*:

"37A. *Valuation of interest in coparcenary property ceasing on death.*—(1) The value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family property governed by the Mitakshara school of Hindu law which ceases on the death of a member thereof shall be the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death.

(2) In determining under subsection (1) the share which would have been allotted to the deceased, a member of a coparcenary who had not completed the age of eighteen years at the time of the death of the deceased, and who has a father or other male ascendant in the male line who is a coparcener of the same family, shall be deemed not to have been entitled to any interest in the joint family property.

(3) The value of the benefit accruing or arising from the cesser of an interest in the property of a *tarwad* or *tavazhi* governed by the Marumakkattayam rule of inheritance or of a *kutumba* or *kavaru* governed by the Aliyasantana rule of inheritance which ceases on the death of a member thereof shall be the principal value of the share in the property of the *tarwad* or *tavazhi* or, as the case may be, the *kutumba* or *kavaru* which would have been allotted to the deceased had a partition taken place immediately before his death.

(4) In determining under subsection (3) the share which would have been allotted to the deceased, a member of a *tarwad* or *tavazhi* or, as the case may be, the *kutumba* or *kavaru* who had not completed the age of eighteen years at the time of the death of the deceased shall be deemed not to have been entitled to any interest in the property of the *tarwad* or *tavazhi* or, as the case may be, the *kutumba* or *kavaru*.

(5) For the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara,

[Shri C. D. Deshmukh]

Marumakkattayam or Aliyasantana law in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediately before his death, the provisions of this Act, so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased.".

The question of the valuation of the cesser of interest in the case of death of a coparcener in a Hindu undivided family is, as the House is well aware, fraught with great difficulties and there is the disadvantage that we have no precedent for valuing such interest. Now in order to understand the exact implications of the amendment proposed, I shall try to explain to the House in brief the nature and the incidence relating to coparcenary property. Taking the Mitakshara law first, the Hindu coparcenary includes only those persons who acquire by birth an interest in the joint or coparcenary property. These consist of the three generations next to the holder in unbroken male descent. A female is not a coparcener under the Mitakshara law although certain rights have been given to the widow under the Hindu Women's Rights to Property Act, 1937. The right that a son obtains in the ancestral property is wholly independent of that of his father, and his claim is, therefore, not through his father, but by himself. For our purposes, the important point is that no coparcener is entitled to any special interest in the coparcenary property, nor is he entitled to exclusive possession of any part of the property. There is a community of interest and community of possession between all the members of the family. The only occasion on which the interest of a coparcener can be determined is at the time of the partition of a corparcenary property. Here again, there are restrictions about the persons who can claim partition. Generally speaking, every adult corparcener is entitled to demand and sue for partition, except in Bombay and in the Punjab, where the son's right to claim partition in the life-time of his father is not recognised.

Shri Raghavachari: Even minor can claim partition.

Shri C. D. Deshmukh: In the Punjab and in Bombay what I said is correct. A son *en ventre sa mare* (that is, in the womb) is also entitled to a share. A widow has the same right to claim partition as a male member under the 1937 Hindu Women's Rights to Property Act. On partition between the members of a joint family, shares are allotted according to certain rules. These are—

(a) Where the partition is between the father and the sons, each son takes his share equal to that of his father.

(b) Where the partition is between the brothers, they take equal shares.

(c) Where the partition is between coparceners belonging to different branches of the family, the property is divided among the branches equally *per stirpes*.

(d) Where the partition is between coparceners belonging to the same branch the property is divided equally among them *per capita*.

Proceeding now to Marumakkattayam law, *tarwad* is the name given to the joint family,—this may not be quite familiar to hon. Members in the North—consisting of males and females, all descended in the female line from a common ancestress.

Shri A. M. Thomas: The hon. Minister must also come to Kerala.

Shri C. D. Deshmukh: I am only informing myself of the conditions in Kerala before venturing to go there. *tarwad* may consist of two or more branches known as *tavashis*. Each *tavashi* is a branch consisting of one of the female members of the *tarwad*

and her descendant in the female line, both males and females have equal rights in *tarwad* property and the question of limited estate of Hindu women in the *Mitakshara* law is unknown to *Marumakkattayam* or *Aliyasantana* systems. Generally speaking, a partition can be claimed only with the concurrence of all the members of the *tarwad*. With the exception of certain *tarwads* the share of partition is *per capita* and not *per stirpes*. The rules of intestate succession to separate property in Marumakkattyam law are also different.

Finally, as regards *Aliyasantana* law, *Kutumba* means the group of persons forming a joint family with community of property. *Kavaru* used in relation to a female, means the group of persons consisting of that female, her children and of her descendants in the female line. While used in relation to a male, it means the *kavaru* of the mother of that male Here again there is no identifiable interest of each of the members of the *kavaru*. But generally speaking, any *kavaru* represented by the majority of its major members may claim to take its share of all the properties of the *kutumba* over which the *kutumba* has power of disposal and separate from the *kavaru*. Except in certam circumstances, the allotment of shares is that in one half of the properties, the *kavaru* is allotted such share as would fall to it if a division thereof were made *per capita* among all the members of the *kutumba* then living and in the other half of the *kutumba* property the *kavaru* is allotted such share as would fall to it if a division thereof were made *per stirpes* among the *kavarus*.

This, Sir, is a brief and perhaps an adequate account of the complexities involved in applying the provisions of clause 7 of this Bill. In valuing the interest that ceases on the death of a member of any of the families that I have described, it will not be proper to leave the matter in the air and thus cause a lot of misunderstanding and unnecessary litigation. We have to envolve an artificial method which can be operated by Revenue Officers and understood by people. It has also to be remembered that in certain cases the shares are in *stirpes* and the method adopted should be such that does not make the law largely ineffective in the case of members of joint families consisting of several branches.

The amendment, therefore, suggests that the interests will be valued as if a partition had taken place, immediately before the death of the deceased. That is the formula. It ignores the point whether the deceased had any right to claim partition. The partition will be purely notional and this point does not indeed arise. The amendment also provides that at the time of such notional partition, the respective laws would be followed, but that the shares of the minors would be excluded except where there is no male ascendant living in the male line who is a coparcener.

This is proposed not only because, the shares in some cases being *per stirpes*, the allotment of shares to minors would mean that duty would not be leviable except in the case of very large properties, but also because by sub-clauses (2) and (3) of clause 7 duty is not to be charged on the death of the minor himself. I am assured that there is nothing unconstitutional in this, though undoubtedly we are making some encroachment on the ordinary laws of partition. I hope the advantage which joint family property gets by not having to pay duty on the death of a minor, and also the benefit of quick succession relief—because in a large family deaths are likely to be more frequent, as I pointed out this morning—will more than compensate for any possible unfairness in ignoring the shares of minor members of the family.

Sub-clause (5) of the amendment has been proposed because, in order to arrive at the share which is allottable to a deceased member, it is essential that the value of the total coparcenary property should be ascertained, otherwise it would be impossible to ascertain the share of the deceased.

[Shri C. D. Deshmukh]

Here again, in determining the total value of the entire property, the provisions in Part II relating to gifts, settlements, declarations of trusts, etc. should apply, so that any transfers made, say, by the manager or by other persons on behalf of the Hindu coparcenary within the statutory period may be brought back into the joint family property, not for the purpose of upsetting any of those transactions but merely for the purpose of enabling the revenue authorities to determine the total value of the property. If it is suggested that the provision is unfair, the answer is that it is not so, particularly as it does not seek to set aside any transfers but merely provides a method—perhaps the only method— by which the share of the deceased in the entire property could be determined satisfactorily. If such a provision were not made, in most cases it would be impossible to determine the share of a deceased member, which in fact may be nil, if such transactions are not ignored for computing the principal value of the entire property.

With these words I leave this amendment to the House—because it would have to be considered carefully. I think that is the only amendment I have.

Mr. Chairman: Amendment moved:

In page 22, *after* line 9, *insert*:

"37A. *Valuation of interest in coparcenary property ceasing on death.*— (1) The value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family property governed by the Mitakshara school of Hindu law which ceases on the death of a member thereof shall be the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death.

(2) In determining under subsection (1) the share which would have been allotted to the deceased, a member of a copacenary who had not completed the age of eighteen years at the time of the death of the deceased, and who has a father or other male ascendant in the male line who is a coparcener of the same family, shall be deemed not to have been entitled to any interest in the joint family property.

(3) The value of the benefit accruing or arising from the cesser of an interest in the property of a *tarwad* or *tavazhi* governed by the Marumakkattayam rule of inheritance or of a *kutumba* or *kavaru* governed by the Aliyasantana rule of inheritance which ceases on the death of a member thereof shall be the principal value of the share in the property of the *tarwad* or *tavazhi* or, as the case may be, the *kutumba* or *kavaru* which would have been allotted to the deceased had a partition taken place immediately before his death

(4) In determining under subsection (3) the share which would have been allotted to the deceased, a member of a *tarwad* or *tavazhi* or, as the case may be, the *kutumba* or *kavaru* who had not completed the age of eighteen years at the time of the death of the deceased shall be deemed not to have been entitled to any interest in the property of the *tarwad* or *tavazi* or, as the case may be, the *kutumba* or *kavaru*.

(5) For the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediately before his death, the provisions of this Act, so far

as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased."

Shri U. M. Trivedi (Chittor): Sir, I would like to know if the provisions of rule 101 and rule 102 of the Rules of Procedure have been satisfied with regard to this amendment. Rule 101 requires that "if any member desires to move an amendment which under the Constitution cannot be moved without the previous sanction or recommendation of the President, he shall annex to the notice required by these rules such sanction or recommendation conveyed through a Minister and the notice shall not be valid until this requirement is complied with". I would like to know whether any recommendation from the President is attached to this or not.

Mr. Chairman: To this amendment?

Shri U. M. Trivedi: To this amendment.

Mr. Chairman: Does it require the sanction of the President?

Shri U. M. Trivedi: That is my submission. But before I make my submission I would like to know if that certificate is attached, because the point of order will stand only if there is no such recommendation.

Shri S. S. More: You are yourself deciding!

Shri U. M. Trivedi: I am not deciding. I want that information first.

Mr. Chairman: The only point that the hon. Member wants to know is whether any recommendation has been obtained from the President for this amendment. Then he would raise his point of order.

Shri U. M. Trivedi: Assuming it has not been obtained.....

Mr. Chairman: I am just requesting the hon. the Finance Minister to let the hon. Member know whether it has been obtained or not.

Shri C. D. Deshmukh: We have not considered it necessary to obtain any recommendation in respect of this particular amendment.

Mr. Chairman: The hon. Member may now raise his point.

Shri U. M. Trivedi: Mr. Chairman, the point is this. In sub-clause (2) of this amendment, the new clause 37A, it is provided that a minor who has not completed the age of eighteen years and who has got a father or a male ascendant in the male line who is a coparcener of the same family, shall be deemed not to have any interest in the joint family property. In other words what will happen is that, his share being not counted, the amount of duty that would be collected would increase. In other words the amount of duty will be varied. Any enhancement of duty to be provided for, will require the sanction of the President not only under article 117 but specifically in this case under article 274 also.

Shri A M. Thomas: We have passed clause 7.

Shri U. M. Trivedi: Mistakes we might have committed and they might be condoned. But today, when we are considering some proposition here, we have got an amendment which in very clear terms varies the duty that is going to be levied. And since it varies the duty to be levied, even if we read article 117 it says:

"A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:

Provided that no recommendation shall be required under this

[Shri U. M. Trivedi]

clause for the moving of an amendment making provision for the reduction or abolition of any tax".

But this is not a provision for reduction or abolition of the duty. It is a clear provision for enhancement of the duty to be levied. And in this particular instance article 274 is very very clear, because article 274 is a special provision with reference to a duty to be levied from various States subjects. And in that case "no Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression 'agricultural income' as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions, of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President".

This being, therefore, a very clear provision of law, read with rules 101 and 102 of the Rules of Procedure, my submission is that without the necessary recommendation of the President this new clause 37A cannot be moved.

Shri Raghavachari: My objection is that the amendment is out of order under rule 100(ii) of the Rules of Procedure because "an amendment shall not be inconsistent with any previous decision of the House on the same question". I shall now point out.....

Mr. Chairman: Before the hon. Member proceeds let the first point be decided.

Shri T. S. A. Chettiar (Tiruppur): Sir, I want a clarification. If "A" has four sons and all the four sons are minors how will he be taxed and what will be the limit?

Shri Gadgil: Who dies?

Shri T. S. A. Chettiar: A dies. A is the father and he has 4 sons and all the sons are minors. Is it correct to say according to this amendment that A will be adjudged as a coparcener in a joint family and the limit that would apply to him is only Rs. 50,000 and the whole property will be taxed for the purposes of etate duty? May I know whether that is the intention of the Government?

Shri C. D. Deshmukh: The minor's interest is not to be calculated.

Shri S. S. More: This point will have to be postponed because it is of the same nature as the point of order which was so elaborately discussed this morning, a point on which the Law Minister threw a flood of light.

Mr. Chairman: I was also of the same opinion that this point may have to be postponed. But, I wanted to hear the hon. Finance Minister as to what his reactions are.

Shri T. S. A Chettiar: Let us have clarification.

Mr. Chairman: May I know what the hon. Finance Minister thinks about this point of order?

Shri A. M. Thomas: There will clearly be an enlargement of the share.

Shri C. D. Deshmukh: This is one of the incidental provisions that are being made. It does not go to the imposition of a duty or the variation of the rates. In other words, it cannot be regarded as an imposition or variation of a tax.

Mr. Chairman: The contention seems to be that it is an enhancement of the rate. If a certain share

is excluded, the amount of property is larger and certainly the tax will be larger.

Shri S. S. More: And the rates will change greatly.

Shri C. D. Deshmukh: It is a matter of valuation: is it not? After all, when we moved amendments to clause 35, some raising the valuation and some lowering the valuation, we did not consider there whether the valuation itself was going to be changed by the amendment. That is why I say that it is wrong to say that article 107(1) has any application here. If one tries to see and answer this question: is there anything in this clause which is covered by the matters mentioned in article 110 (a) to (f), this is a procedural matter.

Shri S. S. More: Not procedural.

Mr. Chairman: Let him proceed; let him finish.

Shri C. D. Deshmukh: Our view is that a Money Bill, certainly contains provisions relating to these matters; but it does not mean that every word of it goes either to the imposition of a tax, or alteration of a tax or abolition of a tax and so on. There are other matters like, whether appeals should go to the Board or to a tribunal and so on. If there are amendments to that, are we going to say, this is a money bill and therefore it is an amendment which either seeks to impose or vary a tax? You cannot say so. Therefore, one can conceive of amendments to a Money Bill which are not in themselves amendments which seek to impose or vary a tax. I say this is not that kind of amendment. Therefore, one need not consider the question whether it has the effect of reducing finally the end result or not. It is on the same lines, as I said, of valuation, determination of the market values.

Shri Gadgil: The whole Chapter V deals with procedure of valuation. It does not deal with taxation as such. Therefore, no sanction to an amendment of procedure is necessary.

Shri S. S. More: This point of view is not correct, Sir. If you go further, as a matter of fact, to clause 7, certain concessions are supposed to be held out to a Mitakshara family where a person is below 18. Now, a special fiction is being created, if the House agrees to this, that the share of a minor under 18 will be treated as not to exist at all. What will be the result? If his share is supposed to be there and if a member in the family dies, his share will be computed for the purposes of assessment. If this new fiction is allowed, and tolerated by the House, what will happen? Suppose A and B are brothers and B is a minor. His share in the joint family property is supposed not to exist at all. A will be supposed to inherit from the deceased the whole of the property. The result will be that though B has a *de facto* share, according to the personal law, A's share will be supposed to be the whole of the corpus and it will be subjected to a higher levy. As a matter of fact, though this provision ostensibly seems to be very innocent, still in its application, it has got a most mischievous tendency and it may take away the concession which is supposed to be held out under clause 7. I am only arguing on the point of order. I am not going into the merits of the case whether this fiction is created in a *bona fide* manner or with some ulterior purpose. I am not going into that question. A.'s share, which is practically a half will, in view of this fiction, be treated as the whole and the whole property will be taken for purposes of assessment. It will vary the rate; it will enhance the rate.

Shri A. M. Thomas: My objection is that not only is the estate of the deceased taxed, but the estate of the living also is taxed by this provision.

Shri S. S. More: That is another point.

Shri Tek Chand: On the point of order, Sir, I wish to invite the point-

[Shri Tek Chand]

ed attention of the hon. Finance Minister to article 110 (1) of the Constitution where a Money Bill is defined and the definition includes "the imposition, abolition, remission, alteration or regulation of any tax". This amendment is regulating the tax. Therefore, under article 117—proviso, all that you can say is that no recommendation shall be required under this clause for moving an amendment making provision for reduction or abolition of any tax. If the effect of sub-clause (2) is enhancement or imposition of a greater burden, then, in so far as it falls within the ambit of a Money Bill, the recommendation of the President becomes imperative.

Shri S. S. More: Let the whole bundle be sent to the President. (*Interruption*).

Mr. Chairman: Order, order. It appears to be correct that clause 37A comes in Part V: Value Chargeable. But, as pointed out by Mr. More, if the effect of this variation is a substantial one and it results in the duty being enhanced, the share being allotted as an enhanced share. I am afraid the question will arise whether it is only a procedural question or a substantial question. If the actual result is different from only a question of valuing the property, and if it results in it being accepted that the share of a particular person is larger than it would be but for the enactment of this sub-clause (2), the question will be one of substance. I should therefore think that this question be taken up along with the other question and the question will be decided along with that question. In this way, if the House agrees, we may proceed to other clauses 38, 39 and so on, postponing the decision of this question.

Shri S. S. More: There are only ten minutes left. Let us adjourn now.

An Hon. Member: There cannot be any objection to sub-clauses (1), (3), (5).

Shri M. C. Shah: We decided to sit up to 7-30.

Mr. Chairman: That is why I said that it would be better if we take up other clauses.

Shri Raghavachari: I have another objection. My objection is that this amendment, particularly sub-clauses (2), (4) and (5) offend rule 100 (ii). That is, an amendment cannot be inconsistent with any previous decision of the House on the same question. That is the objection. I shall now point out how these amendments are inconsistent with the decision of this House already taken. I do not wish to address arguments on other points now. That will come later. I have myself an amendment. I only confine myself to the particular objection I have raised that it is inconsistent.

I shall invite the attention of this House to provision after provision of the Bill which we have passed so far. For instance, Clause 5 is that it is the estate of the deceased that is the subject of taxation. And this amendment makes the estate not of the deceased as it is in fact, but as the Law Minister or the Government thinks it should be. It is not the estate of the deceased. I do not wish to elaborate. It is perfectly clear that minors are to be treated as people without any right in the property for the purpose of this calculation. Suppose a father with half a dozen sons dies, and there is also a grandfather. Then, the father's share will be half. Tax. When the grandfather dies, all the minors have no interest at all. Tax again the whole. Therefore, the principle we have decided under Clause 5 that it is the deceased's estate that will be taxed is offended by this. Therefore, it is inconsistent with that.

Then, Sir, you go to Clause 7. Sub-clause (1) of the Clause that we have passed is:

> "Subject to the provisions of this section, property in which .....on the deceased's death to

the extent to which a benefit accrues or arises by the cesser of such interest.....".

that is, from his death. So, if a person dies, the interest which he possessed in law is the thing which has ceased, or which has accrued to other people. And now, by this amendment you offend the principle which you have already decided that it must be the interest that has ceased and accrued. You make this accrual a very big accrual by saying: "Though the deceased had a fourth or a fifth or a tenth interest, I shall consider it as half or as the whole". Therefore, we have again offended that portion of the principle which we have decided.

And then, Sir, we again come to sub-clause (2) of Clause 7. In sub-clause (2) you said that an interest only of a minor who has not attained 18 who has his father or male ascendent who is living, will not be taxed at all. That is no estate that is taxable. But now you have gone to the contrary. You are not worried about the deceased minor, but you are by this amendment catching all the living minors, and say: "You are treated as dead. You have no property", or "you have no interest in this property". That is again going against the principle that we have already decided, and therefore, it is inconsistent.

Shri C. D. Deshmukh: Which is the Rule the hon. Member mentioned?

Shri Raghavachari: Rule No. 100 (ii).

Shri C. D. Deshmukh: Of the Rules of Procedure?

Shri Raghavachari: Yes.

Mr. Chairman: Once a decision is taken by the House, then nothing inconsistent with the previous decision shall be allowed to be discussed.

Shri C. D. Deshmukh: Rule No. 102 does not apply to this.

Shri Raghavachari: Rule No. 100 (ii). It reads:

"An amendment shall not be inconsistent with any previous decision of the House on the same question".

Shri Gadgil: Which previous decision you are referring to?

Mr. Chairman: He is referring to Clause 5.

Shri Raghavachari: Clauses 5 and 7. Those are the previous decisions of this House.

Shri C. D. Deshmukh: Supposing the wording was "Notwithstanding anything contained in Clauses 5, 6, 7 and 8, the interest shall be determined as follows:"; in other words, the previous Clauses only refer to interest as they accure. Then, if one prescribes a method by which the interests are to be determined, I cannot see how you can say that we are discussing the same matter. It is not the same question. The question is how actually these interests are to be determined. I do not see any Clause which says how the interest shall be determined. All it says is these interests shall be property passing on death. Therefore, it should be quite open to us to say—I think it would have been better if we had said—"Notwithstanding anything contained in any previous section.....". One can do it. There is no inconsistency in this.

Shri Gadgil: They are two different topics.

Shri K. K. Basu (Diamond Harbour): The whole point is: interest ceasing at death and what passed. Under the normal law of the land, an interest in the estate accrues to the minor in which the deceased had a particular interest. Now, when you want to calculate, you want to say that the interest includes something

[Shri K. K. Basu]

in which the deceased had no interest. The minor's interest you now want to add for calculation. Even if you include "notwithstanding....." that will not clarify. It is a substantial thing.

Shri A. M. Thomas (Ernakulam): It won't be an estate duty.

Shri K. K. Basu: Had it been for aggregation in the corpus similar matter, it is quite different, but here it is property in which he had no property when he died that is being taken for imposing duty.

Shri Raghavachari: The language of Clause 7 is clear. It only says:

> "Subject to the provisions of this section....."

We have determined and we have decided that the estate of the man is the interest that accrues to some other by the death of what particular individual. How can you enlarge it, which is not there, simply by saying this is a matter of evaluation or the process of determining that interest? Certainly, it is inconsistent with the principle that we have already decided that the man's interest or the estate is only that which accrues by his death to other people. And you cannot by a fiction say: "Let us calculate a greater interest for the purpose of this thing". You are offending not only your own previous decision, but you are offending the personal law of the country by saying that a man who has only 1/4 or 1/10 will be supposed to be a man who owns a much larger share of the property. You know, Sir, that in many joint families we have got a number of minors. Take the case of a father with one adult son and 8 minors. Every example may be.....

Mr. Chairman: Personal law is not being changed.

Shri Raghavachari: What I say is you are treating the interest of the deceased to be larger than the personal law gives him. That is how you calculate. You may as well say: "In the process of evaluation, I shall treat the properties of all living people in the world as the deceased's property" It must be his property.

Shri K. K. Basu: That is the whole point.

Shri Raghavachari: I was mentioning the case of a father, an adult son and half a dozen minor sons. The adult son dies. The son, in the ordinary course, would be entitled to 1/8 share. Now, because all the six others are minors , you call it half and you begin to tax. Later it is the father that dies, and then you have got all these minors. Again not the other half but the whole is to be taxed.

Mr. Chairman: The hon. Member is going to speak on the merits.

Shri Raghavachari: No, no.

Mr. Chairman: Here, the only point is that, according to the hon. Member, the House has taken a decision and this proposed amendment is inconsistent with that decision.

Shri Raghavachari: Exactly.

Mr. Chairman: This is the only point. So far as the question of merits is concerned, we shall consider it subsequently.

Shri Raghavachari: I gave the instance only to show how this amendment is inconsistent with the decision that the House has already taken under Clause 7(2). That is the point.

And then, you will see, Sir, it is also inconsistent not only with Clause 5 and Clauses 7(1) and 7(2), it is further inconsistent with Clause 35 that we have just passed, in the matter of valuation. In Clause 35 you said that in offering or in estimating the property value by the Controller, no reduction will be given on the basis the whole property is offered

for sale. That is the principle. And now you say in this: "Well, it will be as if the whole property is offered for sale". That is the valuation you want to put now. It is thoroughly inconsistent with the other principle which we have just now passed in Clause 35, and thus you will see....

Mr. Chairman: I fail to see how Clause 35 comes in.

Shri Raghavachari: It is only this way.

Shri A. M. Thomas: Only Clause 5 comes in.

7 P.M.

Shri Raghavachari: Sub-clause 5 of the proposed amendment says that the valuation of the estate will be determined as if the entire property of the family was to be sold. Clause 35 (2) reads:

> "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:....."

Generally we know that when smaller bits are sold, they fetch a better price; whereas, when a bigger thing is offered, the bidders are few, and value is generally less for it.

Mr. Chairman: Clause 35 deals with the time of valuation, *viz.* "at the time of the deceased's death". So far as the question of property is concerned, it is a different matter. If reference is made to clauses 5, 7 (i) and (ii) we find that clause 35 has no relationship whatsoever with them.

Shri Raghavachari: These are all the inconsistencies of the amendment proposed, when compared with the decisions that the House has already taken. Therefore this amendment is not to be permitted.

Shri K. P. Gounder: On a point of order, Sir.....

Mr. Chairman: Are you speaking on this point of order?

Shri K. P. Gounder: Yes. Supposing there are two independent persons A and B each having a certain property. If A dies, can you make a legislation saying that we will assume B's property also as included in A's property, even though A has no interest in it? I will illustrate my point with a small instance. Suppose there is a father A, with six sons B, C, D, E, F, and G, and B alone is a major, while the other five are minors, B's share is only one-seventh but if B dies, you say, we tax all the property, and not merely the one-seventh which is his share, as though C, D, E, F, and G had no shares at all. The effect of that will be, if you take a property worth about a crore of rupees, B's share will be.....

Mr. Chairman: The hon. Member is speaking on the merits of the question.

Shri K. P. Gounder: I was saying that this amendment seeks to tax a living man's property, because not only the deceased's property is touched but the share of the others also is taken into account.

Mr. Chairman: Substantively the hon. member is speaking on the merits of the amendment, and is saying that such and such a property ought not to be taxed. Really speaking, the hon. member is speaking on his own amendment, which has not yet been moved.

Shri H. G. Vaishnav: He is saying it is not death duty, but it is living duty.

Shri K. P. Gounder: This provision is illegal, because you are taxing a living man's property.

Mr. Chairman: What I was saying is that this is a matter which affects the merits of this amendment. We are not concerned with the merits at this stage. We are only concerned with the questions that have been raised. If there is any other point of order, I would like to hear it.

Shri K. P. Gounder: You are taxing not only the dead man's property, but also the living man's property. I shall illustrate it with an example. Suppose a man dies, leaving six boys, you tax not only his share, but also the share of the minors. You are taking away not only the dead man's property, but also the minors' property. If you are taxing a living man's property, then it is illegal.

Shri Krishna Chandra: May I say a few words on the point of order raised by my hon. friend Mr. Raghavachari?

Mr. Chairman: On the question of inconsistency? The hon. member may just resume his seat. The point that has been raised is that this provision is inconsistent with the previous decision taken by the House, to which the reply of the hon. Finance Minister was that if the words 'Notwithstanding anything contained in clauses.....' are included, the amendment may be entertained by this House.

If clause 5 is looked into, it will be found that:

> "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....."

So, clause 5, as far as it goes, is not inconsistent with any provision which subsequently defines the value of that property or in what manner that value is to be ascertained.

So far as clause 7 is concerned, it specifically refers to interests ceasing on death. In clause 2, we have defined property passing on the death of the deceased. I think there was a reference to minors in clause 7 (2).

Shri Raghavachari: Clause 7 (2) as originally proposed was amended, and a new sub-clause was substituted in its place. I think it is amendment No. 467.

Mr. Chairman: How does it read?

Shri Raghavachari: I think that also is in substance the same as what is contained in the Bill, whether it is cumulative or alternative, unless the minor had a father or male ascendant in the male line who was not a coparcener of the same family, and so on. The substance of that is more or less the same. I have not got a copy of that amendment with me just now.

Shri C. D. Deshmukh: I would like to ask one question of the hon. member. But for this new clause 37-A, that we have suggested, will it be possible to determine the interest ceasing on death, by virtue of clause 7 alone?

Shri Raghavachari: No. That is why I said sub-clauses (2) and (4) are out of order. Sub-clause (1) of clause 37-A is perfectly all right, and is necessary.

Shri C. D. Deshmukh: I think the hon. member said that in clause 7, we had decided certain matters and that we are now going back on our previous decisions or are varying them. I say that this additional clause is intended to help us to determine what will be the interest ceasing on death, on account of the peculiar conditions. Whether on the merits, any particular part of it is right or wrong is quite another matter. I am now on this point of standing orders. Under clause 7, we have not determined all the matters that fall to be determined. Merely saying "interest ceasing on death"

does not give us a sufficiently concrete thing to proceed to the question of evaluation and assessment of duty. What we are trying to do by this clause is to determine what will be the interest ceasing on death. There is a certain amount of conventionalising here, because the Hindu Law does not help us, and therefore we have evolved the formula, 'as if partition had taken place'. So the generality of this clause is not open to the objection raised.

Shri Raghavachari: I specifically confined my objection to sub-clauses (2), (4) and (5) and not to (1) and (3). Sub-clauses (1) and (3) are required to clarify the position.

Mr. Chairman: That is more or less a question of merits, I think.

Shri Raghavachari: It is a question of principle.

Mr. Chairman: I was just submitting for the consideration of the House that so far as the original provisions of the Hindu Law are concerned, they have been encroached upon in various clauses, and by this clause also. For instance, this amendment seeks to provide that notional partition had taken place. According to Hindu Law, death does not make any difference, so far as enjoyment of property is concerned. Partition makes all the difference and not death. But according to this provision, and also similar other provisions in this Bill, it is death which becomes much more important than partition. Partition is assumed to have taken place, just before the death of the deceased. So far as the question of personal laws is concerned, we have already made inroads into them; unless inroads are made into the personal laws of the parties concerned,—and there is absolutely no other view that we can take—this law cannot be entertained or passed by this House.

We are accepting another notion, as if a minor below the age of 18 did not exist, and even if he had existed, he had no share. Previously the House has passed a provision saying that if such a member of a family died, then no estate duty will be levied.

This is a counterpart of that proposal, practically.

Shri Raghavachari: No, it is not.

Mr. Chairman: For the purpose of the interest, a minor below 18 is deemed to be non-existing. I feel to see why his existence is to be emphasised upon if the question arises as to what is the value of the property. This is one aspect of the case. I am not deciding the matter. I am only submitting it for the Consideration of the house.

Shri S. S. More: May I make a submission, Sir? As a matter of fact, if at all I want to argue this point of order, I would say that this particular amendment falls outside the scope of the Bill under Rule 100 (i). Because what is the scope and principle of the Bill? To assess and levy duty on the estate of a deceased. Now, by a sort of fiction, the Finance Minister is trying to get the property of a living person, a minor, taxed for the purpose of this Bill. Therefore, I would say that it falls outside the scope, not that it is inconsistent with the decisions that we have arrived at. As a matter of fact, this is supposed to be an estate duty on the estate of the deceased while the Finance Minister is ingeneously creating a fiction by which a living person is treated as dead.

Mr. Chairman: This is the same point made out by the other hon. member.

Shri S. S. More: The relevant rule is 100 (i). This falls outside the scope of the Bill.

Shri Altekar: May I point out, Sir, that 37A is not inconsistent.....

Mr. Chairman: The present amendment does not say that the property of a minor shall be taxed. It only defines what is the property which is sought to be charged under estate duty and that duty is a fictitious one.

[Mr. Chairman.]

which it actually is not, according to Mr. More.

Shri S. S. More: Yes.

Mr. Chairman: But then it does not mean that this Bill seeks to levy an estate duty on the property of a living man.

Shri A. M. Thomas: Virtually what happens is.....

Shri S. S. More: *rose*—

Mr. Chairman: Order, order. The hon. member ought not to encroach on the rights of the Chair also.

I was submitting that as a matter of fact, according to this amendment, the valuation of the property is to be deemed to be that valuation which it would command had the interest of the minor not existed. This is only tantamount to that, not that the property of the minor is going to be taxed. (*Interruptions*). Whatever may be said on merits, so far as this amendment goes, it only seeks to define the valuation of that property in the hands of the heirs of the deceased. When a person dies, what happens?

Shri S. S. More: May I reply to that, Sir? Suppose 'A' dies leaving two sons. Now the share in the joint family property is: 'A' has one-third, 'B' has one-third and 'C' has one-third. Now, 'C' is a minor. Now, it is only one-third share which becomes the property of the deceased. But the Finance Minister, by virtue of this fiction, will say: 'Well, one-third share of the minor which is given to him by the personal law shall be treated as the property of the deceased'. That is, instead of 'B' and 'C' together inheriting one-third, 'B' shall be supposed to have inherited two-thirds from 'A'. That means, Sir, that the share of a living person is put to the credit of the deceased on account of the minority of 'C'. Which means, Sir, in fact, that for the purpose of assessment, a slice of the property which belongs to a living person is treated as the property belonging to a deceased and passing on death. This is absolutely wrong and outside the scope of the Bill.

Mr. Chairman: This is a different matter. But this particular point that the property of the minor is treated as not having been inherited by him for the purposes of this Act is only a fiction and on account of this fiction it is stated that the minor shall be deemed to have not inherited that property for the purposes of this Act.

Shri S. S. More: It is a fantastic fiction.

Mr. Chairman: It may be anything. (*Interruptions*). But there is no provision here that the property of the minor, as such, will be taxed. Moreover, according to the personal law, the minor will be entitled to that property and no tax will be chargeable from the minor's property too. The only point is whether by fiction we can treat the property of other people—other sons—who are inheriting, who are not minors, as the property which they have got from the deceased, though, fictitiously, they have not got that property. By virtue of this fiction, we are treating as if they have got more property. That is the only point. We are not taxing the property of a living person.

Shri Altekar: May I point out, Sir....

Shri Raghavachari: I may be permitted to invite your attention.....

Mr. Chairman: I will call the hon. member, Mr. Raghavachari, after Mr. Altekar.

Shri Altekar: Sir, it is contended that clause 37A is inconsistent with clause 7 which we have passed. But it is not so, because in sub-clause (1) of clause 7 it is said:

> "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....."

This has been made subject to the provisions of sub-clause (2), wherein it is stated:

> "If a member of a Hindu coparcenary governed by the Mitak-

shara 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....."

That means that what passed was not exactly what was the property of the deceased, but even the minor sons who may be there would be taken to be not existing. This is the principle that has been accepted in sub-clause (2) and clause 37A is merely a corollary of it, and not anything which goes contrary to it.

Shri Raghavachari: There it is a 'dead' minor that is concerned, not the living minor.

Sir, I only wish to invite your attention to the language of section 7 which is in line 31: "to the extent to which a benefit accrues or arises by the cesser of such interest". Therefore, the decision that we have taken is that the property of the person who dies in an undivided Mitakshara Hindu family is the accrual of the benefit by his death which cannot be anything but the interest which he himself owned. My friend was saying that because we have made, 'subject to the provisions of this section', if a minor is dead and particular limits are prescribed, he would be considered not to possess any property or estate. The principle that we have dicided is that it is only the property that the deceased left that is taxable and not because you refer to a minor who is dead, it includes also the living minors. The principle is that it is only the property of the deceased that is taxed and not anything which you imagine to be his property.

Mr. Chairman: Since it has been decided that this clause is going to be postponed. I proceed to the next clause.

Shri Raghavachari: There are other amendments to clause 37A.

Mr. Chairman: They will be taken up when this clause is taken up. They will only arise upon the decision to take up clause 37A, and not otherwise. I proceed to clause 38.

Clause 38 was added to the Bill.

Clause 39.—(*Valuation to be made etc.*)

Mr. Chairman: There is one amendment by Shri Banerjee. He is not in the House. I put clause 39 to the vote.

The question is:

"That clause 39 stand part of the Bill."

Shri T. S. A. Chettiar: Before you put it to the vote, Sir, I want to ask one thing. (*Interruption*). I remember the hon. Finance Minister said that we are evolving certain ways in which the properties can be evaluated. If I remember correctly, he referred to the stamp duty regarding prices of landed property and taxes to municipalities for properties situate therein. In either case we have got certain standards to go by. May we know, Sir, how this will be prescribed? The clause says, 'prescribed'. May we know whether the Government have any notions as to how they propose to make these rules and what standards they propose to lay down?

Shri C. D. Deshmukh: Sir, I made no reference to stamp duties or municipalities. We have very good notions as to what the rules shall be but it is not necessary at this time to say what those notions are.

Mr. Chairman: The question is:

"That clause 39 stand part of the Bill."

The motion was adopted.

Clause 39 was added to the Bill.

Clauses 40 and 41 were added to the Bill.

Clause 42.—(*Reasonable funeral expenses etc.*)

Shri Tulsidas: I beg to move:

In page 22, *for* lines 34 to 39, *substitute*:

"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 the estate for the purposes of estate duty, allowance shall be made for any tax, rates or assessments, Central, States or Local, whether assessment in respect of it has been completed or not before the death of the deceased for debts due to the deceased which have become bad or irrecoverable, for reasonable costs of administering the estate including costs of proceedings for determining the amount of estate duty, funeral expenses (not exceeding rupees two thousand) and for debts and incumbrances; but no allowance shall be made."

There are other amendments also, Sir.

Shri Mohiuddin (Hyderabad City): I beg to move:

In page 23, line 8, *after* "sraddha" *insert* "or barsi".

Shri Tulsidas: Sir this clause is for determining the chargeable value of the estate. There is no provision, however, for allowing for taxes, Central, State or Local from the value of the estate. Such taxes form a compulsory deduction from the estate of the deceased and it is only the net estate which will pass on death. In the U.K. in practice the whole of the current year's taxation together with any arrears is usually allowed. Sections 17(i)(c) and 17(i)(d) of the Australian Estate Duty Act are as follows:

"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."

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

Shri C. D. Deshmukh: Sir, the amendment of the hon. Members seeks the allowances of four things;

(i) taxes due on the estate upto the date of death whether assessed or to be assessed;

(ii) bad debts;

(iii) reasonable cost of administering the estate including cost of proceedings for determining the amount of estate duty and

(iv) funeral expenses not exceeding Rs. 2000.

Now, we have to remind ourselves again that what we are concerned with is the value of the proprtey on the point of death. Whatever debts and encumbrances of whatever nature which have become due up to and on the date of death are deductable. Obviously, therefore, all taxes due for the period up to the date of death are deductable. It is not necessary to make a specific mention of them; and if we do make a mention then it might have the unintended effect of limiting the scope of the clause by virtue of the specific mention.

Now, we come to the question of debts. It is not possible to make any deduction for debts which become bad after the death, or for cost of administering the estate after death or for the cost of proceedings for determining the quantum of recoverable debt. The fact that a certain portion of it might already have become irrecoverable or is doubtful might of course be taken into account. But, we cannot proceed further and try and see what happens afterwards, because the process of assessment has to be gone through immediately after death if possible.

So far as the cost of administration is concerned, that would fall on the estate clearly after the date of death and that is the reason why we cannot deduct them from the value of the property passing on death. The only exception to this is what is provided for in clause 46, which are the extra costs incurred in foreign countries. That is by way of exception.

So, these are my reasons for not being able to accept the amendment moved by the hon. Member.

Shri K. K. Basu: Suppose there is a certificate issued by the income-tax authorities under the Income-tax Act with respect to a property which is the only asset the deceased had. Often income-tax proceedings are not over; at that point of time if the heirs of the deceased had no cash money to pay—though there is provision for instalment— they cannot sell the property unless the proceedings are over. You can actually ascertain what the tax liability was. In that event, I do not know whether under the rules or something else there is any provision to obviate difficulties. I do not dispute the principle as in this section.

Shri C. D. Deshmukh: I should say that in such a case the rules could make a provision if that matter is decided.

Mr. Chairman: The question is:

That in page 22, *for* lines 34 to 39 *substitute*:

"42. *Reasonable funeral expenses and, with some exception debts and incumbrances to be allowed for in determining chargeable value of estate.*—In determining the value of the estate for the purposes of estate duty, allowance shall be made for any tax, rates or assessments, Central, States or Local, whether assessment in respect of it has been completed or not before the death of the deceased for debts due to the deceased which have become bad for irrecoverable, for reasonable costs of administering the estate including costs of proceedings for determining the amount of estate duty, funeral expenses (not exceeding rupees two thousand) and for debts and incumbrances; but no allowances shall be made."

The motion was negatived.

Shri Mohiuddin: The reason for moving my amendment is that the term used here is only Sraddha. The hon. the Finance Minister should make it clear that the annual ceremony performed customarily by other communities will be included within the term "Sraddha". That is why I have wanted to add "or *barsi*". If all the ceremonies performed within one year after the death of the person is included in the term "Sraddha" then I do not want to press the amendment.

Shri C. D. Deshmukh: I accept the amendment.

Mr. Chairman: The question is:

In page 23 line 8, *after* "sraddha" *insert* "or barsi".

The motion was adopted.

Mr. Chairman: The question is:

"That clause 42, as amended, stand part of the Bill."

The motion was adopted.

Clause 42, as amended, was added to the Bill.

Shri S. S. More: Sir, I would request the Treasury benches that sup-

[Shri S. S. More]

posing they go to the President for obtaining recommendation for their amendments in deference to the point of orders raised, they shall also advise the President to give recommendation to all the amendments moved by non-officials—even those which are for the enhancement of the rates. This is a matter which ought to be debated on the floor of the House and no amendments should be lost for want of recommendation by the President.

Shri C. D. Deshmukh: This is the second time that the suggestion has been made; the first time it was made by the Deputy Leader of the Communist Party. I do not think if a straight answer was given to it. I do not consider that these things are on all fours, because if it were to be accepted then it would simply mean that the Executive must not advise the President in connection with any Finance Bill. If there are proposals for raising them the specious logic that might be given would be that all these matters should be discussed in the House and then the executive would know the mind of the House. Now we flatter ourselves that we know the sense of the House generally that is to say what is the kind of policy in taxation that will be acceptable to the House and it is on that assumption that after a great deal of deliberation we come to certain conclusion. You can imagine, Sir, what the effect of this would be in other directions if amendments which have the effect of increasing taxation were to be recommended by the Executive for the recommendation of the President. Therefore, I am concluding that it will not be possible for me to give such advice to the President.

The House then adjourned till a Quarter Past Eight of the Clock on Thursday, the 10th September, 1953.