THE PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

HOUSE OF THE PEOPLE

Saturday, 5th 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

(1) PATIALA AND EAST PUNJAB States Union Occupancy Tenants MALKIYAT RIGHTS ACT

(2) PATIALA AND EAST PUNJAB STATES UNION OCCUPANCY TENANTS (VESTING OF PROPRIETARY RIGHTS) ACT

The Minister of Home Affairs and States (Dr. Katju): Sir, I beg to lay on the Table a copy of each of the following Acts, under sub-section (3) of section 3 of the Patiala and East Punjab States Union Legislature (Delegation of Powers) Act, 1953:—

(i) The Patiala and East Punjab States Union Abolition of Ala Malkiyat Rights Act, 1953 (President's Act II of 1953). [*Placed in the Library. See* No. S-118/53]; and

(ii) The Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (President's Act III of 1953). [*Placed in the Library. See* No. S-119/53.]

ESTATE DUTY BILL—*Contd.*

Clause 9.— *(Gifts within a certain period before death)*—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 9 is under consideration.

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): May I submit, Sir, that I shall be in charge of the Bill till my colleague comes?

Mr. Deputy-Speaker: Mr. Trivedi, I appeal to hon. Members to be as brief as possible.

Shri U. M. Trivedi (Chittor): I have never been long, Sir. In discussing clause 9 the main objection that can be raised about this is that the clause as framed, in making these gifts *inter vivos*, has a qulification added to these gifts in the word "*bona fide*". As the clause stands, every one who makes a gift, at any time, whether it is in relation to the Estate Duty or whether it is a gift which is made for any other purpose, at all times, as this language stands, every one who makes a gift will be presumed to have made that gift not *bona fide*. This is a very great slur on the national character of the country. We give an indication that all of us are dishonest. This thing should be wiped out. Such a castigation of the whole nation is uncalled for for levying a duty. You have said here the moment a gift is made, the first and foremost thing we have to look into is this, that if a gift has been made, although

[Shri U. M. Trivedi]

it might have been made *inter vivos*, if it is within two years, you are going to challenge it wholesale without saying whether it is *bona fide* or not. In all cases such gifts are to be affected. But in cases where it is two years or more—it is not merely two years—that is for all times to come, even if a gift has been made ten years before the death, even then you will say that it is not *bona fide*. This is too much to be expected in a fiscal law. Under all fiscal provisions on the contrary, we have got interpretations of law to this effect, that if a man wriggles out of any particular provision of a fiscal measure he is allowed to wriggle out and the interpretation is always made in favour of the subject where he does not come within the letter of the law. Here, by making this provision, we are making it incumbent upon every one to prove that the gift was *bona fide*. To prove a matter on an action of a deceased person, where *mala fide* is already imputed, is difficult. Ordinarily the Evidence Act or the principles of evidence assume that whatever has been said or done or whatever statement has been made by a person who is dead must be presumed to be true. That is the fundamental principle.

Shri S. S. More (Sholapur): There is no such fundamental principle.

Shri U. M. Trivedi: You please see clause (3) of section 32. This is the ordinary principle of law that when a man is dead and gone, if he has done anything against his own pecuniary interest, under ordinary circumstances it should be presumed to be true, and it must be presumed to be *bona fide*. We are challenging that fundamental provision of law and, as I said, we are castigating the whole nation and suggesting that we are all downright rogues who will always act *mala fide*. This is too much to bear. For the sake of certain people who cannot look upon this country as their own country or as the country which has got its own culture but who are imbibed only with western ideas and think in these terms, can you say that because they think in these terms everybody in this country must think in similar terms of dishonesty? There should not be any question of imputing dishonesty to any one of us.

I had suggested that these two years must be struck off. It may be two months. I had also suggested you must say in cases where death has taken place by accident or *vis major*, this clause should not apply. But I would most humbly suggest to the hon. the Finance Minister not to have this proposition with the words as they are, namely "which shall not have been *bona fide* made two years or more before the death of the deceased shall be deemed to pass". These words "*bona fide*" must be taken out. If a gift has been made it must be accepted as a gift. Otherwise what will happen is this. Yesterday in the course of the argument one of the Members was suggesting something. Of course you yourself suggested to him that a particular provision is there to circumvent such actions till by this very provision people will be led to dishonesty. Fictitious sales will take place by way of gifts and there will be any amount of litigation and hardship. And the very use of the words "*bona fide*" will give vast powers to the Controller, whosoever he might be, and open the gate for all sorts of corruption. It was pointed out by one of the hon. Members who spoke on the last occasion that in the Income-tax Department also certain things go on. I remember a case. A man was assessed to Rs. 47,000. Then a particular thing happened. One of the Income-tax officers wanted to use his car for about 40 miles. That was not supplied. The net result was that at the next assessment, this Rs. 47,000 jumped to 8 lakhs and the amount was to be paid then and there. These things will happen. We may try to remedy these things when we reach the higher courts or higher tribunals. But, as it stands by the use of the word '*bona fide*', we are opening, I should say, the flood gate of corruption. Therefore my humble submission is that this word '*bona fide*'

must be taken out. When you are already putting the limit of two years, where is the necessity for adding this word *'bona fide'*? The mere length of time of two years itself will be enough to show that the gift has been *bona fide*.

Shri Jhunjhunwala (Bhagalpur Central): The previous speaker said that it is a slur on the conduct of the people to use the word *'bona fide'* here. I do not agree with him. If it has any meaning and if it serves any purpose to have the word *'bona fide'* here, so that we could catch hold of people who are *mala fide*, even if it is a slur, I do not mind. But I have not been able to understand the purpose of putting the word *'bona fide'* here.

When we were having informal discussions with the hon. Finance Minister, there was a great discussion as to the utility of the word *'bona fide'* here. A gift under the Transfer of Property Act implies that it has been made *bona fide*. If there has been anything which does not come within the definition of the Transfer of Property Act or if there has been anything wrong, that could be regarded as *mala fide*. But, this word *'bona fide'* here—I do not know whether it is a slur or not—gives rise to misgivings. Even after the informal discussions that we had with the Finance Minister, I had occasion to meet many people and place this section before them. They simply said that this word *'bona fide'* will lead to great confusion and litigation. They were of the view that the word *'bona fide'* will immediately lead to the presumption that where a man makes a gift he did it with a view to evade payment of tax. They will immediately attack the motive. The hon. Finance Minister, in his speech while referring the matter to the Select Committee, had made it clear that the motive of the man who makes the gift will not be taken into consideration. In spite of that, this word *'bona fide'* is likely to create some misapprehension in the mind of the people. If the Transfer of Property Act under which the gift is made is not sufficient and the word *'bona fide'* is very very necessary, of course, by all means, I should say that it should be there. But, I do not see any necessity to put the word *'bona fide'* here. Even without the word *'bona fide'* the clause itself is quite sufficient.

Regarding the proviso that for all gifts made for public charitable purposes, the period will be six months, I have only to submit this, that if a man acquires some property late in his life, and wants to give something in charity and gives in charity as defined under this Act, but if he dies within six months, the property which has been given as gift is chargeable with tax. Much has been said already on this subject. But, all the same, I submit that this restriction of six months should be removed.

Shri G. D. Somani (Nagaur-Pali): Mr. Deputy-Speaker, I want to refer to my two amendments numbers 25 and 30 in regard to this clause. My hon. friend Shri Tek Chand has already very ably dealt with amendment No. 25. I would therefore confine my remarks to amendment No. 30 in regard to this period of 6 months for charities. I know much has already been said and the matter has been thoroughly discussed. But, even at this late stage, I would like to make a few observations upon the implications of this clause regarding charities.

The policy of the Government has been to promote and encourage private charities and they did so by recognising under the Income-tax Act certain classes of charities. After that concession was given, the hon. Finance Minister may be aware that several public causes and several public institutions derived much benefit. I am also aware of the fact that this concession was to a large extent responsible for very substantial contributions by several industrial concerns for the Mahatma Gandhi Memorial Fund, Sardar Patel Memorial Fund, etc. I feel that this clause, as it stands, seeks to reverse the policy of the Government in regard to charities. The clause, as it stands, will act as a positive hindrance or dis-

[Shri G. D. Somani]

couragement to the free flow of charities for public causes. The position is that any individual making any gifts within six months of death will run the risk that his successors will be called upon to pay an Estate duty not only upon the estate which he leaves to his successors, but also upon any amont or property which he may have gifted to a charity within six months of his last days. The position really is very difficult. We have been asked, why should a man wait till his last days for making charities. Firstly, I would like to ask what is the guarantee that if any man makes a charity at the age of 30 or 40 or 50, he will not die within six months of making the charity? In our country the mortality rates are high and deaths at early ages are not uncommon. In this connection, I would like to know whether the Finance Minister will accept the proposition that if any individual makes any charity up to the age of 50, he will not come within the purview of this restriction. Quite apart from that, the position is also there that individuals generally making any substantial contributions to charity, do so only in the later period of their life. One of the primary objects of this Bill is to remove inequality. Even from that point of view, I do not understand how this restriction on charity is going to further the cause which we have in view. As a matter of fact, these charities will further that cause to a greater extent than the levy of the Estate duty. For instance, if a man makes a gift of Rs. 1 lakh, then, 100 per cent. of the amount goes to the public cause. On the other hand, if under this clause he is prevented, or at any rate discouraged in making that gift, then, the utmost that the State realises is only a partial amount on the property that he leaves at the time of his death. Therefore, may I ask whether it is not preferable to give encouragement for voluntary gifts of 100 per cent. of the amount instead of forcing the individual to leave that property or estate to be charged with Estate duty at a partial rate.

The only reason that has been advanced during the course of the debate and during the discussions about this time of six months has been that it might lead to evasion of the Estate duty in many cases.

Firstly, I would ask in this connection whether in the experience of the Government of India there have been cases of evasion of tax in regard to the Income-tax Act on the lines feared by some Members. The individuals and companies get this exemption of income-tax in respect of their contributions, and I would like to know whether there have been any substantial cases of evasion, where people have taken undue advantage of the exemption. May I also ask whether it is not possible to devise certain safeguards to avoid that evasion? After all, the number of cases and the amounts involved will be far larger when people will simply be prevented or discouraged by the fear that if they make any substantial gift for charity and if unfortunately they die, within six months of making that charity, then their successors will be liable for estate duty on that substantial amount. Therefore, if proper and effective safeguards are devised—which, I submit it is quite easy and possible to do—then, there is no fear that this will lead to any extensive evasion of tax. So long as the Finance Minister is convinced that there are ways of devising effective safeguards against any abuse that is likely to arise, he should have an open mind and he should consider whether even at this late stage he cannot see his way to waive this clause imposing a restriction of six months. I submit that this will be a positive hindrance and a discouragement at least to gifts for public causes. Therefore, I appeal to the Finance Minister to go deeply into the implications of this clause and not do anything which will act as a hindrance to the free flow of charities.

Shri Raghavachari (Renukonda): I do not know whether amendment No. 511 has been moved by the Finance Minister.

The Minister of Finance (Shri C. D. Deshmukh): I have moved the first part. It is only consequential, and would not be necessary unless the second part of No. 583 is moved by Mr. Gadgil.

Mr. Deputy-Speaker: He is trying to put a monetary limit.

Shri S. S. More: When the same amendment is moved by both Mr. Gadgil and the Finance Minister, I feel like asking the reason for this division of labour. Is it to share the credit?

Mr. Deputy-Speaker: There is division of labour on all sides with respect to this clause.

Shri Raghavachari: I wish to make only one or two observations with regard to amendment No. 583 moved by Mr. Gadgil.

Before I do so, I would like to deal with amendment No. 509 by the Finance Minister. He has sought the deletion of the words "or more". If this amendment is carried, the provision will read: "Made two years before the death". Now, the question is: should it be, in point of time, only two years —I mean, just two years, and not a second more; not a second less. In other parts of this legislation, we have used the phrase "not less than two years", etc. Therefore, it would be more appropriate to say "made before two years of the death". If you put the word "before" before "two years", it would be more meaningful. It is a slight verbal alteration.

Mr. Deputy-Speaker: The hon. Member is referring to the exact point of time. If you say only "two years", even if it be made a second before "two years" elapse, technically it would be out of order. If "or more" is omitted, you will have only "two years" and that would mean, in point of time, just two years and not a second more and not a second less.

Shri C. D. Deshmukh: The word "before" is there, Sir. I am only removing "or more", and it would now read: "made two years before the death"

Mr. Deputy-Speaker: Then, what is the object of removing "or more"?

Shri A. M. Thomas (Ernakulam): Because in the English Act it is without the words "or more" and no difficulty has been found there.

Shri Raghavachari: In other portions of this Bill, we have used the expressions, "not more than two years", "not less than two years" etc. If you use a phrase here which is not of that type, then it will lead to an argument as to whether it is just two years in point of time; that sort of construction will be possible.

Shri C. D. Deshmukh: Let me tell my hon. friend that on this point I have a perfectly open mind.

Shri Raghavachari: If that is so, then I would only say that if you are going to omit "or more", you should put the word "before" before "two years", so that it will read: "before two years of the death".

As regards other amendments, I join with the group of friends who urged that there was great need for omitting "*bona fide*". They advanced elaborate arguments. They pointed out that it will simply lead to endless litigation, and even if a man has made a gift years ago and the Controller says that it is not *bona fide*, it is always disputable and it is liable to harass people. Therefore, "*bona fide*" has no place there, unless it be that we want to restrain people from exercising their rights.

Now, I come to amendment No. 583. It looks as though the Finance Minister is favourably inclined towards accepting it, because he has himself tabled a similar amendment, except that this amendment of Mr. Gadgil seeks to introduce something more. In his amendment, Mr. Gadgil has suggested a limit of Rs. 5000. To some extent, it is a concession—possibly—to the agitation that went on in this House. I

[Shri Raghavachari]

want to understand the exact scope of this amendment. It reads:

> "..shall not apply to gifts made in consideration of marriage or which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased....."

He can make a gift in consideration of marriage. There, no question of proving it to be a normal expenditure arises. In other cases, the gifts must be proved to be part of the normal expenditure. That means, in every case of gift, a record or account must be maintained, showing that the person making the gift did incur similar expenditure on account of the purposes covered by the gift as part of his normal expenditure during his lifetime. And it is only then that that part of the gift would be permissible. That would again mean putting the same kind of obstacle in the way of the administration or in the way of the beneficiary having to take the trouble of taking up and preserving the records to show that it was part of the normal expenditure of the man who had made the gift.

Then again, the other trouble also is there, that it must be proved to the satisfaction of the Controller. Everything is to the satisfaction of the Controller; in the whole Act, all the facts must be proved to the satisfaction of the Controller. As if that was not sufficient, this additional phrase 'to the satisfaction of the Controller' would simply mean a particular discretion vested according to the Bill in that particular person, and once he has exercised it, there is an end of the matter. Therefore I feel this phrase is quite unnecessary. It will only lead to additional bother in the administration.

As regards the limit of Rs. 5000, I am not very much bothered. Originally there was nothing, now a further attempt has been made to salvage Rs. 5000 more. But the main question is the language in which it is put. It is not very easily comprehensible, and in the course of administration, it is likely to lead to practically not conceding anything at all, if you want that it should be proved to the satisfaction of the Controller and that it was all part of the normal expenditure of the man who has made the gift. Now we find the additional provision for gifts made in consideration of marriage. In the original amendment which Mr. Deshmukh wanted to move, this was not there. I thought that it was one thing if it was in consideration of a marriage, and quite another, if it is some other kind of relationship. Anyhow, the language that we find here is:

> "...gifts made in consideration of marriage or which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased and to have been reasonable having regard to the amount of his income or to the circumstance, but not exceeding rupees five thousand in the aggregate."

The language is clumsy and certainly not clear. In any event I submit that the words 'to the satisfaction of the Controller', and 'normal expenditure' should be omitted. Otherwise, when you have a fixed limit of Rs. 5000 it will mean nothing. You must be graceful, and you must also have an eye on the inconveniences you are likely to cause in the administration, by this language. Once you put a limit, there is an end of the matter a man may be given the liberty of paying anything up to that amount. Or do not put the limit, and make it subject to proving it to be part of the normal expenditure of the man.

Shri Gadgil (Poona Central): There is a large number of amendments to clause 9, which can be classified as follows. Certain amendments seek to extend the time, while certain others want to reduce the time. No doubt, it is true that in other countries, the

most vulnerable point of any system of estate duty has been the creation of gifts and other dispositions. If it were possible to start without all this, then it would have been very good, and we would have avoided those consequences which were referred to by Mr. Gandhi yesterday. Since we have accepted in the Select Committee the principle that inasmuch as this is a new measure that we are introducing in in the life of the community as well as in our system of taxation, we should rather go slow.

In England, the original period was two years. Now it has been raised to five years. There are certain amendments here, which seek to extend the period to five years; certain amendments there are which want to reduce the period to one year, and in the case of public charities, they want no limit at all. I think that on the whole what was decided by the Select Committee should be acceptable to this hon. House.

Another precaution that has been taken in this clause is that although the period is only two years, the fact that the proof of *bona fide* will have to be given is a fair safeguard, for all sorts of doubtful and suspicious alienation. The question of *bona fide* according to certain observations made by Mr. Chatterjee last time, do not really and necessarily relate to the desire to avoid estate duty. My own view, however humble it may be, is different, that *bona fide* has to do, not secondarily but essentially, with the intention of the man, whether he has an intention to avoid estate duty or not. If the intention was to avoid estate duty, then obviously his gift is invalid and not genuine and he cannot get the benefit contemplated in this clause.

Shri A. M. Thomas: The English authorities do not support you.

Shri C. D. Pande (Naini Tal Distt. *cum* Almora Distt.—South West *cum* Bareilly Distt.—North): Avoiding duty is permissible, but it should be *bona fide* in the sense that transfer is absolute and genuine.

Shri Gadgil: My interpretation of the words '*bona fide*' has been given earlier, and I do not propose to repeat it now. It deals directly with the intention of the man, whether he wants to get out of this obligation to pay estate duty or not.

Shri C. D. Pande: The Finance Minister, in a committee, was pleased to say otherwise..... (*Interruptions*)

Mr. Deputy-Speaker: Order, order. Let the hon. Member proceed. Each Member has had his opportunity.

Shri Gadgil: On the whole I think that the period mentioned in clause 9, both for private gifts as well as for public charities should remain.

The question that there should be no limit on public charities has been sufficiently discussed, and I do not think that we should give a wide margin for charity. If anybody wants to give in charity, surely he can give it six months before his death. No time is inauspicious for that purpose. It can be continually given. As I said last time, by allowing a wide margin, for charity, what we would do is that the entire corpus will be allowed to get out of this taxation, for eternity. If the corpus goes out of this, and the current income also will be exempt under the Income-Tax Act, the result will be that the community loses for eternity, whatever you give by way of charity, apart from the fact...

Shri Dhulekar (Jhansi Distt.—South): Community gains by public charity.

Shri Gadgil:...that you allow private persons to deal with the social reorganisation which you have in contemplation. Such a huge power should not be allowed. That is my humble submission.

Then there is an amendment moved for exemption being given to *bhoodan*. To ask for exemption in matters of *bhoodan gifts* is to bring down that high and noble movement from the high pedestal it maintains, to mundane affairs. The whole concept of *bhoodan*, is *yajna*. That means sacrifice pure

[Shri Gadgil]

and simple, and no sacrifice can be complete, unless everything is completely given. To suggest therefore that *bhoodan* gift should be completely exempt is, I honestly feel...

Mr. Deputy-Speaker: The hon. Member evidently feels that along with *bhoodan*, some *dakshina* also is necessary.

Shri Gadgil: When you give a house to a Brahmin—nowadays nobody does it and nobody will ever do it—apart from the house, you give also some money. That is the custom even among the *Marwaris and* Gujratis. If they want to give Rs. 1000, they will always give Rs. 1001. This *'Shubhanka'* is just the same thing as estate duty in this case. If you are paying estate duty, you are giving a *dan* or gift to the whole community, whereas *bhoodan* will be only to a certain section of it. I therefore respectfully submit that no exemption should be given, because if we do give exemption, we would be taking away the grace, beauty and spiritual significance of that movement. However, there may be very hard cases, where a man who has received a gift, may, under this clause, in some far off contingency, be called upon to pay a *proportionate amount*. In that case, I submit, there is power left to the Government under clause 32 to exempt. I am sure our Government also will do it, having in mind the whole background of the bhoodan movement. But to have anything like a statutory provision in this Bill would not be good.

Then, regarding the amendment that I have moved, it is in response to the appeal of—and in fact, the lacuna pointed out by—Shri Chatterjee. He asked—and quite rightly—what about certain gifts, small or big, made in a period between two years prior to death and the actual date of death? Those may be customary gifts. It may be that the deceased gave his daughter in marriage, say, six month before. It may be called a gift, and if a strict and legalistic view of the whole thing is taken, the deceased's successors will have to pay on it. So this amendment exempts this and other gifts which are normal and reasonable. The word 'normal' is used with a certain meaning, as also the word 'reasonable'. 'Reasonable' has relation to the resources of the person. As regards 'normal', the interpretation is, what is customary. There are customs in each community, in sub-communities also, which require that whenever there is a friend's daughter's marriage you have to give something; or whenever there is a birth, the incoming of a young man, you have to give something. Similarly you pay to some of your dependants by way of monthly allowance. Similarly there are the clubs; you pay the subscription. There are certain holy obligations, for example on *'Ekadashi'* day you have to give something. So what is normal is to be considered with respect to the position of the deceased in the community and the customs of that community, and whatever reasonable is to be considered in relation to his resources. Suppose I am a man getting about Rs. 500. A year before my death, suddenly I give some Rs. 2000 to my nephew. I never give it; on Divali holidays I used to give Rs. 100. But if I give Rs. 2000, it really raises a suspicion because it is not reasonable, although to give something is normal. Under these circumstances, the words 'normal' and 'reasonable' are advisedly used and they have the meaning as I have suggested. Therefore, in order to see that the State treasury does not lose much on the one hand, and on the other those things which are normal and reasonable are allowed, an overall ceiling of Rs. 5000 has been fixed. I submit that in the circumstances I have detailed this is a very reasonable amendment and it has to be read along with the amendment moved by Shri Deshmukh. The two together form the lungs of this conception.

Shri S. S. More: On a point of clarification, Sir. According to my friend Mr. Gadgil, the provisions of sub-section (1) shall not apply to gifts made in consideration of marriage. Is he not

giving legal form to the pernicious system of dowry?

Shri Gadgil: The limit is Rs. 5000. As a matter of fact, I am doing something for social advancement.

Mr. Deputy-Speaker: Jewels and other gifts.

Shri S. S. More: Another point, Sir. He says "but not exceeding Rs. 5000 in the aggregate'. Possibly it may be said that the ceiling fixed refers to other gifts.

Mr. Deputy-Speaker: I thought that was the intention—not regarding marriage. Is that so?

Shri S. S. More: Does he mean gifts in consideration of marriage as well as other gifts? If that is so, it is not brought out here. Possibly it may be said that this clause restricts it only in regard to other gifts.

Mr. Deputy-Speaker: This Rs. 5000 will apply to other gifts and to marriage also.

Shri C. D. Pande: Including the club fee?

Shri Gadgil: The overall aggregate ceiling is Rs. 5000. So far as marriages are concerned, already a provision is made for deduction for each female—every daughter or female dependent—for the purposes of marriage.

Shri S. S. More: But that is for expenses, not for gifts.

Shri N. P. Nathwani (Sorath): May I seek a clarification Sir. Will the aggregate amount of Rs. 5000 cover both sets of gifts or it will cover only one?

Shri Gadgil: Both.

Shri C. D. Pande: All manner of gifts.

Shri T. S. A. Chettiar (Tiruppur): Before going further let me point out that what Mr. Gadgil referred to in clause 32 was for a provision for future marriages. That should not be confused with the provision that is sought to be made under this section. And so the explanation that he sought to give created some sort of misunderstanding in the House. If somebody has four daughters whose marriage had been celebrated within two years, the provision that will be allowed under this amendment now will be Rs. 5000 for all those marriages and for all the usual gifts within those two years. I want the House to appreciate the implications of this amendment so that it will be voted upon fully understanding those implications.

10 A.M.

Now let me raise a few points on the clause itself as well as my amendment. This caluse 9 refers to two kinds of gifts. One is gifts to relatives and to others. That is the first portion of the clause. For that the conditions are that it must be *bona fide* and it must be more than two years old. The second category is gifts to public charitable institutions. As far as I am concerned I am not very much interested in the first category, because paying tax does not do bad to them. But I am bound to point out that these two conditions imposed, that it must be *bona fide* as well as more than two years old is bound to cause hardship in certain cases. I have heard the legal interpretation with regard to '*bona fide*'. I am not myself a practising lawyer; I do not presume to know much about law. But what I have been told is that if once transfer is made, then it is tantamount to *bona fide*. Those are the decisions. But I would like to know one thing. My hon. friend on the other side who is an ex-judge and a legal luminary said the other day "Suppose somebody says, 'After I die in a couple of years, I give such and such to so and so'. If in the deed itself, there is no reference made, but a complete transfer is made, I would like to know what is the position. I am referring to this because I want things to be understood so that there will not be harassing procedures adopted.

Then the other point is this. Even if it is more than two years—some gifts are five years old, some ten years old—if the Controller thinks that it is not *bona fide*, then it is bound to be reopened by him. These are matters which, I think, ought to be dealt with. I am anxious that no evasion should

[Shri T. S. A. Chettiar]

be allowed. I am anxious that people who want to evade tax must be caught and must be made to pay tax. But I am also anxious that unnecessary harassment should not happen. As far as I see, Government have made up their mind to see that these words exist there. But I would at least ask them to issue executive instructions to see that normally cases of more than two years' duration are not reopened unless there is concrete evidence to prove that it was not intended to be a *bona fide* gift.

Now I come to the second and, in my opinion, more important, point—with regard to gifts to charitable institutions. I am one of those who believe that we as a nation should encourage these things. My hon. friend, Mr. Somani, said that this provision may prevent gifts being made. I do not think that it will prevent gifts being made, but, I am sure, to some extent it will act as a deterrent. I am one of those who believe that money given to charitable institutions is much better used than money given to Government. Having, as I do, experience of administration of Government, I know the wasteful expenditure in Government departments. (*Interruptions*). In running schools, running colleges, running dispensaries and running hospitals, much more money is spent in Government institutions; and much more economically the same thing is achieved and with greater missionary zeal and personal touch by charitable institutions. So I am one of those who believe that charitable institutions must be supported.

My hon. friend, Mr. Gadgil, in an expansive mood, said when he made his previous speech: "My own submission is that we have come to a stage in our social evolution where private charity is not going to solve any public problem". But I am afraid that is not an opinion which is shared by the Government of India which has set up a Planning Commission, and the Planning Commission is evolving its plans for social welfare definitely on the basis of the help of social service institutions. (*Interruption* by **Shri Gadgil**).

May I refer to page 95 of the recommendations in the Five Year Plan? They definitely say:

> "In view of the inadequacy of resources, a large share of responsibility for social services will have to be borne by the people themselves. In the case of education, there is evidence that the people are keen to contribute in cash, kind, labour and land for creating the necessary facilities. It should be the major aim of the Central and State Governments and non-official organisations to explore this avenue and harness this urge in the people by using their influence, providing technical aid and stimulating public opinion."

The Government are wise in taking that attitude. Coming to my own State, which I know well, there are nearly 35 to 36 thousand elementary schools in the province of which 18,000 are maintained by aided agencies; there are nearly 900 High schools in my province of which nearly 500 are maintained by aided agencies; there are nearly 75 colleges, out of which nearly, 40 are maintained by aided agencies. By aided agencies I mean that government gives them a grant, a particular proportion, it may be 50 per cent., or it may be two-thirds. The rest is found by raising public contributions and public donations. I know from experience that the spread of education and medical facilities is possible only through the help of these aided agencies who will organise public charity in our country. The personal touch, the personal devotion and the personal zeal and missionary spirit which is necessary for the advancement of social services can be provided to a large extent only by private institutions. So I am one of those who believe that whatever law we may make, whatever provisions we may make, we must make them to this end that they will support and help in the growth of the social

service institutions, that we may help in the giving of gifts to such institutions and that we will so arrange things that these institutions will get support from the public; and, from that point of view the Income-tax Act is an improvement. When my hon. friend Shanmukham Chetty was here, he introduced a provision, setcoin 15B which said that up to 10 per cent. of the income of individuals and up tc 5 per cent. of the income of companies, contributions may be made to recognised charities, and that those contributions will not be taxable within certain limits. Latterly we have had an amendment reducing that 10 per cent. to 5 per cent. and making certain other conditions with regard to gifts. But, still it is an improvement in the right direction because we encourage people to give to charitable institutions by saying that the amount thus paid within a 5 per cent. limit will not be taxed.

In the Estate duty Bill we are doing something just the opposite. What have we done? We say even with regard to gifts to public charitable institutions, even with regard to *bona fide* gifts, gifts to institutions which come under the definition of charitable institution accepted by this House, they will not be debarred from taxation, if they are given within six months. If they are given within six months of the death, then even these *bona fide* gifts, these gifts to institutions which are well recognised, big hospitals, recognised colleges, even Government colleges—for example, we have beautiful colleges in our country just as the Karaikudi College which has risen out of private munificence of a great man (nearly 30 or 40 lakhs of rupees has been invested and it is one of the best education centres in South India)—then tax will have to be collected even from them. To my mind, Sir, this is not a desirable state of affairs. I do not want to say more on this point because it is well understood. Amendments have been moved to remove this period and that this period need not apply to gifts to public institutions. I do not want to take more time of the House on this point and I would request that that amendment may be accepted.

One other matter, and that is my own amendment. There have been many aircrashes in our country. Now the Government have taken up the management of the Air Companies.

An Hon. Member: More accidents.

Shri T. S. A. Chettiar: My friend here says that there will be more accidents. Let us not hope so. When these accidents happen certain people die who did not expect to die. These deaths are unforeseen ond it is difficult for anybody to say that these things were planned even two years before, so that tax may be evaded. At least in the case of deaths due to accidents I shall be glad if the Government will see its way to accept that gifts made by people who have been victims of accidents do not come within the mischief of this section.

Shri N. C. Chatterjee (Hooghly): Clause 9 has one particular object. The object is to bring under charge of estate duty gifts made *inter vivos* within a period of two years before death or in case of gifts for public charitable purposes within six months before death. Now, I want to make three points and I wish to submit very few suggestions in support of my argument.

This is the first time that estate duty is being introduced in India. I submit it is both reasonable and necessary that the time-limit of two years should be reduced to one year, in the case of ordinary gifts *inter vivos*.

My second submission is as far as gifts for public charitable purposes are concerned, there is no point in having a time-limit. Why should you fix six months at all? Under the Australian Act, section 2 sub-section (5), there is no such time-limit. Estate duty is not at all leviable or payable in respect of gifts to scientific public purposes, public hospitals and public benevolent institutions or to any fund maintained for the relief of persons in necessitous circumstances. So, I submit that the same thing should be done in India.

[Shri N. C. Chatterjee]

Thirdly, I come to the *bona fide* business. I thought there was a *bona fide* end to all this dispute about the meaning of the word *bona fide*, but some *mala fide* mind is still haunting us.

Shri Gadgil: It is on the other side.

Shri N. C. Chatterjee: You may remember that you have copied this from the English Finance Act of 1894. I made my point clear when we were considering the general discussion, that Mr. Gadgil's suggestion should be firmly rejected because if it were to be accepted that will be a terror and an engine of oppression. It will be a source of money-making and it will be putting the onus and the burden of proof will fall on people who cannot possibly discharge that burden. A man makes a gift today and some 20 years later dies. Then Mr. Gadgil says that we have got to prove affirmatively that there was a *bona fide* gift. There was a document executed on the possession of the transfer of interests to the exclusion of the donor, but you also show that there was no intention at all effecting payment of death duty when you die 20 years later. God alone knows when you will die!

Mr. Deputy-Speaker: It is not Mr. Gadgil, but the Select Committee.

Shri N. C. Chatterjee: The Select Committee did not say that. What I am pointing out is that the Select Committee did not at all take the Interpretation of Mr. Gadgil. The Select Committee took the interpretation of English law. I am reading Green's "Death Duties" which is our Bible. In that book—1952 edition, page 17, Mr. Green says, "The words, '*bona fide*', are in effect merely an express indication that the substance of the transaction should be considered. *Bona fide* transaction is one which is not fictitious or which is not coloured, but real and genuine." "It is immaterial," Mr. Green says, "that the motive would have been to lessen the death duty." What does it matter that the motive was that when I would die ten years later...

Mr. Deputy-Speaker: Just to cut short the debate, I might say that wherever there is an agreement, we might pass on to the next point. Mr. Gadgil's own interpretation may be there.

Shri C. D. Pande: It will be quoted in the courts of law.

Shri Gadgil: It is his opinion.

Mr. Deputy-Speaker: Mr. Gadgil's opinion is not Government's opinion. And whatever might be the Government's opinion, the court's opinion is different.

Shri C. D. Pande: Generally courts need not be guided by the opinions expressed here, but lawyers quote the discussions to prove the intention of law and there is great relevancy in doing so. I will put to the Finance Minister directly—in a Committee he said that he accepted Mr. Chatterjee's interpretation and he also said that he looks to English interpretation. Today, he should make it clear.

Shri N. C. Chatterjee: Let me complete. We do not want Mr. Gadgil's interpretation,—with great respect to him. Lord Atkinson has made the law clear on this matter. I am reading from Dymond's "*Death Duty*" at page 17:—

Lord Atkinson said:

> "The transactions were real and genuine as opposed to colourable transactions. It is admitted that the motive which prompted the Duke of Richmond to enter into these transactions was to relieve from the payment of Estate Duty those estates which upon his death would pass to another or others. That motive does not vitiate the transactions."

Such a transaction might not come within the description "*bona fide* commercial transaction". But it will still be a *bona fide* gift *inter vivos* which

comes within section 9. I submit there will be no difficulty.

Sir, I had pointed out that both Mr. Gadgil and the Finance Minister were good enough to appreciate the force of my submission. We have omitted—it is a pure omission—"normal and reasonable expenditure". They must be brought in, in consideration of the marriage, and they have accepted it. In England, there is absolutely no limit, no ceiling, and you cannot fix a limit. You will be reducing it to absurdity when, say, three daughters are to be married. In that case, how can you fix it at Rs. 5,000? Either make it reasonable, or don't have it at all. In England, there is absolutely nothing of the kind. The English law says "normal and reasonable, having regard to the income of the person concerned". I submit that the same thing should be done here.

Just look at Mr. Gadgil's amendment which is No. 583. He says:

> "The provisions of sub-section (1) shall not apply to gifts made in consideration of marriage or which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased and to have been reasonable having regard to the amount of his income or to the circumstances, but not exceeding Rs. 5,000 in the aggregate."

You stop there, with the words, "to the circumstances". That is English law. Why add these words, "but not exceeding rupees five thousand in the aggregate"? My amendment omits this ceiling and it would be unfair, very unreasonable to say "not exceeding Rs. 5,000", and then leave it to the Controller. You must take the country as it is. You are not legislating for every problem. You cannot possibly force all kinds of social reform by this kind of penal provision in a statute dealing with estate duty. I am suggesting to the hon. Finance Minister that this ceiling should not be there and the House should not fix any such ceiling of Rs. 5,000 in the aggregate for all kinds of things. As Green says, whom I quoted earlier, it may be reasonable for a man to give his sister a large proportion of his income if he is a bachelor, while the sister is a widow with young children. Supposing that gift is made, 50 per cent. goes there. That itself comes to Rs. 5,000 in two years. Then you cannot possibly make any other normal gifts or any other public subscriptions. Supposing a man is in the habit of paying something to a society or some organization, that should be allowed. Suppose a Muslim goes to Haj—just two years before death, then, he has to spend large sums of money in charity. He has got to do it under the canonical law. That is barred out. That is not proper. I submit, that that should be deleted, and my humble submission is that it will be a protection if these words are omitted.

Now, about one thing for which I am sorry. I am sorry that the Finance Minister said that. I can understand Mr. Gadgil saying that. Is it a proviso under clause 32? What is the proviso? You are providing, according to the Finance Minister's amendment No. 539, for an exemption. You remember clause 32 is an exemption clause. You are putting in that clause some provision for exemption. Exemption for what?

> "Moneys earmarked under policies of insurance or declarations of trust or settlements effected or made by a deceased parent or natural guardian for the marriage of any of his female relatives ....." etc.

This means, if I make provision for the marriage of my daughters, then that would be exempted. This is a prospective marriage—*post mortem*—and we are now thinking of the past —*ante-mortem*—of actual marriages that have already happened. These wordings should not be confused. That is something that will happen after death. But this is something that precedes that.

Shrimati Sushama Sen (Bhagalpur South): My amendment in clause 9 is No. 220. I may just add a few words to that clause. I beg to move:

In page 5, *after* line 17, *add*:

"Provided always that the conditions herein contained shall not apply if death is the result of an accident or of any *vis major*."

I think this is a very important amendment, and if the House will accept it and if the hon. Finance Minister would accept it, it will be good. I would appeal to the hon. Finance Minister once more to accept the amendment, although it is a sort of hopeless effort perhaps.

Clause 9 deals with gifts within a certain period before death, but if there is an accident and if there is death which is the result of any *vis major*, surely, the family should not be penalized for that. I agree with Shri Gadgil in as far as he has said just now that this is absolutely a new taxation, hitherto unknown in the country, and so we have to go slow. So, I would press this amendment, as I think it very necessary to exempt in cases of accident.

Shri Krishna Chandra (Mathura Distt.—West): My amendment is No. 644. It runs thus:

In page 5, *after* line 19, *insert*:

"Provided further that in the case of gifts whenever and howsoever made in favour of person in succession or in favour of person likely to be person in succession if the succession was to open on the date of the gift, the property taken as a gift shall be deemed to pass on the donor's death."

The amendment is quite clear. It means.....

Mr. Deputy-Speaker: That is making it stricter. Is it not more limited in scope?

Shri Krishna Chandra: Yes, Sir; it is more limited in scope. It only means to bring those gifts, under which the property passes, to the persons who are likely to succeed. I have heard Mr. Chatterjee with great care; he tried to impress that the word "*bona fide*" should be deleted.

Shri C. D. Pande: Not deleted, but the interpretation of Mr. Deshmukh may be put on it, not the interpretation of Shri Gadgil.

Shri Krishna Chandra: I have followed him. The hon. the Finance Minister has been quite reasonable, I should say rather generous, in accepting the amendments to water down this Bill. He has been accepting amendments after amendments which aim at watering down this measure. It is perhaps due to his impression—which I say is not well founded—that the opinions voiced in this House are generally for such exemptions. If we analyse the list of amendments we will find that they can be divided into two broad divisions: One of those aim to make this measure a strict measure, a fit instrument to achieve the professed aim which has been declared too often by the hon. the Finance Minister—that this measure is aimed to achieve a social objective. On the other hand there are amendments which want to water down the provisions of this Bill and it has been a misfortune that the opinions voiced in this House have often been predominantly on the latter side, that is, those opinions which aim to water down this Bill have been more vocal. But, if you scrutinise the amendments tabled, you will find that there are a number of amendments from those who want to make this measure a fit instrument. The misfortune has, however, been that those people have either failed to catch your eye or they have not been assertive enough to speak in this House. But there is no dearth of such amendments which mean to make this measure a fit instrument.

Now, coming to my point, I feel that if the word "*bona fide*" is removed then gifts which have been made to

successors in the family only for the purpose of evasion of duty will be taken out of the property. I will give an example. A father has four sons, and, as is generally the case in this country, the father has implicit confidence and trust in his sons. He knows that his sons will never betray him. He can always gift his property to his sons and remain confident that those sons will support him in his old age.

Shri Dhulekar: They will not.

Shri Krishna Chandra: It may be your conception, but that is not correct.

The property is gifted and the gifts so far as the legal instrument of transfer are concerned are perfect. The transfer has been made, the possession has been given. But the proceeds of the property may be utilised for the joint benefit of the whole family and may continue to be so utilised. I think such gifts will be taken out if this word *"bona fide"* remains here. If the hon. the Finance Minister is kind enough to accept my amendment,—he will see it has got a very limited scope,—then such gifts will go out of the purview. But even if he does not see his way to accept my amendment, I would only entreat him not to be moved by the arguments made in this House for the omission of the words *"bona fide"*. The words *"bona fide"* may to an extent serve the purpose which my amendment seeks to serve.

There is no reason why gifts made to persons in succession should not be taxed. If we take another point of view in this connection it is after all an unearned income. A relative, a son, or any other near successor, gets the property in gift from the father or from any other relative. Then, it is an unearned thing for him. When we are taxing earned income in this country it is a misfortune that there is no law in this country to tax such unearned income. A person gets a good amount in a lottery, but that amount is not liable to the payment of income-tax. It should be. If we exempt even such gifts from being taxed under the Estate Duty Bill, it will be quite unreasonable. The donee here gets the property in gift without putting in any labour and that property is utilised for the benefit of the family.

In the end I would appeal to the Finance Minister that he should be kind enough to accept my amendment which has got a very limited scope. If he does not see his way to accept my amendment, then he should not agree to remove the word *"bona fide"*.

Shri K. K. Basu (Diamond Harbour): My amendment No. 446 speaks for itself. The principle and our point of view underlying this amendment will be found in the minute of dissent appended by us to the Report of the Select Committee. On account of the lapse of time that has happened from the time the Bill was first mooted in 1946 and now, a number of persons would be able to evade the tax. We have therefore suggested that the period should be five years. But Mr. Gadgil, who is practically the governing spirit behind this Bill as it is understood in this House, has already replied to our suggestion. I do not wish to enter into a long discussion, but I think Mr. Gadgil's interpretation of the meaning of the word *"bona fide"* will not be accepted by the courts of law. Because, as you know, under the Muslim law it is only possession that is required. Once a transfer is allowed to be made—and that is the very basis of this clause—that means that the persons who make a gift to the successor, or whoever it may be, are allowed to do so. Then the question of *bona fide* is not quite tenable. Of course in our country there are *benami* transactions which may be brought under the purview of this section.

But I would like to suggest one amendment to the amendment moved by Mr. Gadgil (No. 583). I hope the hon. Member will hear me. I want to move an amendment—I have no

[Shri K. K. Basu]

time to move an amendment, therefore I would like to suggest a modification to the amendment moved by Mr. Gadgil where he wants to put a new sub-section. (*An Hon. Member*: He is not hearing you, he is reading.) The Finance Minister is hearing. I would suggest the deletion of the words "and to have been reasonable having regard to the amount of his income or to the circumstances" in that amendment. When you want to restrict the amount to Rs. 5,000, why do you bring in the judgment and discretion of the Controller to determine whether that sum was reasonable in the context of the income and the social position he held? Considering for a moment that a person is allowed to make a gift to the extent of the maximum of Rs. 5,000, the maximum that the exchequer would lose will be Rs. 1,800 (it is 38 point something of the total tax) even from the person who is in a position to pay at the maximum rate. Therefore, if this particular expression "and to have been reasonable having regard to the amount of his income or to the circumstances" is allowed to be put in this clause, there may be occasions for disputes; the Controller may have a different view; it will go in appeal. As I said, the maximum loss to the exchequer will be only Rs. 1,700 or Rs. 1,800. And in the case of lower limits it may be only Rs. 100 or Rs. 200. Therefore I suggest that instead of complicating things, particularly when you want to put a maximum limit, that particular provision should go away. In our country, on account of the social structure, possibly one person may be a middle-class man. He might have inherited from his relations some jewellery or something which may be of the value of Rs. 4,500. If he has only one daughter or a son he might have made a gift. In that event, if the person's earning was only, say, Rs. 200, you may say he is not entitled to own so much jewellery. I do not say the Controller will always take an unreasonable view. But when you have put a maximum limit to the amount, it is better that this particular expression "and to have been reasonable having regard to the amount of his income or to the circumstances" should go away so as to avoid complication.

Shri N. Somana (Coorg): I want to make a humble suggestion. I would request the hon. the Finance Minister not to press his amendment to delete the words "or more", because that might complicate the issues. I think the expression as it is, is perfectly clear.

Mr. Deputy-Speaker: The Finance Minister has said that he is always open to conviction so far as "or more" is concerned.

Shri N. Somana: I would request him not to press for the deletion of the words "or more".

Mr. Deputy-Speaker: He said he will consider.

Shri Dhulekar: I want to suggest that in the amendment of Mr. Gadgil the words "but not exceeding rupees five thousand in the aggregate" may be deleted. When they have already given powers to the Controller to exercise his judgment, to investigate and to see whether the expenditure is normal or according to the circumstances, then the Controller who is a very high placed person should not be saddled with this limitation that he *should determine* only up to Rs. 5,000. Suppose it is Rs. 5,200. He will be helpless. I think he should be credited with some knowledge of the people and the country.

Shri R. K. Choudhury (Gauhati): Do you expect to influence him?

Shri Dhulekar: I think Shri Gadgil also will agree to this.

बाबू रामनारायण सिंह (हजारीबाग–पश्चिम) : उपाध्यक्ष जी, मैं केवल दो, तीन मिनट में अपनी बात समाप्त कर दूंगा ।

उपाध्यक्ष महोदय : आप भी क्लैरीफिकेशन करना चाहते हैं, अच्छा कर लीजिये ।

बाबू रामनारायण सिंह : उपाध्यक्ष जी, मैं वित्त मंत्री महोदय से यह बात जानना चाहता हूं कि कोई सम्पत्ति वाला व्यक्ति अगर मर गया और उस के पास पांच लाख रुपये के करीब की सम्पत्ति थी, तो उसका दो लाख तो दान में गया और तीन लाख उसके उत्तराधिकारी पाते हैं, तो जो कर लगेगा वह केवल उत्तराधिकारी से वसूल किया जायगा या जिन लोगों को दान दिया गया है, उन लोगों से भी यह कर लिया जायेगा ?

उपाध्यक्ष महोदय : दान पाने वाले से भी वसूल किया जायेगा !

श्री सी० डी० देशमुख : पहले उत्तराधिकारी से वसूल किया जायेगा, फिर जिस को दान दिया गया है, उस से वसूल किया जायेगा।

बाबू रामनारायण सिंह : मेरा निवेदन है कि सारी सभा इस बारे में खूब ठीक से सोचे कि यह तो कहा जा रहा है कि दान जो बोनाफ़ाइडी हो, तो उस पर कर नहीं लगेगा लेकिन मैं सरकार से कहूंगा, संसद के सदस्यों से कहूंगा कि यह तो हो कि दान बोनाफ़ाइडी हो, लेकिन साथ ही इस विषय पर बहस भी बोनाफ़ाइडी हो, बोनाफ़ाइड वोटिंग हो और बोनाफ़ाइडी तरीके से यह पास भी हो। यह हमारे देश की संस्कृति है कि मरे हुए व्यक्ति की नीयत पर हम कोई बात नहीं करते, उस की निन्दा नहीं करते। एक आदमी दान दे कर के मर गया, अब चार वर्ष के बाद कहना कि उस ने बेईमानी से दान दिया, ठीक से दान नहीं दिया, यह हमारी संस्कृति के प्रतिकूल बात हो रही है। एक तो इस तरह का क़ानून हमारे देश में कभी नहीं था, नये नये क़ानून बना कर उनका पहाड़ हमारे देश के लोगों के ऊपर लादा जा रहा है। अब बतलाइये यह कैसे साबित हो कि यह दान ठीक से किया गया, बोनाफ़ाइडी दान किया गया, उस के लिये बोनाफ़ाइडी सबूत हों, उस के लिए दो वर्ष उस को जीना पड़ेगा। यदि इस सरकार के हाथ में, वित्त मंत्री के हाथ में अथवा हमारे भाई गाडगिल के हाथ में हो कि बोनाफ़ाइडी दान होने के बाद दाता दो वर्ष ज़रूर जिये अगर वह दान व्यक्तिगत दान है और अगर वह सार्वजनिक कार्य के हेतु दान है, तो कम से कम छै महीने तक जिये, ऐसा कोई उपाय यदि सरकार के पास हो, तब तो यह धारा स्वीकृत होनी चाहिए। लेकिन यह तो सभी जानते हैं कि मृत्यु पर किसी का अधिकार नहीं है इसलिये मैं वित्त मंत्री से कहूंगा कि दान करने का कोई ऐसा उपाय करें कि ठीक दान करने पर आदमी कम से कम छै महीने जिये। अगर इसका वह कोई उपाय कर सकते हों, तब तो यह धारा रहे, नहीं तो यह धारा नहीं पास होनी चाहिये। मैं इसका विरोध करता हूं।

Shri C. D. Deshmukh: I shall first deal with my amendment No. 509.

Mr. Deputy-Speaker: Omission of 'or more'.

Shri C. D. Deshmukh: I have heard hon. Members express some doubt about the wisdom of carrying through this amendment. I know that in clause 11 I have not suggested a similar amendment and there it puts it the opposite way, "..... *bona fide* effected or suffered not less than two years before the death....." To be strictly consistent, I should have moved an amendment for this wording 'not less.....' In the English rulings, I find "beginning with the second year" and so on. Therefore, there is not much to be gained either way. I will not press this amendment and I shall at the right time ask your leave and the leave of the House to withdraw it.

In regard to all other amendments, I am sorry I have to oppose them

[Shri C. D. Deshmukh]

except of course my own, which is consequential, and 583. I may as well say here that I think that what the hon. Member Mr. Basu has suggested is reasonable. In regard to 'reasonable' what he has suggested is reasonable. Because, the fixation of ceiling itself is a kind of constructive meaning attached to 'reasonable'. Therefore, one need not go again into what is reasonable. Therefore, one has to content himself with saying, ".....part of the normal expenditure of the deceased having regard to the amount of his income or to the circumstances....." I share his fear that otherwise we are likely to get bogged down in trying to determine what is the elusive quantity 'reasonable'. If it is acceptable to the mover of the amendment, I am prepared to accept it.

Shri K. K. Basu: Once he has nodded his head.

Shri C. D. Deshmukh: Now, I will come to the main points that have been made. The first is about the period of these gifts. One general statement I should like to make is that the experience of all countries has shown that gifts shortly before death are a familiar method of evading duty. That is really the rationale of our attempt to fix some period. Some countries go farther. In Australia I think, there is a tax on gifts. Of course, the normal method is to prescribe a period within which the gifts made are dutiable. It is familiar ground; but I must mention it to round off the argument. In England, the period originally prescribed was one year. They were influenced by these generous impulses with which most hon. Members have been influenced here. Then, bitter experience made them raise it to five years. We are starting with twice as much generosity as in the U.K. and therefore we are fixing a period of two years. The point is that there is really no *a priori* basis for determining periods of this kind. It must be a matter of rule of thumb and experiment. That is why we are starting with the period as in the Bill, which seems to have appealed to the Select Committee and I think it will still find favour with the majority of the House. If experience shows that this is either inadequate or adequate, I am sure, when the occasion comes, —and there will be very many—to amend this Act, then we shall have to do something about this period also.

Now, on various occasions, on behalf of Government, we have made our attitude clear in regard to this time-limit for gifts to charitable purposes and the arguments in favour of the present period are somewhat reinforced by the more comprehensive definition that I have agreed to adopt in deference to the wishes of the majority of the Members—what I conceive to be a majority of the Members of the House, it is only a matter of sensing it. The position is, the donor will be pretty free to make gifts to any charitable purpose of his choice. That being so, it goes further and further away from the control of the State. We have made this argument that in this period, unlike other countries, we are trying to channel the resources of the country into certain priorities. Therefore, we cannot take too much of a risk of wealth flowing into some other directions which are controlled entirely by the choice of the individuals. There is nothing in this against the traditions of the country. There is no hostile intention. The champions of those who want this period to be removed or shortened are somewhat unfair to the community at large. Take this argument, for instance, that there is waste if money that flows into Government coffers. I am surprised to hear this argument from Members in this House.....

Babu Ramnarayan Singh: But that is right.

Shri C. D. Deshmukh:..... .....who vote year in and year out very large funds, thousand times more than the funds which will flow into charity. Indeed, if one were to look into the

private charities, how does one know that there is no waste? The only difference is that there is no audit of this expenditure. Therefore, I must say that I adhere to our position.

Then, there are various other difficulties into which I need not go. When gifts are made shortly before death, they may not be in proper form, may have been verbal, and there will always be difficulties in establishing their *bona fides*. For all these reasons, we must adhere to the provisions that are embodied in the Bill as it stands. There was a point regarding banning of all gifts to successors. As a tax gatherer, I should welcome this. But, I resist that temptation. I think here again we should learn by the experience of other countries. So far as I know there is no exception like this made in any law. May be, it is their experience, although one might expect something else, that such gifts are not more common than other kinds of gifts. If our experience is otherwise, —family ties prove stronger in this country as they well might be—and therefore a good deal of revenue escapes the net of the tax-gatherer, we shall have to review the position. In any case, it is not a succession duty although we have introduced an element here and there in some of the quick succession and other clauses, and I think we better not gradually transform it into a succession duty.

I am sorry I cannot accept the amendment that suggests that special provision be made for deaths due to accidents. Again, administratively it will be very difficult to establish causes of death, particularly by revenue officers. In any case, I think cases of accidents must be very small as compared with other cases, and as I have said before, it is not right to try to legislate for an odd remote contingency.

Then, we come to the vexed question of gifts *bona fide* made. I have already stated my own view. But, I must observe that we use the word "moving" too often in the course of the debate. It is a moving spectacle to have so many amendments. Certainly there are Movers of amendments. But when some one says that an hon. Member is a moving spirit, I think he goes too far. I stand by the opinion that I have expressed in regard to this business of *bona fide*. The essence of the matter is, I think, that there must be no secret arrangement or reservations. That is the effect of the English decisions. It is very fortunate that for the legal diamonds amongst us, there are Dymonds and for the greens among us, there are Greens. And here is some reference—Brey in 1907—it is an old case. I won't give the reference. It sounds too much like a Court. I quote now:

> "The intention is to provide that the transaction shall be a real and genuine transaction, intended to have full and real operation without any secret or collusive arrangement or reservation, and as I found.....

—this is the quotation—

> ".....that all the deeds and documents here.....

—in that case—

> ".....were genuine instruments intended to have their full operation without any reservation of any kind, secret or otherwise, I must find, as I do find, that these encumbrances were created *bona fide*."

Then he goes on to say:

> "In my opinion, motive has nothing to do with it. In coming to the conclusion whether they were real deeds intended to have been really operative, one of the elements for consideration may be motive, but once it is found that they were real deeds, I think the motive that actuated the donor in making them is immaterial."

To my knowledge that has not been overruled, and, therefore, it is possible when the matter goes to Court, if it

[Shri C. D. Deshmukh]

ever does, then they will possibly follow these rulings. I am not trying to give my own interpretations. I am only referring to interpretations that have been put on these words in the United Kingdom.

Now, there is only one thing—I think it finishes it—this vexed question of gifts to *Bhoodan Yajna*. Undoubtedly these will be for charitable purposes, and they will have to be made more than six months before death in order to escape the duty, but whatever one's sympathy may be with this campaign, one must realize that it is still, from a legal point of view, in an inchoate situation. One does not know yet what exactly the legal incidents are, how the land is going to be distributed, if the best form of distribution would be to co-operative societies of the landless or to individuals, what the convenience of recovery from the rest of the estate would be—because that danger was referred to by the Mover of this amendment. So, I think it is not advisable to consider this matter at this stage until the exact legal position of these lands and the rights of ownership become clearer. Also we should be treading on dangerous ground if we once start distinguishing one kind of charitable purpose from another, and in this we have had bitter experience in trying to administer the old Section 15-B of the Income-tax Act which we amended recently. Maybe that a situation would emerge in which this form of charity will stand out over the others, and it might be possible to categorise or classify them. Then, if there is a class of property, a class of persons, then there is provision for residual exercise of discretion under Clause 32.

Reverting again to this question of *bona fides* and referring to the speech made by, I think, Babu Ramnarayan Singh, the Hindi would be not सद्हेतु-पूर्वक but वास्तव में a real transaction. The rendering of *bona fide* will be वास्तव में :

बाबू रामनारायण सिंह : अच्छी नियत ।

श्री सी० डी० देशमुख : नहीं, नीयत का सवाल नहीं उठता ।

Shri A. M. Thomas: Whether it was intended to take effect or not.

Shri C. D. Deshmukh: So, in reality, that amounts to a gift, and that is a matter which will always have to be determined with reference to the law on the subject, the physical facts of the transaction and so on. So, it is not necessary for me to enlarge on that point.

One last point. An appeal was made to me that even at this last minute I should agree to abandon the ceiling. I am sorry I cannot because all these really represent concessions in one form or another, and somewhere or the other one has to say "This is the kind of pattern I want about this." In other words, what I am driving at is, every single matter, if it is considered by itself, might appear very persuasive, but when you have the whole picture, then one may say one might well be content although one is not fully satisfied with some provision, and this is a provision which I have inserted originally in deference to a point raised by the hon. Member opposite who has still to do with some of the other clauses, and, as I have said yesterday, we have still to give our mind to some of the other things which arise under Clause 34. I would advise, therefore, hon. Members not to press this particular thing. I think Rs. 5,000 should be enough for all ordinary families.

Mr. Deputy-Speaker: May I ask one question? How does it happen that Rs. 5,000 is allowed to each marriage —the marriage of a daughter—after the death of the man, and why should there be a distinction? If he celebrates the marriage of his daughters before his death, he is not allowed Rs. 5,000 for each daughter. Under this amendment, whatever might be the number of daughters, he cannot spend more than Rs. 5,000, whereas if he leaves money behind after his death, it is different.

Shri C. D. Deshmukh: It is the time element. It may be that in an odd instance you might find that, say 18 months before his death, a man celebrated the marriage of ten daughters, but the greater probability is that he will marry one daughter if he is lucky enough. It is not so easy to marry daughters now. Whereas, when you refer to future marriages, well, if a man dies, it may be that when they come of age and when they are fortunate enough to be paired off, then they will be married. So, the whole process is spread over a very long period, whereas here it is only a question of what is likely to have happened within this two-year period. That is what we were considering. Therefore, the statistical probabilities of the case are that it will be only one marriage.

11 A.M.

Mr. Deputy-Speaker: It is clubbed along with other gifts also.

Shri A. M. Thomas: What about the words pointed out by Mr. Raghavachari "to the satisfaction of the Controller"? Do these words oust the jurisdiction of the Board of Revenue when appeals are filed?

Shri C. D. Deshmukh: Yes, Sir, that is...

Mr. Deputy-Speaker: He has already agreed to make that.

Shri C. D. Deshmukh: I have not.

Mr. Deputy-Speaker: He said "reasonable" something.

Shri C. D. Deshmukh: Again, my intention is that all these things which are not comparatively very important should not get bogged down in a court of law, and once you raise this question of what is reasonable, what is normal, is this a gift, is this for marriage, well, we say "All these things have to be established to the satisfaction of the Controller". That is quite a common legal experience. In many Acts we find "In the opinion of so-and-so". Apparently, lawyers have even found a way out of this, but we are trying to safeguard the position as much as we can.

Shri H. G. Vaishnav (Ambad): If the words "two years or more" remain, the question of Rs. 5,000/-, of course, is not restricted to the two-year period, but even more. I will just explain. If the word "more" is not there, then, of course, as the hon. Finance Minister explained, the restriction is only to two years. But, if the words "two years or more" remain there, the restriction of Rs. 5,000 will go even beyond the two-year period.

Shri C. D. Deshmukh: With regard to proving it, anything that happens before two years is really outside our ken.

Shri A. M. Thomas: May I know whether the Central Board of Revenue can enquire into the standard adopted by the Controller? That was exactly what I wanted.

Mr. Deputy-Speaker: What the hon. Member wants is this. Whereas it is not the intention of the framers of the Bill that a gift of any value for a marriage or for any other purpose—whatever might be the nature of the purpose of the gift—ought not to be affected if it is made beyond two years, the amendment as it is worded will mean the previous sub-section (i) shall not apply to cases of gifts made in consideration of marriage. That is, notwithstanding the fact that the marriage was celebrated ten years before that if a gift is more than Rs. 5,000, that gift is taboo. It is possible to bring about that construction.

Shri C. D. Deshmukh: That is not the intention.

Mr. Deputy-Speaker: But we must make sure that it does not lead to a wrong interpretation. Would it not be better to say: "Notwithstanding the provisions of sub-section (1), gifts made in consideration of marriage—(then the words regarding the satisfaction of the Controller)—.....if made within two years of death....."—such gifts will not be liable to estate duty?

[Mr. Deputy-Speaker]

I think if you do that, it will make the position clear.

Shri Dhulekar: If you take out the Rs. 5000 limit, whether it is two years or more, it will be all right. Then everything else can remain.

Shri N. C. Chatterjee: I wanted to put in the words: "gifts made within two years of the death..."—that will clear the position.

Mr Deputy-Speaker: Could we not say, "Notwithstanding the provisions of sub-section (1)..."?

Shri N. C. Chatterjee: That is one way. I was suggesting the following wording: "The provisions of sub-section (1) shall not apply to gifts made two years of the death.....etc."

Mr. Deputy-Speaker: Very well.

Shri C. D. Deshmukh: If you do that, you are then faced with the difficulty of why we have not used the words *"bona fide"* there.

Mr. Deputy-Speaker: In regard to gifts made in consideration of marriage, no question of *"bona fides"* arises. In regard to other gifts, we have already said that they should be proved to the satisfaction of the Controller to have been part of the normal expenditure. Marriage expenditure is normal expenditure and there is no question of proving the *bona fides* there. If a gift has been made, no son-in-law would leave it. After all, it is not a very large amount . So, we need not worry about the words *"bona fide"*. I am only making a suggestion.

Shri U. M. Trivedi: The original amendment of Mr. Deshmukh was all right. All this hotch-potch has been created by putting in a ceiling figure.

Mr. Deputy-Speaker: I am not concerned with the substance. The hon. Finance Minister is not willing to forego the Rs. 5000 limit. Accepting that, —lest he should create an impression which he did not want to create, *viz.* that he taboos even gifts made within two years—, he now wants to restrict that amendment to a period beyond two years. We are on this point, *viz.* "The provisions of sub-section (1) shall not apply to gifts made within two years..."

Shri C. D. Deshmukh: The position is that if we do not have Clause 9, then all gifts would be treated as not part of the property. What we are trying to do is, that we are defining gifts which shall be deemed to pass on death, that is to say, they are not really part of the property. If anyone were to ask, "What has happened to the gifts?", we will say that the ownership of it has been transferred now to somebody else. What we are now doing is that we are reversing, by this whole clause, something which has already happened, and constructively we are saying that "this is part of the property". If we say that this kind of rigour shall not apply to these gifts, then these gifts remain gifts. Therefore, in the normal construction, they would not be part of the property. Threfore, it is not necessary to put this in again—I mean the amendment suggested. The whole of clause 9 is an exception to the natural order of things, and all that we say is that the natural order will regain its force if we say that the provisions of sub-section (1) shall not apply. We exclude these from the scope of clause 9.

Mr. Deputy-Speaker: No, no. The natural order is this. Whatever was the property at the time of the deceased's death is the property which is taxable, and if before his death he had given away something, that something, according to the normal procedure, is not his property. It is not deemed to be his property.

Shri C. D. Deshmukh: That is what I am also saying. Even on his deathbed, if he has given something away, it is not his property. Ordinarily, you would not regard it as his property, but because we fear that this might be used as a way of evading estate duty, we say that gifts made for public charitable purposes, if made within six months, and other gifts as speci-

fied, if made within two years, shall not be deemed to be his property: in other words, they will be the property of somebody else. That is why we say that the provisions of clause 9 shall not apply to gifts made for so and so purposes. In view of this, it is not necessary to put it again in the exception.

Shri Dhulekar: The Finance Minister's interpretation is correct, because it takes away from the corpus of the property any gifts which are part of the normal expenditure up to a limit of Rs. 5000.

Shri C. D. Pande: You do not mean, normal daily expenditure also?

Shri Dhulekar: Normal expenditure as provided for in the section.

Mr. Deputy-Speaker: Very well. I leave it to the Finance Minister. I shall first put Mr. Gadgil's amendment, No. 583.

The question is:

In page 5,

(i) line 12, *before* "Property" insert "(1)"; and

(ii) *after* line 19, *insert*:

"(2) The provisions of sub-section (1) shall not apply to gifts made in consideration of marriage or which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased but not exceeding rupees five thousand in the aggregate."

Shri C. D. Deshmukh: Sir, are you putting both the parts? May I point out that if you are putting the whole of amendment No. 583, I will have to ask for leave to withdraw my amendment No. 511. Mr. Gadgil had said that he was moving only the second part: but you have mentioned both the parts.

Mr. Deputy-Speaker: What is the harm? The first part of Mr. Gadgil's amendment and amendment No. 511 are indentical, I think.

Shri C. D. Deshmukh: No harm is done. I do not mind

Shri Raghavachari: The position is that Mr. Deshmukh had moved only the first part of his amendment No. 511; and Mr. Gadgil had moved only the second part of his amendment No. 583; and these two combined together, make the whole of amendment No. 583, as you have now mentioned.

Mr. Deputy-Speaker: I am advised that Mr. Gadgil had not moved the first portion of his amendment.

Shri C. D. Deshmukh: But I moved it.

Mr. Deputy-Speaker: So, Mr. Gadgil's amendment will be only the second portion of Amendment No. 583 after deleting certain words. I shall now put it to be vote of the House.

The question is:

In page 5, *after* line 19, *insert*:

"(2) The provisions of sub-section (1) shall not apply to gifts made in consideration of marriage or which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, but not exceeding rupees five thousand in the aggregate."

The motion was adopted.

Mr. Deputy-Speaker: I shall now put Mr. Deshmukh's amendment, the first part of No. 511 to the vote of the House.

The question is:

In page 5, line 12, *before* "Property" *insert* "(1)".

The motion was adopted.

Mr. Deputy-Speaker: Then there is amendment No. 509.

Shri C. D. Deshmukh: I wish to withdraw it.

Mr. Deputy-Speaker: Has the hon. Minister the leave of the House to withdraw his amendment?

Hon. Members: Yes.

Amendment No. 509 was, by leave of the House, withdrawn.

Mr. Deputy-Speaker: As for the other amendments, unless any hon. Member wants that his amendment should be put separately, I shall put all of them together to the vote of the House.

Shri S. S. More: May I make a submission, Sir. There are some amendments which seek to increase the period, while there are others which seek to reduce the period. So I would suggest that the amendments may be put in two separate groups. Otherwise it will be difficult for us.

Mr. Deputy-Speaker: I shall see what each hon. Member wants to be done with his amendment.

Dr. Krishnaswami (Kancheepuram): I had given an amendment that Clause 21 should be put as an explanation to clause 9. But I suppose it can be taken up when clause 21 comes up for discussion?

Mr. Deputy-Speaker: I am not able to give any ruling in advance. As and when a matter arises, I am bound to give a ruling.

What is that amendment? Has not the hon. Member moved it?

Dr. Krishnaswami: I have moved it.

Mr. Deputy-Speaker: He had told me about it yesterday, and I do not know why he has not moved, if he wants that clause 21 should be put in as an explanation to clause 9.

Dr. Krishnaswami: It has been moved already.

Mr. Deputy-Speaker: What is the amendment?

Dr. Krishnaswami: Amendment No. 225.

Mr. Deputy-Speaker: It is an amendment to clause 9, and so this is more appropriate here.

Dr. Krishnaswami: I would like to withdraw it.

Mr. Deputy-Speaker: Has the hon. Member the leave of the House to withdraw his amendment?

Hon. Members: Yes.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: We shall be merely wasting the time of the House, if the amendments are put one after the other, after our looking into them to see whether they seek to increase or reduce the period. Any hon. Member who wants his amendment to be put separately may kindly tell me.

Shri S. S. More: That will be giving us some incovenience. Supposing those who are in favour of increasing the period have to say, no, to those amendments which seek to increase the period, then it will be a little inconvenient for us, if we are to say, no, to all the amendments put together.

Mr. Deputy-Speaker: I will put Mr. More's amendments separately. Let him not worry about the other amendments.

Shri S. S. More: In one of the amendments, I seek to increase the period, and the other seeks to provide that gifts in favour of successors should not be held to be valid.

Mr. Deputy-Speaker: I shall put Amendments Nos. 481 and 482 to the vote of the House.

The question is:

In page 5, line 15, *for* "in succession, or otherwise", *substitute* "who are not in succession".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *for* "two years or more" *substitute* "five years".

The motion was negatived.

Mr. Deputy-Speaker: What about the other hon. Member's amendments?

I find some of the hon. Members are absent. I shall put all the other amendments to the vote of the House.

The question is:

In page 5, line 12, *after* "taken" *insert* "or settled".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 14, *after* "inter vivos" *insert* "other than for public charitable purposes".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5,

(i) line 14, *after* "trust" *add* "or"; and

(ii) line 15, *for* "in succession, or otherwise" *substitute* "who are not successors of the deceased".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 15, *after* "otherwise" *insert* "exceeding rupees five thousand in value".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5,

(i) lines 15 and 16, *for* "which shall not have been *bona fide* made two years or more before the death of the deceased" *substitute* "which shall have been made *mala fide* within two years before the death of the deceased"; and

ii) *after* line 19, *insert*:

"*Explanation.*—*Mala fide* in this section shall mean, with the intention of evading the duty payable under this Act".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *omit* "*bona fide*".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *omit* "*bona fide*".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *omit* "two years or more".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *for* "two" *substitute* "three".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *for* "two years" *substitute* "two months".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *for* "two years" *substitute* "one year".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *for* "two years" *substitute* "five years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *for* "two years" *substitute* "five years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *for* "two years" *substitute* "five years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *omit* "or more".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *after* "deceased" *insert* "unless it is an accidental death".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 17, *before* "shall be" *insert* "which is not an accidental death".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 17, *add* at the end "unless death was due to *vis major* or accident".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 17, *add* at the end:

"Unless the Court otherwise determines the *bona fides* of the disposition on a suit filed by the aggrieved party within six months of the determination of the *mala fides* of the gifts."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *omit* lines 18 and 19.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *for* lines 18 and 19, *substitute*:

"Provided that—

(i) in the case of gifts made for public charitable purposes, the period shall be six months; and

(ii) in the case of gifts made to the successors, the period shall be fifteen years."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *for* lines 18 and 19, *substitute*:

"Provided that this section shall not apply to gifts made for public or charitable purposes."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *for* lines 18 and 19, *substitute*:

"Provided that gifts made for public charitable purposes shall not be deemed to pass on death."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *for* lines 18 and 19, *substitute*:

"Provided that in the case of gifts made for public charitable or religious purposes the property covered by such gifts shall not be deemed to pass on deaths."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *for* lines 18 and 19, *substitute*:

"Provided that gifts specifically made for public charitable purposes can be made any time before the death."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 18, *omit* "public".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 18, *after* "public" *insert* "or".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 19, *for* "the period shall be six months" *substitute* "the property shall not be deemed to pass on death".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 19, *for* "the period shall be six months" *substitute* "prescribed by the Government of India, the property covered by such gifts shall not be deemed to pass on death".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 19, *for* "six months" *substitute* "six hours".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 19, *for* "six months" *substitute* "one year".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In the amendment No. 511 proposed by Shri C. D. Deshmukh, *add* at the end:

"subject to a limit of rupees five thousand in the case of each marriage and rupees two thousand in the case of each donee."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *after* line 19, *insert*:

"Provided further that the limit of two years shall not apply where death occurs due to fatal accidents or sudden unforeseen calamity".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *after* line 19, *insert*:

"Provided further that where an absolute *gift inter vivos* is made to the Union Government to be applied in reduction of the Public Debt of India, the property so given shall be exempt from the estate duty as from the date when it is transferred to the Government".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *after* line 19, *add*:

"Provided further that the property covered by such gifts in favour of the legal heirs of the deceased shall be deemed to pass on death."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *after* line 19, *insert*:

"Provided further that the gifts *inter vivos* made after the 1st day

[Mr. Deputy-Speaker]

of April 1946 shall be subject to a duty not exceeding one-half of the rate under section 34."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In the amendment No. 583 proposed by Shri Narhar Vishnu Gadgil, *omit* "but not exceeding rupees five thousand in the aggregate".

That is an amendment to Mr. Gadgil's amendment.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *after* line 19, *insert*:

"Provided further that always the conditions herein contained shall not apply in the case of gifts of land made to the landless in the *Bhoomidan Yagna*".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *after* line 19, *insert*:

"Provided further that in the case of gifts whenever and howsoever made in favour of person in succession or in favour of person likely to be person in succession if the succession was to open on the date of the gift, the property taken as a gift shall be deemed to pass on the donor's death."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *after* line 17, *add*:

"Provided always that the conditions herein contained shall not apply if death is the result of an accident or of any *vis major*."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 9, as amended, stand part of the Bill."

The motion was adopted.

Clause 9, as amended, was added to the Bill.

Clause 10.— (*Gifts whenever made etc.*)

Shrimati Sushama Sen: I have got two amendments, Nos. 226 and 228. I wish to move only the latter.

I beg to move:

In page 5, lines 23 to 25, *omit* "and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise."

Under clause 10, property given under any gift will be deemed to pass on donor's death to the extent that *bona fide* possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise. My amendment seeks to omit the portion "and thenceforward retained....." According to the Hindu Law, a gift of property is not invalid because the donor reserved the usufruct of the property for lifetime. The Transfer of Property Act abrogates the rule of Hindu Law that considers delivery of possession as essential to the validity of a gift. It is therefore not necessary to have delivery of possession to complete a gift. Whereas under the clause, immediate possession and exclusive enjoyment to the donee of the property given as a gift is required.

The provision is also contrary, I believe, to the Muslim law. Now I think it makes it very difficult if the donor is absolutely excluded from enjoying any benefits and privileges. Therefore, I think it is very necessary

that we should omit these words—"and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise".

I do not want to take up much time of the House, but I think it is a very necessary amendment and I hope the House will accept it.

Shri Barman (North Bengal—Reserved—Sch. Castes): I simply submit for the consideration of the Minister that the word 'immediately' be inserted in line 30 after 'at least'.

Mr. Deputy-Speaker: I think he did not move it.

Shri Barman: I was just finding out the number—626.

I beg to move:

In page 5, line 30, *after* "two years" *insert* "immediately".

It may be that these two years may not be immediately before the date, but at any previous time. In that case the real intention of this clause will not be served. But if the word 'immediately' is put there, then the real purpose of this clause may be better served. It is for the Minister to consider it.

Mr. Deputy-Speaker: Amendment moved:

In page 5, line 30, *after* "two years" *insert* "immediately".

The Deputy Minister of Finance (Shri M. C. Shah): I regret that the Government cannot accept the amendment of Mrs. Sushama Sen. These words are absolutely essential to avoid certain gifts which may not be, really speaking, gifts, but the donor may just enter into a deed of gift and may keep possession to himself.

Shrimati Sushama Sen: Why don't you trust the people? It is a *bona fide* gift.

Shri M. C. Shah: We trust the people. We trust them to be very honest. But we want to avoid those gifts where possession is handed over to the donee and to be enjoyed entirely to the exclusion of the donee. 'Exclusion' means legal exclusion. If there are any fears as regards entire exclusion in cases like, a father going and staying with his widowed daughter in law for some time, those fears are misconceived. As a matter of fact, there are certain rulings and I do not think I should take the time of the House. There must be legal exclusion. He may not have any benefit whatever, direct, indirect, distant or remote, in the property already gifted away. Therefore, these words are absolutely necessary and I am sorry I cannot accept the amendment.

Shrimati Sushama Sen: Should you not put in some provision so that you are not legally absolutely thrown out?

Shri M. C. Shah: It is not necessary. If you consult your lawyer friends, they will tell you immediately that this is entirely necessary and your fears are absolutely misplaced.

Mr. Deputy-Speaker: The question is:

In page 5, lines 23 to 25, *omit*:

> "and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise".

The motion was negatived.

Mr. Deputy-Speaker: What about Mr. Barman's amendment? Shall I put it to the House?

Shri K. K. Basu: It is withdrawn.

Shri Barman: I beg leave of the House to withdraw my amendment.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

> "That clause 10 stand part of the Bill."

The motion was adopted.

Clause 10 was added to the Bill.

Clause 11.—(*Limited interests disposed of etc.*).

Shri N. C. Chatterjee: I beg to move:

In page 5, lines 41 and 42 *omit*:

"and no disposition of any interest expectant upon or subject to that interest".

Shri M. C. Shah: I beg to move:

In page 5, line 43, *for* "section 6" *substitute* "section 5".

Shri N. C. Chatterjee: I beg to move:

(1) In page 5, lines 47 and 48, *omit*;

"and no disposition of any interest expectant upon or subject to that interest".

(2) In page 6, lines 2 and 3, *for* "two years" *substitute* "one year".

Shri U. M. Trivedi: I beg to move:

In page 6,

(i) line 3, *for* "years" *substitute* "months"; and

(ii) line 4, *for* "not less than six months before the death" *substitute* "whenever so effected."

Shri N. C. Chatterjee: I beg to move:

In page 6, line 4, *for* "not less than six months" *substitute* "at any time."

Shri M. C. Shah: I beg to move:

(1) In page 6,

(i) *after* line 16, *insert*:

"Provided that where *bona fide* possession and enjoyment of the property referred in clause (a) was not assumed immediately after the disposition or determination of the interest limited to cease on death, the disposition or determination shall be excepted by this sub-section, if, by means of the surrender of the reserved benefit or otherwise, the property is subsequently enjoyed for at least two years before the death, to the entire exclusion of the person who immediately before the disposition or determination had the interest and of any benefit to him by contract or otherwise."

(ii) line 17, *after* "Provided" *insert* "further".

(2) In page 6, lines 39 and 40, *for* "of the proviso to section 10" *substitute* "of the first proviso to sub-section (2)".

Mr. Deputy-Speaker: Amendments moved:

(1) In page 5, lines 41 and 42, *omit*;

"and no disposition of any interest expectant upon or subject to that interest".

(2) In page 5, line 43, *for* "section 6" *substitute* "section 5".

(3) In page 5, lines 47 and 48, *omit*;

"and no disposition of any interest expectant upon or subject to that interest".

(4) In page 6, lines 2 and 3, *for* "two years" *substitute* "one year".

(5) In page 6,

(i) line 3, *for* "years" *substitute* "months"; and

(ii) line 4, *for* "not less than six months before the death" *substitute* "whenever so effected".

(6) In page 6, line 4, *for* "not less than six months" *substitute* "at any time".

(7) In page 6,

(i) *after* line 16, *insert*:

"Provided that where *bona fide* possession and enjoyment of the property referred in clause (a) was not assumed immediately after the disposition or determi-

nation of the interest limited to cease on death, the disposition or determination shall be excepted by this sub-section, if, by means of the surrender of the reserved benefit or otherwise, the property is subsequently enjoyed for at least two years before the death, to the entire exclusion of the person who immediately before the disposition or determination had the interest and of any benefit to him by contract or otherwise."

(ii) line 17, *after* "Provided" *insert* "further".

(8) In page 6, lines 39 and 40, *for* "of the proviso to section 10" *substitute* "of the first proviso to sub-section (2)".

Shri M. C. Shah: Amendment No. 514 is to rectify a typing mistake—"*for* section 6, *substitute* section 5", and regarding amendment No. 515....

Mr. Deputy-Speaker: What is the object of the amendment. The hon. Minister will kindly say what it is. That is enough.

Shri M. C. Shah: .... we have made that position very clear. Before two years if the benefit was surrendered to the entire exclusion of the donor and if the property was enjoyed by the donee, then this may not apply.

Then we have said "(ii) in line 17, *after* 'provided' *insert* 'further'", because that will be the second proviso.

Then again amendment No. 516 is also consequential—"*for* 'of the proviso to section 10' *substitute* 'of the first proviso to sub-section (2)'".

Shri N. C. Chatterjee: This clause 11 means to bring within the charge interests limited to cease on death and which have been disposed of within 2 years of the death. Take for instance, the Hindu widow who has got a widow's estate in a house property. She surrendered the estate to the reversioners before death. In such a case property would not be said to pass to the reversioners on her death because it actually passed to them more than two years back. Therefore, section 5 will not apply nor section 7. But our object under sub-clause (1) was that property should be deemed to pass on death; and estate duty should be chargeable if the property had not been surrendered two years before death. You may remember that in the Select Committee the old clause has been altered to some extent having regard to certain English decisions. You may kindly look into the words that I want to omit. I hope the hon. Minister will have no objection. Just look at clause 11. 'Limited interests disposed of within a certain period before death' is the heading.

> "Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner.....whether wholly or partly, and whether for value or not, after becoming an interest in possession, and the disposition or determination (or any of them if there are more than one) is not excepted by sub-section (2), then—
>
> (a) if, had there been no disposition or determination, as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have passed on the death under section 6, that property shall be deemed by virtue of this section to be included as to the whole thereof in the property passing on the death;"

Now, Sir, I find that in England the greatest difficulty has been caused by the decisions. Dymond has pointed out that the words 'and no disposition of any interest expectant upon or subject to that interest' are not clear. They will create complications. What I am pointing out is

[Shri N. C. Chatterjee]

even the limited interest if it has been surrendered two years before and if it is made over, that is, if the conditions of sub-section (2) are complete, then it is all right, and if there is no special disposition with regard to that particular property to make it charitable and public, the removal of these words would really help. I hope the Government would accept my amendment.

I am also asking that in clause (b) also the same words be omitted.

Mr. Deputy-Speaker: I will put first the Government amendments to vote. Amendment No. 514 is a formal amendment to substitute 5 for 6. Then there is amendment No. 515 and 516 a consequential amendment.

The question is:

In page 5, line 43, *for* "section 6" *substitute* "section 5".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 6,

(i) *after* line 16, *insert*:

"Provided that where *bona fide* possession and enjoyment of the property referred in clause (a) was not assumed immediately after the disposition or determination of the interest limited to cease on death, the disposition or determination shall be excepted by this sub-section if, by means of the surrender of the reserved benefit or otherwise, the property is subsequently enjoyed for at least two years before the death, to the entire exclusion of the person who immediately before the disposition or determination had the interest and of any benefit to him by contract or otherwise." and

(ii) line 17, *after* "Provided" *insert* "further".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 6, lines 39 and 40, *for* "of the proviso to section 10" *substitute* "of the first proviso to sub-section (2)".

The motion was adopted.

Mr. Deputy-Speaker: Now, I will put the amendments of Mr. Chatterjee.

The question is:

In page 5, lines 41 and 42, *omit* "and no disposition of any interest expectant, upon or subject to that interest".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, lines 47 and 48, *omit* "and no disposition of any interest expectant upon or subject to that interest".

The motion was negatived.

Mr. Deputy-Speaker: Now, I will put the other amendments to vote. The question is:

In page 6, lines 2 and 3, *for* "two years" *substitute* "one year".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6,—(i) line 3, *for* "years" *substitute* "months"; and (ii) line 4, *for* "not less than six months before the death" *substitute* "whenever so effected".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, line 4, *for* "not less than six months" *substitute* "at any time".

The motion was negatived.

Mr. Deputy-Speaker: Now, the question is:

"That clause 11, as amended, stand part of the Bill."

The motion was adopted.

Clause 11, as amended, was added to the Bill.

Clause 12.—(*Settlements with reservation*)

Shri M. C. Shah: I beg to move:

(i) In page 6, line 49, *before* "property" *insert* "(1)"; and

(ii) In page 7, *for* lines 6 to 9, *substitute*:

"Provided that the property shall not be deemed to pass on the settler's death by reason only that any such interest or right was so reserved if by means of the surrender of such interest or right the property is subsequently enjoyed to the entire exclusion of the settler and of any benefit to him by contract or otherwise, for at least two years before his death.

Explanation.—A settler reserving an interest in the settled property for the maintenance of himself and any of his relatives (as defined in section 26) shall be deemed to reserve an interest for himself within the meaning of this section.

(2) Notwithstanding anything contained in sub-section (1), where property is settled by a person on one or more other persons for their respective lives and after their death, on the settler for life and thereafter on other persons and the settler dies before his interest in the property becomes an interest in possession, the property shall not be deemed to pass on settler's death within the meaning of this section."

Shri N. C. Chatterjee: Yes. I beg to move:

(1) In page 7, *after* line 5, *insert*:

"Provided that where in a settlement an interest is conferred upon the settler or disposer which is to take effect only in case a specified uncertain event shall happen an interest shall not be deemed to have been reserved to the settler within the meaning of this section and provided further that where a settlement is made irrevocable for a period exceeding six years but is revocable at the expiration of the said period, the settler shall not be deemed to have reserved to himself the right to restore to himself or to reclaim the absolute interest in such property within the meaning of this section."

(2) In page 7, *omit* lines 6 to 9.

Mr. Deputy-Speaker: Amendments moved:

(1) (i) In page 6, line 49, *before* "Property" *insert* "(1)"; and

(ii) In page 7, *for* lines 6 to 9, *substitute*:

"Provided that the property shall not be deemed to pass on the settler's death by reason only that any such interest or right was so reserved if by means of the surrender of such interest or right the property is subsequently enjoyed to the entire exclusion of the settler and of any benefit to him by contract or otherwise, for at least two years before his death.

Explanation.—A settler reserving an interest in the settled property for the maintenance of himself and any of his relatives (as defined in section 26) shall be deemed to reserve an interest for himself within the meaning of this section.

(2) Notwithstanding anything contained in sub-section (1), where property is settled by a person on one or more other persons for their respective lives and after their death, on the settler for life and thereafter on other persons and the settler dies before his interest in the property becomes an interest in possession, the property shall not be deemand to pass on the settler's death within the meaning of this section."

(2) In page 7, *after* line 5, *insert*:

"Provided that where in a settlement an interest is conferred

[Mr. Deputy-Speaker]

upon the settler or disposer which is to take effect only in case a specified uncertain event shall happen an interest shall not be deemed to have been reserved to the settler within the meaning of this section and provided further that where a settlement is made irrevocable for a period exceeding six years but is revocable at the expiration of the said period, the settler shall not be deemed to have reserved to himself the right to restore to himself or to reclaim the absolute interest in such property within the meaning of this section."

(3) In page 7, *omit* lines 6 to 9.

Shri M. C. Shah: We have made the position clear:

"Provided that the property shall not be deemed to pass on the settler's death by reason only that any such interest or right was so reserved if by means of the surrender of such interest or right the property is subsequently enjoyed to the exclusion of the settler and of any benefit to him by contract or otherwise....."

Mr. Deputy-Speaker: As in the previous case something exclusively enjoyed.

Shri M. C. Shah: Yes. The wording of clause 12 by the Select Committee was not very clear. We have made the intention clear.

Shri N. C. Chatterjee: Sir, I thought that the Minister was going to accept the suggestion I made in case of a revocable settlement where you have got a peculiar mode of settlement. A life interest is given by A to B, and in the case of B pre-deceasing A a second life interest is given to the settler 'A' with remainder to C, a question will arise whether under the clause an interest is reserved to the settler. We want to put in the following proviso that a contingent interest reserved to the settler which may come into operation only in case a specified uncertain event shall happen is not an interest reserved to the settler within the meaning of the section:—

"Provided that where in a settlement an interest is conferred upon the settler or disposer which is to take effect only in case a specified uncertain event shall happen an interest shall not be deemed to have been reserved to the settler within the meaning of this section and provided further that where a settlement is made irrevocable for a period exceeding six years but is revocable at the expiration of the said period, the settler shall not be deemed to have reserved to himself the right to restore to himself or to reclaim the absolute interest in such property....."

That is in conformity with the Income-tax Act. You know that in such cases the settlement is held to be good. What I am pointing out is that this kind of proviso should be accepted so that the position may be clarified. I wish Mr. Shah was also taking a line in conformity with that. He has not moved it. It should be made clear. I think there should be no opposition to this. It is a more or less drafting amendment to make the position clear.

Shri C. C. Shah (Gohilwad-Sorath): Sir, so far as the first part of Mr. Chatterjee's amendment 312 is concerned, that is covered by sub-section (2) now moved by the Government in amendment 517. It is made clear that if the life interest reserved for the settler does not fall into possession before the death of the settler, then it will not be deemed to pass the property. So far as the second part of Mr. Chatterjee's amendment is concerned, it is on the same lines as Explanation 3 in my amendment 410. I have not moved that Explanation for this reason. Under section 16, sub-section (1) (c) of the Income-tax Act, if the settlement is irrevocable for a period of six years it is

considered irrevocable. No doubt, relying on this provision, some people have made settlements today which are irrevocable for six years within the meaning of this clause. As they are revocable after a period of six years, they are irrevocable so far as the settler is concerned for the period of six years and yet they are revocable for Clause 12 under consideration. It would have been reasonable in my opinion to accept the amendment on the lines of Explanation 3 which I have tabled, namely, that if the settler dies within the period of six years, since he had no power to revoke the settlement it should be considered irrevocable. As a result of the clause as it stands and the explanation worded by the Government it would be considered a revocable settlement. But, since the Government, it appears, is not prepared to accept that kind of policy, I have not moved my amendment.

Shri M. C. Shah: This point was raised when we discussed it last. Under the Indian Income-tax Act—Section 16(1)(c), for income-tax exemption purposes, irrevocable trusts are made for six years, in which case they get the exemption. But then the matter was argued and we are informed that those trusts can be made irrevocable for all time to come. Therefore, it was not considered necessary to have that mentioned. So, we have taken up this line.

Mr. Deputy-Speaker: I shall put Amendment No. 517 by Shri C. D. Deshmukh to the vote of the House first.

The question is:

(i) In page 6, line 49, before "Property" insert "(1)"; and

(ii) In page 7, for lines 6 to 9, substitute:

"Provided that the property shall not be deemed to pass on the settler's death by reason only that any such interest or right was so reserved if by means of the surrender of such interest or right the property is subsequently enjoyed to the entire exclusion of the settler and of any benefit to him by contract or otherwise, for at least two years before his death.

Explanation.—A settler reserving an interest in the settled property for the maintenance of himself and any of his relatives (as defined in section 26) shall be deemed to reserve an interest for himself within the meaning of this section.

(2) Notwithstanding anything contained in sub-section (1), where property is settled by a person on one or more other persons for their respective lives and after their death, on the settler for life and thereafter on other persons and the settler dies before his interest in the property becomes an interest in possession, the property shall not be deemed to pass on the settler's death within the meaning of this section."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 7, *after* line 5, *insert*:

"Provided that where in a settlement an interest is conferred upon the settler or disposer which is to take effect only in case a specified uncertain event shall happen an interest shall not be deemed to have been reserved to the settler within the meaning of this section and provided further that where a settlement is made irrevocable for a period exceeding six years but is revocable at the expiration of the said period, the settler shall not be deemed to have reserved to himself the right to restore to himself or to reclaim the absolute interest in such property within the meaning of this section."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 7, *omit* lines 6 to 9.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 12, as amended, stand part of the Bill."

The motion was adopted.

Clause 12, *as amended, was added to the Bill.*

Clauses 13 *and* 14 *were added to the Bill.*

Clause 15.—(*Annuity or other interest etc.*)

Amendment made:

In page 7, lines 52 and 53, *omit*

"including moneys payable under a policy of life assurance".

—[*Shri M. C. Shah*]

Mr. Deputy-Speaker: The question is:

"That clause 15, as amended, stand part of the Bill."

The motion was adopted.

Clause 15, *as amended, was added to the Bill.*

Clause 16 *was added to the Bill.*

Clause 17.— (*Property transferred etc.*)

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

(1) In page 9, line 14, *after* "the company" *insert* "as a result of such transfer", and

(2) In page 9, *after* line 17, *insert*:

"*Explanation* 1.—For this section 'transfer to a controlled company' means transfer to a controlled company made without consideration.

Explanation 2.—For this section merely holding of shares and deposits in a controlled company will not be treated as a transfer."

Shri M. C. Shah: I beg to move:

In pages 11 and 12, *omit* lines 34 to 50 and lines 1 to 5 respectively.

Mr. Deputy-Speaker: Why should they be omitted? The House is entitled to know why they are omitted.

Shri M. C. Shah: Because we are having them in 19A. 19A is a separate clause.

Shri Tulsidas: Sir, I am speaking on my amendments to clause 17, which I have moved. Clause 17 which is meant for the controlled companies is a very complicated one. The definition of controlled company has been accepted now by the Select Committee on the lines of the U.K. Act. It is not defined as to what is meant by "transfer to a controlled company." It is presumed that this means transfer without consideration. It should also be clarified that holding of shares or deposits in a controlled company will not be treated as 'transfer'.

Further, it is feared that the clause as at present stands, might involve double taxation; because if the deceased held a share in a controlled company, the principal value of such a share would be included in the property passing on his death and there would also be included a part of the assets of the company. An instance may be cited. Suppose four brothers owned all the shares in a private company. For various reasons, they transferred those shares with or without other property to a holding company which is a controlled company. Then on the death of one of the brothers, it is feared that the shares held by him in the holding company as well as a share of the assets of the holding company would be liable to duty. Clause 33(3) does not provide relief against such double taxation because it is not the same property which is being aggregated, the shares in the controlled company and the share of the assets in the controlled company being not the same 'pro-

perty'. It is to be noted with gratification that the Government has moved an amendment—No. 522—to clause 19A(f) which provides relief firstly for double taxation and secondly where the value of the benefit exceeds the value of the property transferred to the company.

The difficulty in this section is that in England, the powers are all provided in the Statute itself. It is done in the U.K. Act 1940, Section 51(1) which provides for relief where the value of the benefit exceeds the value of the property transferred to the company, and in Section 51(2) which provides for relief for double taxation. But here, these are included in the rule-making powers of the Government. A controlled company or a private company must know the responsibility, must know what is in the Act, it must be provided in the Act itself. Now, what is in the clause? Here, the powers are taken under the rule-making powers of the Government. Therefore, one does not know what the responsibility or liability is. Besides, with the rule-making powers vested in the Government, naturally the Government and the Central Board of Revenue would amend these rules, and then one does not know what the liabilities would be. In the U.K. Act, all these matters which are now to be provided by the rules framed by the Central Board of Revenue and the Government are provided in the Act itself. Therefore, one definitely knows what the liabilities are. I know the difficulties of the Government. The Act is a big one, having a large number of clauses. In case these matters are to be provided for in the Act itself, it may have to be referred again to the Select Committee. I understand that the rules which have been prepared are on the lines of the U.K. Act. I would request the Government that, in order that the private companies should know the responsibilities, and the directors or the shareholders should know the liabilities, in the future amending Bill this must be provided in the statute and not kept under the rule-making powers of the Government. These are very complicated things, and therefore, should be provided in the Act itself.

Another matter which should be made specific is to limit the benefits accruing to the deceased within three years prior to his death with the transfer of property. I am now on my amendment. It may be that for reasons unconnected with the transfer, and perhaps even fortuitously, the deceased may receive a benefit from the company within three years prior to his death. For instance, a person may transfer lands of a nominal value to a sugar company which is a controlled company. The company obtains capital from outside and puts up a factory. Years thereafter, the person may receive benefits from the company as sugarcane contractor or as a manager. If the person should die within three years of receiving such benefits, then a share of the assets of the company might be deemed to have passed on his death. It is certainly unfair to penalise the receipt of any such benefits unless the relationship between the benefit accruing and the transfer is established. In the United Kingdom Finance Act of 1940, Sections 46 to 51 define benefits, provide against double taxation and to some extent also limit the liability in respect of benefits not connected with the transfer. Further no power has been given to the Central Board of Revenue for making rules to give relief for reasonable remuneration for services rendered by the deceased as holder of office in a company. The United Kingdom Act in Section 51(4) provides such relief. It is necessary that the Indian Act also should provide such relief. Although clause 17 covers three pages of print, it only touches the principle of the subject, because clause 19 gives the Board power to make rules regarding a number of matters for working out the provisions of clause 17.

Shri U. M. Trivedi: Can he read out a speech?

Shri Tulsidas: This is a highly technical matter and, therefore, I had to come prepared.

Mr. Deputy-Speaker: Such interruptions only add spice to the debate.

Shri Tulsidas: The provisions of clauses 17 to 19 closely follow the corresponding sections of the United Kingdom Finance Act 1940, section 46 onwards. But there is a very vital difference which is that in the United Kingdom Act, section 47 prescribes what shall be treated as benefits. Section 49 provides the methods of determining the net income of the company; section 50 provides the method of determining the value of assets of the company; section 51 provides the limitation on charge and prevention of duplication of charge of duty. The Seventh Schedule of the same Act provides supplementary provision for amounts to be taken into account in respect of benefits and the time when benefits are treated as accruing, adjustments as to distributed assets and additions to assets, prevention of duplication of charge in respect of benefits and charge in respect of shares, and for other matters.

As clause 18 of the Bill corresponds with Section 53 of the U.K. Act and clause 19 with Section 54, we should have expected to find all the above provisions which appear in the U.K. Act in the remaining clause of the Bill, *viz.*, clause 17, but on looking at clause 17, we find that it lays down a general rule for levying the charge, thereby corresponding to Section 46 of the U.K. Act and a few definitions and leaves all the other matters to be prescribed by rules to be made by the Board. These rules are to have a statutory effect and will be placed before the House of the People, but will not be liable to be discussed or amended by the Members of Parliament. Therefore, it is very essential that these should be in the Act itself, as it is provided in the U.K. Act.

I just wish to point out what are the difficulties that will arise. After all they are only rules and can at any time be changed or amended. The matters to be prescribed by the rules [clause 17(5)] are matters essentially of legislation and should not be left to the rule making power of the Board. As I had pointed out earlier, they form part of the U.K. Act. These matters are of such importance and in fact go to the very root and substance of clause 17 and should not be decided under the rule-making power. On the other hand, it must be considered whether the provisions to be introduced in the first Estate Duty Bill of this country requires to be as elaborate as the English legislation. Here, as I have pointed out, we must be quite elaborate—we must know where we are. Here, under the rule-making power of Government we do not know when the rules will be amended and how we will be affected. In the case of St. Aubyn and ors. And Attorney-General decided by the House of Lords in England and reported in 1952, Appeal Cases at page 15—Lord Radcliffe, one of the Law Lords, stated at page 45 of the report—

> "The Seventeen sections which constitute Part IV of the Finance Act, 1940 (which included sections 46 onwards), are expressed with what proves on investigation to be a vagueness so diffuse and so ambiguous that they may well produce in practice the second alternative while adopting in form the requirements of the first."

The two alternatives which Law Lord referred to are set out by him at pages 44 and 45 of the same report:

> "The tax-payer is entitled to be told with some reasonable certainty in what circumstances and under what conditions liability to tax is incurred or else to be told explicitly that the circumstances and conditions of liability are just those which the Commissioners of Inland Revenue in their administrative discretion may consider appropriate."

It may be taken for granted that the Law Lord in the House of Lords must have had considerable experience in considering the Finance Acts and if he found difficulty in construing Part IV of the U.K. Finance Act, 1940. it does not require such imagination to see that the tax-payer in India is going to have great difficulty in understanding the provisions of clause 17 and the provisions to be made supplementary to it.

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Beattie in his book "The Elements of Estate Duty" 1952 edition says at page 96 in reference to Section 46 of the Finance Act, 1940

> "The section is drawn in such wide terms as to apply to cases which were never within the mischief which the statute was intended to cure. The Commissioner of Inland Revenue have intimated that they intend to apply the statutory provisions in a reasonable manner, and in fact it is relatively rare to find Section 46 invoked at all. But it can only be regarded as highly unsatisfactory that a statutory provision should be so drawn as to give the Commissioners excessive powers of taxation, leaving the subject to rely on a benevolent interpretation by State officials."

The problem has been so well treated in the above quotation by Mr. Beattie that I need not enlarge upon it. The result to be inferred, therefore, is.

(i) that the ambit of clause 17 should be limited. The clause should be in no wider terms than is sufficient to cover the mischief which it intends to cure:

(ii) the Act itself must provide for the various matters set out above:

(iii) the Act must also provide the safeguards contained in the United Kingdom Act, namely that relief will be given where the value of the benefit exceeds the value of the property [U.K. Act Section 51(1)] and reasonable remuneration for services rendered by him as the holder of an office under the company will not be treated as a benefit accruing to the deceased from the company [U.K. Section 51(4)].

These and other safeguards in the U.K. Act should be included in the Indian Act.

At the same time, the Act must be worded in language which can be understood by the layman and in language which is clear and unambiguous. Power should be given to the Central Board of Revenue to give relief in fit cases. There must be a direct relation between the benefit accruing to the deceased and the transfer of the property. There must be a relation between the value of the property transferred to the total value of the assets of the company. There must be a provision for limiting the value on which duty is to be charged by reason of benefits accruing by virtue of the transfer to the value of the property transferred. The deceased must have had a controlling or at any rate a large interest in the management of the company. Provision should be made to avoid double taxation, *i.e.*, of taxation both of the benefit as well as of the charges.

Provisions for the above have been made in the U.K. Finance Act, 1940. The other matters to be provided for by rules should be provided for in the statute.

I would now come to the very wide definition given to 'relatives'.

With regard to relatives the definition given here is this. "Relative" means a husband, wife, ancestor, lineal descendant, brother or sister. On

[Shri Tulsidas]

page 10 item (iii) of sub-clause (4) says:

"In determining whether a company is or is not under the control of not more than five persons, persons who are relatives of one another," (the Explanation is given as to what is a 'relative') persons who are nominees of any other persons together with that other person, persons in partnership, and persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, shall respectively be treated as a single person."

Now, take this expression 'persons in partnership'. A person may be a partner in another concern. It does not mean therefore that it is one person. A person includes all these people. He may be a partner entirely separate, he may be a partner in another company. If he becomes a shareholder of this company, although he may be entirely separate and has no connection with the person who started this company, he will be considered as one person. This is rather carrying things too far. When a controlled company is governed by five persons of one family, if there are four brothers, and if you consider them as one person that is understandable. But according to this provision persons in partnership must also be considered as one person. That, I think, is carrying things too far.

These are the points I have to make. This is a very important clause and it has to be framed in such a manner that persons interested in controlled companies must at least know where they stand. I know the difficulties of the Government, this being the first time that this measure is introduced in our country. But in England it has been in operation for all these years Of course it is not possible for them to put all the provisions which are there in the British Act. But as I requested before, and once again I make the request to the hon. the Finance Minister, after having a certain amount of experience an amending Bill must be brought in as soon as possible, so that all these provisions which are in the English statute may be brought into our own statute. Until that is done it is very difficult for people to arrange matters in a proper manner. For, after all, the promoters of companies and other people connected with them should know what their responsibilities and liabilities are. Every time it has been said that the private sector is not playing its part, and so on and so forth. But here we are trying to make a law in such a manner that if any one wants to start a new company he will have to think not only of the Companies Act and the Indian Income tax Act but now he will have to consider how it will be affected under the Estate Duty Act. And if the Act is so wide and ambiguous, how is any person going to start any industry or think of doing so, unless he knows where he stands?

As I have said, this a matter which is very technical, very complicated. I know it is very difficult to make people understand about this. But it is no use merely saying "After all, what is it? Companies can afford to do this, and do that". Here this is a very important matter. It is not a matter which can be treated lightly. After all, private sector has been given a certain amount of responsibility and we must see that it functions properly. And in order that they may function properly they must know where they are.

Sir, I have dealt with the clause quite briefly. It is a difficult clause One can say any amount of things with respect to it. But I want to limit the discussion. But I do want to impress upon Government that the matter has to be clarified in a proper manner and, in the initial stages at least, the Government ought to consider that wherever difficulties

arise they should see to it with sympathy. Because this is a new Act. We do not understand these things. Therefore if there is anything, as far as it is not done with a *mala fide* intention, and if anything is *bona fide*, the matter should be looked at from that angle and not merely from the technical point of view. Even within the purview of the Act if anything has been done by mistake it should not be looked upon from that point of view but with sympathy. I hope Government will consider this.

Shri M. C. Shah: The point raised by the hon. Member was very carefully considered by Government. There are so many provisions on the subject. There are two courses: whether these provisions should be in the statute itself or, in order to have flexibility, it should be under the Rules. We have seen from the U.K. Finance Acts that there have been so many changes in the provisions. If there is flexibility we can come to know whether there are new methods of evasion. And if we find that there are new methods of evasion it will be very easy to have rules framed and to stop that evasion. Therefore we have preferred the course of rule framing powers under the section. As a matter of fact we have already provided in clause 19A, which I propose to move later on, that all these Rules shall be placed on the table of the House fifteen days before their publication. These Rules will be published, and if there are any difficulties they can approach us and before finalising them those matters can be looked into. Therefore it is not at all necessary to have these Rules in the statute itself for the time being. Because we want to see how these rules framed are working, whether there are new methods of evasion adopted by these controlled companies to evade Estate Duty. So it is after a good deal of consideration that we have preferred this course.

With regard to his amendments I think Mr. Tulsidas has spoken all along about the rule-making powers and has not referred to his amendments.

Mr. Deputy-Speaker: He has.

Shri Tulsidas: I did refer, twice or thrice.

Shri M. C. Shah: In his amendment No. 432 he wants that after the word "company" the words "as a result of such transfer" should be inserted. There also there are two conditions which attract the provisions of clause 17. One is that the transfer of any property should have been made to the company. The second is that any benefit should have accrued within three years of his death. By the amendment he wants to have some connection directly or indirectly on account of the transfer. We feel it is not necessary that this benefit should have arisen out of the transfer. Once a transfer is made the benefit becomes subject to duty.

Shri Tulsidas: May I rise on a point of information? When he says 'directly or indirectly' may I know how my amendment is described to say 'directly or indirectly'? I have not said that.

Shri M. C. Shah: It is not necessary. What I say is.....

Shri Tulsidas: Then why do you say so?

Shri M. C. Shah: We are not concerned with the question whether it is directly or indirectly. When there is a transfer then the benefits derived become chargeable to duty. That is the main thing. If we just accept this, there will be complications.

Shri Tulsidas: How is there complication, I would like to know.

Mr. Deputy-Speaker: How can he go on satisfying the hon. Member?

Shri M. C. Shah: We cannot accept that we must always correlate the benefit to the transfer. This will limit the scope of the law and also, it will be administratively impossible to link the two exactly because if we try to link both, there will be ad-

[Shri M. C. Shah]

ministrative difficulties and practically it will become impossible to administer this section in the best way in which it should be. We cannot accept that amendment.

The next amendment is No. 433. What is to be considered as a transfer will be defined in the rules to be framed under the Act. The term suggested by Mr. Tulsidas is very comprehensive. A person will be deemed to have made a transfer of property to a company if it came to be comprised in the resources of the company by the effect of a disposition made by him or with his consent or by the effect of any associated operations of which such a disposition formed one. This will be seen if he refers to the U.K. Finance Act of 1940, section 58(2). The normal forms of transfers are sale of business or property to a company in consideration of the issue of shares, or cash or debentures. If the amendment is accepted, the whole purpose of this clause will be defeated. We cannot accept the amendment.

Shri U. M. Trivedi: Can a Minister read his speech? (*Interruption*)

Mr. Deputy-Speaker: The hon. Minister is opposing both the amendments of Mr. Tulsidas Kilachand. Now, I will put the amendments to the vote of the House. Enough has been said on both sides.

The question is:

In pages 11 and 12, *omit* lines 34 to 50 and lines 1 to 5 respectively.

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 9, line 14, *after* "the company" *insert* "as a result of such transfer".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 9, *after* line 17, *insert*—

"*Explanation* 1.—For this section 'transfer to a controlled company' means transfer to a controlled company made without consideration.

***Explanation* 2.—For this section merely holding of shares and deposits in a controlled company will not be treated as a transfer."**

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 17, as amended, stand part of the Bill."

The motion was adopted.

Clause 17, as amended, was added to the Bill.

Clauses 18 and 19 were added to the Bill.

Mr. Deputy-Speaker: The House will now take up the one-hour discussion on the automobile industry.

Shri M. C. Shah *rose*—

Mr. Deputy-Speaker: The hon. Minister will continue at 4 o'clock.

Shri M. C. Shah: I thought the discussion was at 12-45.

Mr. Deputy-Speaker: I have allowed three minutes more to the hon. Minister.

FUTURE OF AUTOMOBILE INDUSTRY

[SHRI PATASKAR *in the Chair*]

Dr. Krishnaswami (Kancheepuram): Sir, before being critical of certain aspects of governmental policy, let me express my deep sense of thankfulness to the hon. Minister for Commerce and Industry for having furnished us with an opportunity to raise the issue of the future of the automobile industry on the floor of this House.

The automobile industry, as hon. Members are aware, has received official encouragement, the blessings