May I say, Sir, that the general statement of Government policy is an acceptance of the Tariff Commission's report, subject to certain minor changes. Government are seized of this problem. We have appointed a Committee of the Secretaries of the various Ministries concerned, who are vitally concerned in the development of the automobile industry, to be in more or less close touch with the progress that is made from time to time, and probably we will have an expert visiting these factories and checking up the rate of progress. I do hope we will be able to give a better story later.

One point with which I shall deal before I sit down is about the question of development of road transport generally. I think my hon. friend Dr. Krishnaswami did raise the question of State taxation and the high cost of motor vehicles which is impeding the development of road transport. While on this subject I do feel that our estimates in regard to what we call public service transport has been rather on the conservative side. With all the development that has taken place and the development that will take place in the near future, if our plans go through, we might envisage before the next ten years a demand, so far as the public transport is concerned, in the region of somewhere between 80,000 and 1 lakh of vehicles a year. That will make the industry economic also; but to develop it, we do want the cooperation not merely of these factories but also of the States. State taxation is unduly high today, and Government are in correspondence with the States, to implement the recommendations made by the Tariff Commission, and to see that taxation is brought down. We would indeed like to bring down our duties, the cumulative effect of which should be that the price of vehicles should come down and also the operation costs lowered. There, the point made by the hon. Mr. H. N. Mukerjee also comes in. We will probably have to make an evaluation of the cost of petrol but it might be that our own taxation of petrol, both Central and State, is heavy enough and that perhaps operates as a limiting factor more than even the cost. But these are matters to be gone into. We do propose to go into these matters. We are in correspondence with the States, and the general lines indicated by hon. Members—by Dr. Krishnaswami and Prof. Mukerjee—are the lines which we shall keep in mind in our negotiations with the States and in formulating our policy regarding the automobile industry.

Mr. Chairman: We will now adjourn. The House will meet again at 4.0 P.M.

The House then adjourned till Four of the Clock.

The House re-assembled at Four of the Clock.

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

THE ESTATE DUTY BILL—*Contd.*

Mr. Deputy-Speaker: The House will now resume the discussion on the Estate Duty Bill. Clause 19 was disposed of.

New Clause 19A.— (*Power to make rules etc.*)

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

In page 13, *after* line 48, *insert*:

"19A. *Power to make rules respecting controlled companies generally.*—(1) The Board may make rules—

(a) prescribing the class of dispositions or operations which shall be deemed to be transfers to controlled companies within the meaning of section 17;

(b) prescribing the matters to be treated as benefits accruing to the deceased from any such controlled company, the manner in which their amount is to be determined, and the time at which they are to be treated as accruing.

[Shri C. D. Deshmukh]

(c) prescribing the manner in which the net income and the value of the assets of any such company are to be determined;

(d) prescribing the manner in which the accounting year of any such company is to be reckoned;

(e) prescribing the manner in which the shares and debentures of any such company passing upon the death of the deceased are to be valued for estate duty;

(f) providing an upper limit by reference to the value of the property transferred by the deceased to any such company and preventing duplication of charge where duty would otherwise be payable in respect of both the assets of any such company (or a proportion of them) and the deceased's holding of shares and debentures in any such company;

(g) prescribing the conditions upon which and the extent to which transactions in the name of any such company shall be deemed to be *bona fide* transactions for full consideration; and

(h) generally for the purpose of checking the avoidance of estate duty through the machinery of any such company.

(2) All rules made under this section shall be laid before the House of the People for not less than fifteen days before the date of their final publication."

All that I would say is that it reproduces the original sub-clause about rule-making power (which was deleted under clause 17). Sub-clause (f) has also been included. This refers to section 51 of the U.K. Act of 1940 as amended by section 38 of the Act of 1944. It does not pertain exclusively to section 17. In substance it is only a drafting change.

Mr. Deputy-Speaker: The question is:

In page 13, *after* line 48, *insert*:

"19A. *Power to make rules respecting controlled companies generally.*—(1) The Board may make rules—

(a) prescribing the class of dispositions or operations which shall be deemed to be transfers to controlled companies within the meaning of section 17;

(b) prescribing the matters to be treated as benefits accruing to the deceased from any such controlled company, the manner in which their amount is to be determined, and the time at which they are to be treated as accruing;

(c) prescribing the manner in which the net income and the value of the assets of any such company are to be determined;

(d) prescribing the manner in which the accounting year of any such company is to be reckoned;

(e) prescribing the manner in which the shares and debentures of any such company passing upon the death of the deceased are to be valued for estate duty;

(f) providing an upper limit by reference to the value of the property transferred by the deceased to any such company and preventing duplication of charge where duty would otherwise be payable in respect of both the assets of any such company (or a proportion of them) and the deceased's holding of shares and debentures in any such company;

(g) prescribing the conditions upon which and the extent to which transactions in the name of any such company shall be deemed to be *bona fide* transactions for full consideration; and

(h) generally for the purpose of checking the avoidance of estate

duty through the machinery of any such company.

(2) All rules made under this section shall be laid before the House of the People for not less than fifteen days before the date of their final publication."

The motion was adopted.

New Clause 19A *was added to the Bill.*

Clause 20.— (*Foreign property*)

Shri K. K. Basu: I beg to move:

In page 14, line 16, *after* "purposes of this section", *insert*:

"provided that the assets situated or located in India of the Company or the Corporation incorporated outside India shall for the purpose of the Act and the Section shall be taken as situated and/or located in India, *i.e.*, within the territories."

In moving this amendment I would like to emphasise the point that there are a large number of foreign companies whose entire assets are in India but they are incorporated in the United Kingdom. We know the history of these companies, and under the existing clause 20 of the Bill under discussion the shares of these companies will be deemed to be movable property situated outside the taxable territory and therefore they will not come under the purview of this particular Act. Therefore I would like to emphasise through this amendment that even though they may be incorporated in England, if they have their entire assets in India they should be deemed for the purpose of this section to be situated within the taxable territory, that is India. Because most of the managing firms, whatever assets they have got, have them in India. But they may have registered their office nominally in England so that on the strength of that the shares might be considered as the shares of a firm registered in England. Therefore I would like to emphasise that for the purpose of this clause the assets of these companies, whether they are in the shape of shares or in stock, should be deemed as assets in the territory of India. This is the short point that I would like to emphasise through this amendment. Unless we amend the clause in this fashion there is no chance of taxing these foreign assets which it is absolutely necessary to do for the purposes of our national development. There is no point in going into detail about this, about the quantum and volume of the assets. That is well known to all of us. I therefore hope the Government will accept this amendment.

Shri C. D. Deshmukh: The *situs* of shares of foreign companies operating in India will be determined in accordance with the rules to be framed for the purpose. Ordinarily the *situs* of shares of a company is in the country where the company is registered. In certain circumstances however where the certified register of the company is maintained in India, the *situs* of the shares of even foreign companies will be in India, and such shares would therefore be dutiable. But in respect of those companies which earn more than 50 per cent. of their profits in India, provision has already been made in clause 80(1). Therefore it seems to me that we have provided for this.

There is another amendment by Mr. Nayar. But that has not been moved.

So administratively we feel that this will not be workable. If an Australian holds shares in a British company in India, there is no means of recovering the duty when the Australian dies. It is only when the company has assets in India that recovery is possible, and that too only through the company. And that we have provided for in clause 80(1).

Shri S. S. More: May I ask a question? You have excluded under sub-clause (1) (a) immovable property situated outside the territories to which this Act extends. Suppose an *ex*-Ruler of a State has got properties in France or some other foreign

[Shri S. S. More]

country. On his death what would happen? Will his property in the foreign country be excluded?

Mr. Deputy-Speaker: It is governed by private international law. Whosesoever the immovable property, it cannot be touched.

Shri C. D. Deshmukh: Yes, Sir.

Shri S. S. More: By clause (b) movable property also would be excluded in certain circumstances.

Shri C. D. Deshmukh: In the case of domicile, that is the criterion.

Mr. Deputy-Speaker: Hon. Members may look into the Indian Succession Act. There are similar provisions.

The question is:

In page 14, line 16, *after* "purposes of this section", *insert*:

"provided that the assets situated or located in India of the company or the Corporation incorporated outside India shall for the purpose of the Act and the Section shall be taken as situated and/or located in India, *i.e.*, within the territories."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 20 stand part of the Bill."

The motion was adopted.

Clause 20 was added to the Bill.

New Clause 20A

Shri Nand Lal Sharma (Sikar): I beg to move:

In page 14, *after* line 16, *insert*:

"20A. (1) The claims of a refugee with regard to property left in Pakistan, passing on his or her death to his or her heirs, shall not be subject to the levy of estate duty.

(2) The property acquired by a displaced person after his or her displacement from Pakistan, for the purpose of settling in India, shall not be subject to levy of estate duty for the first ten years from the commencement of this Act."

Mr. Deputy-Speaker: Mr. Ram Sahai Tiwari's amendment is the same. Mr. Nand Lal Sharma may speak on his amendment if he wants or if the amendment is self-explanatory, he need not speak.

Shri Nand Lal Sharma: I will speak a few words.

वर्मेण शासिते राष्ट्रे न च बाधा वर्तते ।
नाधयोव्याधयश्चैव रामे राज्यं प्रशासति ।।

Sardar A. S. Saigal (Bilaspur): We want to know the meaning of this.

Shri Syed Ahmed (Hoshangabad): We cannot follow.

Mr. Deputy-Speaker: When Rama was ruling, everything was all right.

Shri S. S. More: Does he want to suggest that there is Ravana Raj now?

Mr. Deputy-Speaker: The hon. Member may go on with his speech.

श्री नन्दलाल शर्मा : माननीय उपाध्यक्ष महोदय, सिद्धान्ततः मैं पहले निवेदन कर चुका हूं कि हम इस विधेयक के विरोधी हैं । मृत्यु के सम्बन्ध में किसी प्रकार का कर किसी व्यक्ति पर नहीं होना चाहिये, इस सिद्धान्त का हम ने पहले प्रतिपादन किया है । राज्य को प्रजा के द्वारा कर की प्राप्ति होनी चाहिये, इस सिद्धान्त के विरुद्ध हम नहीं हैं, किन्तु उस के बहाने से जहां प्रजा को विशेष लाभ भी न होने वाला हो, राजा के कोष में भी अधिक सम्पत्ति न जाने वाली हो, जैसे कि हम इतने पिछले सारे

नियमों से देख चुके हैं इसलिये हम इसका विरोध करते हैं। हम को पता लगता है कि इस विधेयक का सीधा तात्पर्य हिन्दू ला को खराब करना, उस को मिटाना है। तदनन्तर भारतवर्ष की सभ्यता के अनुकूल दान प्रणाली का जैसे सर्वनाश किया गया है गिफ्ट्स के अन्दर, वह भी हम ने देखा है। आतुरकालिक दानों को भी इसी तरह से नष्ट किया गया है। 'गृहीत इव केशेषु मृत्युना धर्ममाचरेत्' इस सिद्धान्त के अनुसार अन्तिम समय में जो दान होना चाहिये, वह भी आप की सैक्यूलर स्टेट ने स्वाहा कर दिया।

इस सम्बन्ध में मैं शासक वर्ग से, शासक बैंचों से केवल यही निवेदन करूंगा कि उत्पीड़ित रिफ्यूजी आप जिन को कहते हैं, आप लोग उन के कारण ही यहां आज पार्लियामेंट में बैठे हुए हैं। उन के बलिदान से ही आप ने भारतवर्ष का विभाजन स्वीकार किया और तभी यहां आप के राज्य की स्थापना हुई है। उन के क्लेम्स किसी अंश में हम फारेन प्रापर्टी के रूप में स्वीकार करते हैं, क्योंकि उन की जितनी सम्पत्ति है वह दूसरे देश में है, पर राष्ट्र में स्थापित है। एतावत भी हम ने बीसवीं धारा के साथ साथ एक और धारा जोड़ने के लिये निवेदन किया है। आप ने एक पूरा का पूरा विभाग इस के लिये खोल रखा है। नित्य निरन्तर आप की बातचीत पाकिस्तानी प्रधान मंत्री के साथ होती है। निश्चय कुछ नहीं है कि आप कुछ देने वाले हैं या नहीं। किन्तु उन लोगों का, जिन की आप की ओर दृष्टि पड़ी हुई है कि सम्भवतः आप उन के भाग्य का कुछ निर्णय करेंगे, उस के ऊपर आप की इस डैथ ड्यूटी, ऐस्टेट ड्यूटी का टैक्स नहीं होना चाहिये, यह मेरा पहला निवेदन है।

इसी के साथ साथ हमारे प्रधान मंत्री का बार बार कहना है, यह घोषणा की गई है कि हम उत्पीड़ितों का यहां पुनर्वास करेंगे, उन को यहां स्थापित करेंगे। मेरे दूसरे भाग में यह भी निवेदन किया गया है कि उत्पीड़ितों द्वारा अपने पुनः संस्थापन के लिये जो सम्पत्ति यहां भारतवर्ष में खरीदी गई है उन के ऊपर डैथ ड्यूटीज का किसी प्रकार का लगाम नहीं होना चाहिये। दोनों ही परिस्थितियों में यह टैक्स नहीं लगना चाहिये। एक परिस्थिति में तो उन का क्लेम है। वह क्लेम जब कभी मिलने वाला हो, यदि उस के मिलने से पूर्व क्लेम करने वाला व्यक्ति मर गया और उस के क्लेम की जो कुछ भी रक़म उस के आगे के प्रजावर्ग को मिलने वाली हो, उस के ऊपर ऐस्टेट ड्यूटी का टैक्स नहीं होना चाहिये। दूसरे यदि आप अपनी प्रतिज्ञा सच्ची रखते हैं कि आप उन का पुनः संस्थापन करना चाहते हैं और आप उन की सहायता करना चाहते हैं, उन के कष्ट में किसी प्रकार सहानुभूति रखते हैं, तो कम से कम जो सम्पत्ति उन्होंने भारतवर्ष में खरीदी है, अपने पुनः संस्थापन के लिये, उस के ऊपर कम से कम प्रथम दस वर्ष तक कोई टैक्स नहीं होना चाहिये। यह मेरा दूसरा निवेदन है। मैं विश्वास करता हूं कि संसद् इस बात को स्वीकार करेगी।

इतना कह कर मैं समाप्त करता हूं।

श्री सी० डी० देशमुख : उपाध्यक्ष महोदय, मुझे खेद है कि मैं यह सुझाव स्वीकार नहीं कर सकता हूं। शासन प्रजा से कर आदान करता है, जैसे कि दिनकर समुद्र से फिर पर्जन्य रूप में लोक कल्याण के लिए, देश के वास्ते, कई बार देने के लिए।

उपाध्यक्ष महोदय : सहस्र गुणमुत्सृष्टम् आदत्तेहि रसम् रविः।

Shri Nand Lal Sharma: In the fashion of King Ven.

श्री सी० डी० देशमुख: यह आप क्या अंग्रेजी की बात करते हैं।

पीड़ितों के पुनः संस्थापन के लिए तो शासन पर्याप्त व्यय कर चुका है और कर रहा है।

Mr. Deputy-Speaker: The question is:

In page 14, *after* line 16, *insert*:

"20A. (1) The claims of a refugee with regard to property left in Pakistan, passing on his or her death to his or her heirs, shall not be subject to the levy of estate duty.

(2) The property acquired by a displaced person after his or her displacement from Pakistan, for the purpose of settling in India, shall not be subject to levy of estate duty for the first ten years from the commencement of this Act."

The motion was negatived.

Clause 21.—(*Property held by the deceased trustee*).

Shri C. C. Shah: I am not moving my amendments.

Shri G. D. Somani: I beg to move:

In page 14, lines 22 to 26, *for*

"possession and enjoyment of the property was *bona fide* assumed by the beneficiary at least five years before the death and thenceforward retained by him to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise;"

substitute:

"enjoyment of the property was *bona fide* assumed by the beneficiary at least one year before the death to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise."

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

(1) In page 14, line 24, *for* "five" *substitute* "two".

(2) In page 14, *for* lines 27 to 33, *substitute*:

"Provided that in the case of property held by the deceased as sole trustee for another person under a disposition made by himself, the period shall be five years."

Shri G. D. Somani: I beg to move:

In page 14, *for* lines 27 and 28 *substitute*:

"Provided that property held by the deceased as trustee for public charitable purposes shall not be included in the property passing on death."

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

In page 14, *for* line 28 *substitute*:

"for a minor beneficiary or for public or charitable purposes there shall be no bar of any period."

Pandit C. N. Malviya (Raisen): I am not moving my amendment.

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

In page 14, *omit* lines 29 to 33.

Shri G. D. Somani: I beg to move:

In page 14,

(a) line 29, *after* "Explanation" *insert* "1", and

(b) *after* line 33, *insert*:

"*Explanation* 2.—Where the property was held by the deceased as trustee under a disposition or trust settlement made by the deceased and the income thereof if assessable has been assessed or is assessable for income-tax purposes on behalf of the beneficiary or beneficiaries concerned and the settlement was made one year before the death of the settler, the

possession and enjoyment of the property by the beneficiary or beneficiaries shall be deemed to have taken effect on the date the settlement or disposition was made by the deceased."

Mr. Deputy-Speaker: All the amendments are now before the House. First of all, let me hear the hon. Finance Minister.

Shri C. D. Deshmukh: There has been a persistent demand to bring the statutory provision in this clause on a par with the period, that is to say two years, specified in Clauses 9 and 10, so that, so far as liability to duty was concerned, there would be no distinction between disposition of gifts made under a trust on the basis whether the owner was himself a trustee or not. The intention of the Select Committee in amending the Clause was that where the deceased was the sole trustee to a disposition made by himself, he should hand over the trust property to the beneficiaries before five years of death in the case of a private trust, so that the *bona fides* of the transaction may be determined on a surer basis. But the wording of the Clause as it stands might make the five year period applicable also to those trusts where the deceased was a co-trustee with another under his own disposition. So, the amendment now proposed makes an exception, or confines that exception, only to the case of properties held by the deceased as a sole trustee under a trust created by him. The proviso to the existing Clause is to be omitted because it is difficult to visualise how the trustee for a public charitable purpose can hand over the trust property to the beneficiaries. Clause 21 was never intended to apply to cases of public charitable trusts, and there is no provision corresponding to this in the United Kingdom law.

Then there is the Explanation which is being omitted because we find that it is probably misconceived. What is contemplated by Clause 21 is beneficial possession, and not physical possession, and it is, therefore, not correct to say that someone else other than the trustee should take possession of the property. So long as the possession is attributable to the beneficiary, this Section will be satisfied. Therefore, we think the Explanation is not necessary.

Shri K. K. Basu: The Finance Minister was a Member of the Select Committee. He has tried to read the mind of the Select Committee. I do not know whether it is correct or not. As a Member of the Select Committee he did not put in a note of dissent, but at this stage how can he move an amendment to that particular provision by distinguishing the two different cases, the one where he is the sole trustee, and the other where he is a co-trustee. I can understand about the other part. Where there may be ambiguity, for the sake of doing away with the ambiguity, an amendment may be moved.

Shri Raghavachari: I invite the attention of the Finance Minister to the words "possession and enjoyment" in lines 22/23. It is not mere beneficial enjoyment or beneficial possession that was contemplated, but both possession and enjoyment. That is the reason why the Explanation was put in. The Finance Minister may recollect that this was very much debated and with some kind of greater volume of opinion, this period of two years was made into five. So, the Explanation was inserted only to make it perfectly clear that the possession here must be real possession, if a minor, it maybe a possession of somebody on his behalf. It was really thought that it must be physical possession. The Explanation was put for the purpose of benefiting minors.

Shri U. M. Trivedi: That is what my amendment seeks to do. Otherwise, this amendment has no meaning left. What happens to a beneficiary who is a minor? If the beneficiary is not *sui juris*, then what is the meaning of the Explanation. If the Explanation goes away, then there is, in fact, contemplation only of a *sui juris* being a beneficiary.

Shri C. D. Deshmukh: Therefore, the Explanation is being omitted.

Shri U. M. Trivedi: If a person who is a minor is a beneficiary, what happens in his case?

Shri C. D. Deshmukh: It should be constructive possession and enjoyment.

Mr. Deputy-Speaker: If the Explanation goes, what happens to a minor who cannot take possession? According to the earlier portion, if the deceased is himself a trustee, to show the *bona fides*, that it is not a faked one, he must hand over possession and enjoyment to the beneficiary within five years, now reduced to two years. It is intended to give this benefit to minors also who are legally incompetent to take possession and enjoyment. To avoid any difficulty in such cases, the Explanation has been added that it may be possession or enjoyment by the guardian of the minor. It is tantamount to possession by the minor, and therefore, that is accepted. If this Explanation is taken away, no minor can take possession of the property That will be the difficulty. I do not think it is right to exclude the Explanation. The hon. Minister may consider.

Shri Raghavachari: The Explanation part may be added at the end of the two- amendments by the Finance Minister.

Mr. Deputy-Speaker: Amendment Nos. 525 and 526 are both in order. Where is the omission of the Explanation?

Shri Raghavachari: Only the Explanation has to be added.

Mr. Deputy-Speaker: The amendment is:

> "In page 14, *for* lines 27 to 33, *substitute*..."

i.e., including the proviso, till the end. I think he must restrict it to line 28. Public charitable purpose is sought to be done away with first; then the proviso is sought to be done away with, and in its place, the new proviso put in.

Shri C. D. Deshmukh: Yes.

Mr. Deputy-Speaker: Then it will meet the purpose if it is said:

> "In page 14, *for* lines 27 and 28, *substitute*..."

Shri Raghavachari: Omit line 29 and the rest.

Mr. Deputy-Speaker: This proviso is sought to be substituted for the other proviso, but the lines have not been restricted to 27 and 28. By mistake, they have been carried on to 33.

Shri C. D. Deshmukh: The Explanation is sought to be omitted.

Mr. Deputy-Speaker: If it is omitted, the benefit will not go to minors. A person who creates a trust is in possession of the property, and therefore, normally it will be treated as property passing on his death. However, an exception is made in such cases where the property is transferred away to the beneficiary before a period of two years and the possession and enjoyment are both with him. If that is so, a *sui juris*, who is a beneficiary can take advantage of it under the amendment. But if he is a minor, how can he take possession. A transfer to him may not be easy.

Shri C. D. Deshmukh: That is as in other matters when interests of minors and others are concerned. The minor's interest is represented by whosoever is his legal representative or his guardian. Therefore, it is not our intention to take away the advantage from the minor, but we say the ordinary interpretation of law and possession and enjoyment by a beneficiary would cover these cases.

Mr. Deputy-Speaker: The difficulty is this. When there is a particular Explanation and then it is taken away, there may be an interpretation that it is not intended to cover the case of a minor. Otherwise the ordinary law will apply. If this explanation is taken away, in the future any one may argue that in the Bill there was an explanation which was taken away.

Shri Pataskar (Jalgaon): That is exactly the point.

Shri C. D. Deshmukh: How the matter is going to be interpreted in a court of law ten years hence no one can say.

Mr. Deputy-Speaker: If this explanation is taken away, then any one can say that at one time there was an explanation in the Bill, but subsequently it was taken away.

Now, let us look at the question from the other point of view. I suppose the hon. Minister has no objection. He does not want to take away the right of a minor through his guardian or court of wards. In substance, he does not want to exclude the benefit from the minor. Now does this explanation cover only that case? Or is the hon. Minister taking exception to this on the ground that the clause is of much wider scope, and therefore this is not necessary? Supposing it is wider in scope, then there is no harm in allowing it to continue, so that there may be no misunderstanding.

Shri Pataskar: It is open to argument. Supposing any case arises subsequently and it is argued that it does not apply to a minor, then the point will be argued that there was an explanation in the Bill as a matter of fact, but it was thought fit that the minor should not be given the benefit, and therefore the explanation was removed. It will be open for any one to argue that the explanation which was there has been deliberately removed by the Legislature.

Shri C. C. Shah: The retention of the explanation would on the contrary create difficulties, because if the words "possession and enjoyment" in the clause are interpreted to mean beneficial or constructive possession, and not actual physical possession...

Mr. Deputy-Speaker: Why not?

Shri C. C. Shah: That is the interpretation which is sought to be put on it. I will presently explain the point. Then it makes no difference whether the beneficiary is a minor or *sui juris*, because if the possession and enjoyment of the property which is to be assumed by the beneficiary is treated as constructive or beneficial possession, even in the case of a beneficiary who is *sui juris*, the physical possession will remain with the trustee. It will be so in the case of a minor also. Any distinction sought to be made in the case of a beneficiary, between a major and minor.....

Mr. Deputy-Speaker: We can understand enjoyment in the context. Enjoyment is taking the main profits or the income. What is the meaning of this possession?

Shri C. C. Shah: That is precisely why I had tabled an amendment to omit the words 'possession and'.

Mr. Deputy-Speaker: Therefore it applies not only to the national possession, but actual possession as well.

Shri C. C. Shah: But this clause is taken verbatim from the English statute. In England, the courts have interpreted the word 'possession' to mean not actual physical possession, but only beneficial or constructive possession, *i.e.* to say, the possession remains with the trustee, but it is construed to be a possession on behalf of the beneficiary to whom the enjoyment goes, namely the income. Therefore the words 'possession and enjoyment' mean only beneficial or constructive possession. If that is the correct interpretation, then the explanation is entirely out of place, because then it makes no difference whether the beneficiary is a minor or a *sui juris*.

Mr. Deputy-Speaker: How can he have the enjoyment? Payment to a minor does not discharge a person of his liability to pay. He cannot give a discharge. A minor cannot give a discharge, according to the law of contracts.

Shri C. C. Shah: So far as enjoyment is concerned, on behalf of the minor, every trust deed ordinarily provides the person to whom the income is to be paid on behalf of the minor. If no such provision is made in the trust

[Shri C. C. Shah]

deed, then it is the duty of the trustee to apply the income for the benefit of the minor in terms of the trust deed, and in neither case is the income paid to the minor. If the trust deed provides for the income to be paid to somebody on behalf of the minor, then the trustee is discharged upon such payment. If there is no provision in the trust deed, then it is the duty of the trustee himself to apply the income for the benefit of the minor in terms of the trust deed.

Mr. Deputy-Speaker: If there is a guardian for the minor, he is bound to give it to the minor's guardian.

Shri C. C. Shah: A guardian can be of two kinds. He can be a natural guardian or a legal guardian. If there is a natural guardian only, then the trustee would not be discharged of his liability by payment to the natural guardian. If there is a legal guardian appointed by the court, then payment to the legal guardian will be a discharge so far as the trustee is concerned, but if there is no legal guardian appointed, then it is the trustee himself who becomes a guardian for the minor.

Mr. Deputy-Speaker: The natural guardian is the legal guardian in many cases.

Shri C. C. Shah: It is not expected that for every minor, there ought to be a guardian legally...

Mr. Deputy-Speaker: Not necessarily.

Shri Pataskar: There are natural guardians also.

Shri C. C. Shah: In that case, it is the duty of the trustee himself; he becomes the guardian, and it is his duty to apply the income for the benefit of the minor in terms of the trust deed.

Mr. Deputy-Speaker: How does he become? Does he take the place of the mother to maintain the boy and give him milk? A trustee can never take the place of a guardian. It is his duty to pay. What is the objection to having this explanation?

Shri C. C. Shah: The explanation would create this difficulty that it seeks to make a distinction between beneficiaries who are minors, and beneficiaries who are *sui juris*. Assuming that the explanation remains, is it contended that in the case of beneficiaries who are *sui juris*, actually physical possession must be handed over by the trustee to the beneficiary?

Mr. Deputy-Speaker: Whatever position a *sui juris* can take, is taken by the guardian on behalf of the minor. Therefore the nature of the possession is not made different.

Shri C. C. Shah: Supposing there is a trust for life for A, and then for B, and X is the trustee, then it is the duty of X to pay the income to A, because only the income is payable to A for life, the possession of the property cannot be given to A, because if the possession is handed over, the trust would come to an end, and A is only a life-tenant. Therefore the possession will always remain with the trustee, and actual physical possession will be handed over, when under the terms of the trust deed, it is to come to an end. Until then, the possession must remain with the trustee. Therefore it makes no difference, and that is my submission, whether the beneficiary is a minor or a major. The only point for consideration is really this, whether the contention that possession and enjoyment must mean beneficial possession only and not.....

Mr. Deputy-Speaker: It does not. I am afraid, the hon. Member is going away from the point. The main difficulty is this. We will assume that a person, whoever he might be, whether a *sui juris* or a minor, has not got actual possession, but gets only the enjoyment, *viz.*, income. In the case of the *sui juris*, it can be paid to the *sui juris*, who is a major. In the case of a minor, who is to take this possession, whatever might be the nature of the possession? In that case, a guardian gets possession, and he as a *sui juris* is entitled to talk on his behalf, and

that will be sufficient possession, for this purpose.

Shri C. C. Shah: Your question relates only to enjoyment and not to possession.

Mr. Deputy-Speaker: To such possession, as a *sui juris*, he is entitled.

Shri C. C. Shah: So far as possession is concerned, there is no distinction between a *sui juris* and a minor. That is my submission.

Mr. Deputy-Speaker: But so far as enjoyment is concerned?

Shri C. C. Shah: So far as enjoyment is concerned, it is the payment of the income to the beneficiary. So far as a *sui juris* is concerned, it can be paid over to him. So far as a minor is concerned, there are two possibilities. If there is a guardian, it can be paid to the guardian. If there is no guardian, then it is the duty of the trustee to apply it for the benefit of the minor. That is what is done in all trusts. But the retention of the explanation would undoubtedly create greater difficulties, than its omission.

Shri S. S. More: I have got some doubts about the Finance Minister's idea of dropping this proviso, *viz.*,

> "Provided that in the case of property held by the deceased as a trustee for public charitable purposes the period shall be one year."

The hon. Minister was pleased to state that in the case of a public charitable purpose, or trust, there will be no beneficiary to take possession. May I put to him a concrete case, hypothetical though it may be? Supposing I have got some property, and I establish a school, which will be a public charitable purpose within the meaning of the definition, then I become the sole trustee of that particular school, and as the trustee I make rules or regulations for regulating the property or the conduct of the trust by which I appoint my sons, my brothers etc. to different posts, and all the beneficial enjoyment is virtually taken by myself or by my relations in the spurious name of a charitable institution, what happens? Of course, I speak subject to correction. What check is there? Is there any remedy for excluding that entire exclusion of others? I think that clause will not come into operation.

Mr. Deputy-Speaker: I think that that proviso may be allowed to stand, while this may be added as another proviso.

Shri Bansal (Jhajjar-Rewari): On a point of order, Sir. We are discussing the Estate Duty Bill and highly controversial legal issues are involved. I know some of the hon. Members here are legal experts, including yourself, but I think it is the duty of the hon. Law Minister to be present here and guide the House in such delicate and complex mattters.

Mr. Deputy-Speaker: I have myself been feeling the difficulty. I expect the hon. Law Minister to be here all through the day during the passage of this Bill. Although the responsibility of piloting it rests on the Finance Minister himself, questions of legal interpretation come in very often and I may say something and an hon. Member may say some other thing, but we would like to be guided by the Law Minister. I am really sorry that the Law Minister is not here when such controversial issues are being discussed.

Shri C. D. Deshmukh: The hon. Law Minister cannot help it; he is the Leader of the other House and his presence may also be required there as they are also having their sessions.

Mr. Deputy-Speaker: I am sure the Leader of the House will take care to see that the Law Minister is here and his services are available to us whenever such difficult legal questions arise.

Shri C. D. Deshmukh: For the afternoon sessions when the Council of States is not sitting, it would be possible.

Mr. Deputy-Speaker: He is the Leader of Council of States but we do want his assistance here as the Law Minister. Therefore, some arrangements must be made there and I expect him to be here all through until the passage of this Bill.

Shri S. S. More: Why not make Shri Gadgil the substitute?

Shri Raghavachari: What should happen in the case of a man who is not a *sui juris*? It is precisely to make provision for such a thing that this explanation was put in. It was contemplated that not only the beneficial enjoyment but the physical possession also must be with the beneficiary, that is assumed by the beneficiary, and in the case of a person who cannot legally assume as in the case of a person who is not a *sui juris* it was contemplated that somebody on his behalf might do it. Therefore, if the idea is that it is not physical possession, the word "possession" may be omitted. But the intention of the Finance Minister is stated to be not to insist on physical possession also. Therefore, the explanation will only make it perfectly clear and there is no reason to omit it and create confusion.

Shri N. P. Nathwani: I have to make a further submission. The first is that if you retain the explanation, it would lead to confusion. Secondly, I wish to submit that the proviso in favour of public charitable property is necessary and it should be retained.

Mr. Deputy-Speaker: You mean public charitable purpose.

Shri N. P. Nathwani: First of all, I am dealing with the explanation. In my opinion it is necessary that it should be deleted. If you retain it, it would lead to confusion. The words "possession and enjoyment of the property" are not used for the first time in the first part of Clause 21. If you, Sir, turn to Clauses 9 and 10, you will find the same words have been used and this is what the learned author Dymond has to say about deeds and settlements in respect of which the donee should assume and retain possession and enjoyment.

Shri U. M. Trivedi: May I put in a question? You are talking of constructive possession and also say in the same breath "to the exclusion of the deceased". How can constructive possession and "to the exclusion of the deceased" go together?

Shri N. P. Nathwani: I shall deal with it. The same words have been used in clause 21. For this condition the possession and enjoyment should be assumed and retained. The learned author says that for this purpose it is not necessary that the original donee should personally retain the property. It is sufficient that possession and enjoyment are retained by the donee. If the property is held under trust solely for the beneficiary, the condition is fulfilled. So, clauses 9 and 10 deal with cases of trusts also. As you have used the same words "possession and enjoyment" already, and it means beneficial possession and enjoyment. now if you want to retain the explanation like this here, you will have to go back and incorporate the explanation on the same lines in clause 10 also which it is not necessary to do, I submit, because what is meant is beneficial possession and enjoyment. What is meant is the constructive possession. If the trustee holds the property for the benefit of a beneficiary, it is the possession of the beneficiary for the purposes of clauses 9, 10 and 21. Therefore, it is necessary that we should delete the explanation. Otherwise, it would lead to confusion.

Mr. Deputy-Speaker: How do clauses 9 and 10 relate to trusts?

Shri M. C. Shah: If special provision is made in clause 21, where the deceased is the trustee, how can the analogy hold good? Here the deceased is the trustee with some beneficiary interest reserved for him. In the other case, the deceased is not the trustee.

Shri C. D. Deshmukh: It was for this reason that we thought of making an exception in clause 21.

Mr. Deputy-Speaker: Clause 21 relates specially to trusts. Therefore clauses 10 and 21 must be read together. To that extent 10 does not apply to 21.

Shri C. D. Deshmukh: But the language of 10 must be held to include not only to physical possession and enjoyment but also beneficial possession and enjoyment. That must be construed in a general sense in order to make it possible for us to introduce clause 21.

Shri Raghavachari: Under Clause 10 donors are not entirely excluded, but under Clause 21 they are entirely excluded.

Shri C. D. Deshmukh: That is another condition. We are concerned with the meaning of the words "possession and enjoyment" and there may be a good number of combinations of possession and enjoyment and whereever these words occur, the meaning must be construed in the sense which the Law Courts give it. It may by physical possession or beneficial possession. Mr. Nathwani's remarks seem to be that if you retain the explanation, then by implication you deny that possession and enjoyment have a constructive meaning.

Mr. Deputy-Speaker: This is his impression. In the one case a guardian is taking possession, whatever may be the possession—even symbolic possession. In the other case there is no person who can take even that symbolic possession. When he is a minor, it is the guardian who must take the symbolic possession. Therefore, the explantion is necessary. Not that by this symbolic possession will be converted into actual possession. Whatever the possession, the minor is entitled to have it only through the agency of a guardian.

Shri C. D. Deshmukh: The point is this. When we say that possession and enjoyment of the property was *bona fide* assumed by the beneficiary, it also includes, and must include, a case where a minor's possession was held by a guardian.

Mr. Deputy-Speaker: There is no doubt about it. So far as the Finance Minister is concerned, he said even without this explanation a possession by a minor will mean possession through a guardian. We were on the other point. The hon. Member, Mr. Nathwani's point was that it created confusion. All that I am saying is that it does not create any confusion. It may be redundant; it may be unnecessary.

Shri N. P. Nathwani: As regards the second point, I was submitting that under the amendment proposed by the hon. Finance Minister, the main part would apply even when the property was held by the deceased as a trustee for public charity under a trust created by himself. Now, Sir, the whole idea of making provision for five years is this, that there should be greater proof of *bona fide* on the part of the settler that he has parted with the beneficial possession and enjoyment.

Sir, you know there is ample protection under ordinary law for the case of public charities. If the beneficial enjoyment and possession is not given to the beneficiaries, then under section 92 of the Civil Procedure Code the persons who are interested in the charity can go to the court or can move the Advocate-General and got the necessary redress. Therefore, there is no necessity for enlarging the time in the case of public charities, because you have already provided under clause 9 that there should be a period of six months. Once a valid public charitable trust is created, it is the duty of the trustee to see that the income is applied for the benefit of the beneficiary. If he does not do it then even a member of the public who is interested in that charity can move the process of law. But in the case of a private charity, it might not be possible. Therefore, you can separate the case of private trusts from the charitable trusts and provide for a larger period in the case of a private trust. But in the case of a public charity, I submit, Sir, that the period should be that of six months only

[Shri N. P. Nathwani]

which you have already provided for in clause 9, because there is sufficient safeguard under the ordinary law of the land. That is what I have to submit.

Mr. Deputy-Speaker: When it is reduced to two years, the hon. Member wants that in the case of a public charity it should be reduced to six months. Now, this one year was put down because of the increase to five years.

Shri Raghuramaiah (Tenali): Sir, I rise to support the first point raised by Mr. Nathwani. He has drawn attention to clause 10 of the Bill. No doubt, clause 10 deals with gifts and assumption of possession and enjoyment by the donee. This clause relates to trusts and relates to the possession and enjoyment by the beneficiaries. The difference is, in one case it is the beneficiary and in the other it is the donee, but in either case the question arises whether possession and enjoyment—in the case of a minor—should be by the minor or can it be by a guardian? If we say the general law applies and possession by guardian and enjoyment by guardian will be treated as possession and enjoyment by the minor, the explanation becomes unnecessary in either case. On the contrary, if we feel it is necessary to provide in this clause that possession and enjoyment by a guardian should be deemed to be possession and enjoyment by a minor, I submit, the necessity arises for the same explanation in the case of clause 10—in the case of a minor. There is an identical necessity and if you have it in this clause, you must have it in clause 10 also. Of course I agree with some of the speakers who preceded me that the general law will operate and that possession and enjoyment by the guardian will be deemed to be possession and enjoyment by the minor. Of course, if any trouble arises, the minor has got other remedies. In that view I also join the others and say that this clause is unnecessary. But if you would like to have it in this, there must be a similar clause in section 10.

Shri C. D. Deshmukh: I have heard carefully all this discussion and I have come to the conclusion that our amendment is right, in both respects. So far as these trusts are concerned, we do not believe there will be cases which will fall to be governed by the private trusts. In any case, we are satisfied that this six months' period will govern all these cases and I do not think we need go deeper into this.

So far as the explanation is concerned, I do feel that we shall raise a doubt as to the construction to be placed on these words wherever they occur, if we try to explain them only in one place—whether it is in 10 or whether it is in the body of 21. That is why I say it is much better to leave the explanation out and to rely on the courts for the construction of these words.

Shri Pataskar: The courts are not going to come in at all. Where do the courts come in?

Shri Altekar (North Satara) *rose*—

Mr. Deputy-Speaker: After all the other Members had spoken, I called upon the hon. the Finance Minister. I will now put these amendments to the vote of the House.

The question is:

In page 14, line 24, *for* "five" *substitute* "two".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 14, *for* lines 27 to 33, *substitute*:

"Provided that in the case of property held by the deceased as sole trustee for another person under a disposition made by himself, the period shall be five years."

The motion was adopted.

Mr. Deputy-Speaker: What about the other amendments? Nos. 52, 57 and 63 of Mr. Somani and Shri Tulsidas.

Shri Tulsidas: In view of the explanation given by the hon. Finance Minister, I do not think that we would press these amendments.

Mr. Deputy-Speaker: Very well. Amendment No. 52 goes, so also 57 and 63. Then Mr. Trivedi—amendment No. 59. I think that also goes.

Shri U. M. Trivedi: No, Sir. I would press for it.

Mr. Deputy-Speaker: All right.

Shri U. M. Trivedi: The Finance Minister has agreed to reduce this period from five years to two years by his amendment. My amendment says:

> "for a minor beneficiary or for public or charitable purposes there shall be no bar of any period."

He has taken out the whole of the proviso. He has not agreed to this proviso which was there in the Select Committee's report:

> "Provided that in the case of property held by the deceased as a trustee for public charitable purposes the period shall be one year."

This goes. So far as the Explanation for a minor is concerned, that also goes. In other words, where the beneficiary is a minor, even there this period of two years stands, and where it is a public charitable purpose, there also the period of two years stands. My suggestion was that when a man makes a charity—in the previous clause 9 also it was my idea—so far as public charitable purposes were concerned, there should not be a period of six months. Even if it is a public charitable purpose, it should be taken to be a *bona fide* gift and it should take effect from the same date whenever the death occurs.

5 P.M.

In the case of this clause 21, we have again the same proposition that where the minor beneficiary is concerned, if he is trustee only for a minor beneficiary or if it is given for a charitable purpose, then I think, the period should not be there. But, since the Minister has not agreed to that, I merely say that I press for this.

Mr. Deputy-Speaker: Does he want to say anything regarding 62?

Shri U. M. Trivedi: 62 goes; it is only when 59 is there that 62 remains.

Shri C. C. Shah: Sir, I would request the hon. Finance Minister to consider the case of public charitable trusts because when he has reduced the period of 5 years to 2 years, it is to bring in line with clause 9. Under clause 9, the period for the gifts which includes trusts is 2 years, and for public charities it is 6 months. Now, if you take away the proviso in clause 21 as it stands, the period for public charity will be 2 years, contrary to what we have provided in clause 9. If I make a trust for public charity and become one of the trustees of it, 2 years' period must lapse before such a trust would be exempt from duty. That is not, I am sure, the intention of the hon. Finance Minister because all that was said was that there are no beneficiaries.

Mr. Deputy-Speaker: It is only reasonable to say that when he himself is the trustee, the statute must be more careful in that case. A man can call himself a trustee and can be in possession for himself. There should be a different rule when he himself is the trustee as opposed to a case when he makes another man the trustee and puts him in possession of the property.

Shri C. C. Shah: Under section 21, he need not necessarily be the sole trustee. There may be 5 trustees and he may be one of them. Supposing a man gives away property worth ten lakhs of rupees to charity, he would like to be one of the trustees. There may be 4 other eminent people along with him. But, merely because he is one of the trustees, two years' period

[Shri C. C. Shah]

will apply. It will be entirely contrary to our intention in section 9. That is taking away with one hand what is given by the other. I do request the hon. Finance Minister to consider this.

Shri C. D. Deshmukh: I think, Sir, it is safe enough as it is; that is to say, where he is one of the trustees, 2 years; in any other kind of trust, it is 6 months, and if he is the sole trustee, it is 5 years.

Mr. Deputy-Speaker: Now, I will put Mr. Trivedi's amendment to the vote.

The question is:

In page 14, *for* line 28, *substitute*:

"for a minor beneficiary or for public or charitable purposes there shall be no bar of any period."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 21, as amended, stand part of the Bill."

The motion was adopted.

Clause 21, as amended, was added to the Bill.

Clauses 22 to 25 were added to the Bill.

Clause 26.—(*Dispositions in favour of relatives*).

Mr. Deputy-Speaker: Mr. More, are you moving your amendment, No. 486?

Shri S. S. More: Yes, I beg to move:

In page 16, *after* line 4, *add*:

"(c) the disposition was made by deceased in favour of a relation who has married outside his own caste or community, or who is born of an inter-caste or inter-communal marriage."

Shri Tulsidas: I beg to move:

In page 16, *omit* lines 15 to 27.

Shri S. S. More: Many persons here, on my side particularly, have greeted my amendment with a derisive laughter.

Mr. Deputy-Speaker: What is this amendment which evokes so much of interest?

Shri S. S. More: Sir, under clause 26 certain dispositions in favour of relatives of certain kinds have been accepted for exemptions from the duty.

Mr. Deputy-Speaker: This is intended to encourage inter-caste marriages.

Shri S. S. More: You have grasped it correctly, Sir.

Mr. Deputy-Speaker: Why was it not added to every clause in the Bill?

Shri S. S. More: I think a time will come when some one will have to do it.

Sir, this is a sort of test case. I have been hearing so many speeches from the Congress side and particularly from Pandit Nehru who happens to be the Leader of the Congress that casteism should be abolished. The concrete question that I want to ask is, what are the ways and means for demolishing this so-called casteism? How are caste barriers to be demolished? Sir, in our country, I need not give you instances of social reformers who have tried to break down these caste barriers.

Mr. Deputy-Speaker: A law was passed here, a single clause Act whereby inter-caste and sub-caste marriages were held all right.

Shri S. S. More: They have been legalised by Act XXI of 1949. It only legalised. I will give you an instance. Sir, the Widow Re-marriage Act was passed as far back as 1886 but, in spite of that legislative freedom, caste barriers and caste customs and pressure or influence was so formidable that no widow was prepared to take advantage of that measure. Similarly, Act XXI of 1949 legalises such marriages. As a matter of fact, I can give you a long string of social legislation which deals with this problem of marriage, but I do not want to go into his-

tory. Someone at least must make a serious effort to demolish these caste barriers.

If you look to the history of the marriage institution from the earliest days you will find that originally the system was very fluid. Any person belonging to one *varna*—which was a division *guna karma vibhagasah*—

गुण कर्म विभागश :

could marry a lady belonging to another *varna*. But somehow or other after a certain period, these *varnas* which were based upon *gunadharma*, so to say, fossilized and petrified into castes, depending on birth, and in order to perpetuate this caste system, this endogamous marriage system—marriage within the caste only—was introduced. My submission, Sir, is that we have to undo all the things that have been done for the past so many thousands of centuries. Unless economic inducements are held out, large number of persons are not likely to take advantage of this particular measure of reform. Particularly if the rich feel that Government encourage inter-caste marriages by giving tax-reliefs and that if they take to inter-marriages, they may be in the happy position of saving some portion of their property, they will zealously take to it. Possibly they may take to that sort of reform, not for the love of the reform itself but because it brings them some monetary relief or benefit. Sir, inter-caste marriages have to be encouraged. Many people preach many things without practising, but as far as Mr. Deshmukh, the Minister of Finance, is concerned, he practises but does not preach.

Shri C. D. Pande: He preaches and practises.

Shri S. S. More: He is practising but does not preach. That is my complaint. I plead that Government must extend some monetary concessions, some economic facilities, benefits, to those persons who are prepared to defy caste barriers and run counter to the zealousness of the orthodox people who hinder social reform. Such persons need encouragement.

Sir, I would like to quote one or two authorities, because my word alone will not carry the weight which this reform deserves. Justice Gajendragadkar, who presided over the Social Reform Conference which was held at Poona on the 18th April, 1953, says:

जातियता नष्ट करण्याचा प्राणली एक महत्वाचा मार्ग म्हणजे आंतरजातीय विवाहांना प्रोत्साहन व उत्तेजन देणे हा होय ।

I will translate it for those who are not in a position to follow this Marathi.

Mr. Deputy-Speaker: All of us understand it. It is full of Sanskrit.

Shri Gadgil: He has a right to read Marathi.

Shri S. S. More: I am not speaking in Marathi. I am only quoting it.

Mr. Deputy-Speaker: Even if the hon. Member speaks in Marathi, I have no objection. I only said it is easily understandable.

Shri S. S. More: I will translate it for the benefit of the future generations though not for those who are in the House. It means: One more important way of demolishing casteism is to encourage inter-marriages. Justice Gajendragadkar belongs to the Brahmin community, and I will quote now another authority who belongs to the lowest rung of our society. I am quoting Dr. Ambedkar. In his *"Annihilation of Caste"* he has diagnosed all other measures which have been prescribed for so many years for the purpose of abolishing caste, and he comes to the conclusion that inter-dining is not enough and that inter-caste marriages is the only remedy. This is what he says:

> "There are many castes which allow inter-dining but it is a common experience that inter-dining has not succeeded in killing the spirit of caste and the consciousness of caste. I am convinced,"—Sir, his words demand our notice.—

[Shri S. S. More]

"that the real remedy is inter-marriage. Fusion of blood can alone create the feeling of kith and kin and unless this feeling of kinship, of being kindred, becomes paramount the separatist feeling—the feeling of being aliens—created by caste will not vanish. Among the Hindus inter-marriage must necessarily be a factor of greater force in social life than it might be in the life of the non-Hindus. Where society is already well-knit by other ties, marriage is an ordinary incident of life, but where society is cut as under, marriage, a binding force, becomes a matter of urgent necessity."

So, my submission is that in the light of these weighty opinions, inter-caste marriage is an absolute necessity if we are serious in our talks about the demolition of caste. Many people grumble about the caste rivalry and caste jealousy. Many people say: why do you want to pull down the Brahmins? Let them remain as they are. You had better find out your own economic betterment, but, in our society, mere economic equality will not bring about social equality. Even if Dr. Ambedkar, one of the eminent barristers of Bombay, was earning large sums of money by way of practice, he himself told me that even *patwalas* belonging to upper castes and who were not getting even Rs. 15 or 20, were not prepared to touch him even with a barge-pole. So me of my communist Members do say.....

Shri C. D. Pande: This is a thesis on marriage. Is it in any way relevant to this clause?

Mr. Deputy-Speaker: He cannot go on talking about marriage.

Shri S. S. More: Many people yearn for this or that particular measure. Some people have put in amendments for encouraging *bhoodan*. Some people have put in amendments for the purpose of giving some protection to the refugees. I am also interested in a sort of social reform which is of the greatest importance, and I feel that the time has come for prohibiting caste marriages, but possibly that cannot come so early.

Shri C. D. Pande: You marry a Mahar.

Shri S. S. More: He is asking me to marry at this age.

Mr. Deputy-Speaker: No such conversation need take place, and no reference to such things need be made. Always, the present company must be accepted.

Shri S. S. More: I have not prescribed any Harijan lady for Mr. Pande. Then he would be justified in retaliating in the way he has done. But he is offending me without any reason.

Shri C. D. Pande: Sir, on a point of explanation. I am constrained I must say what I had in mind and what I wanted to say. When he says casteism, he only emits venom against the Brahmins. What I wanted to say was that he is a Mahratta, a non-Brahmin. Is he prepared to descend to the level of Mahars, or he only wants Brahmins to be pulled down to the level of the Mahars?

Mr. Deputy-Speaker: No, no. It is not right, the Mahars will take exception to this. Why, it is very wrong too. We are trying to do something but it ought not to alienate the feelings of others. Let it pass away from our minds. What is the good of saying, is he prepared to marry a Mahar? Is a Mahar prepared to marry a high caste? They do not recognize a high caste. Under these circumstances, it is not right to say one community is better than another community. The hon. Member is just referring to castes. If any particular man—even a Member of Parliament—says caste must go—whether he is able to folow it or not—it is out of order here. Such questions ought not to be put.

Shri S. S. More: My object in moving this particular amendment is that there must be a modest beginning in devising concrete steps to abolish caste. Maharashtra was very fortunate in giving to the country a long line of social reformers.

Mr. Deputy-Speaker: I am afraid the hon. Member is going far beyond the scope of the amendment.

Shri S. S. More: I want to emphasise the point that such a positive step at least may be taken to abolish this caste system. I cannot understand the interruptions and I believe this is ugly orthodoxy raising its head. With these words, I commend the amendment, for the acceptance of the House.

Shri Achuthan (Crangannur): I support the idea in the amendment. My only doubt is whether there will be anybody to give such a disposition. Among the poor communities, there are not people who are worth more than Rs. 10 or 15 thousand. Then, again, inter-caste marriage would help them for their betterment. Among the so-called Brahmins or among the so-called non-Brahmins many are not prepared to dispose of their property for the purpose of encouraging inter-caste marriages. I would really appreciate the attitude or the idea underlying this amendment. There are a number of other matters to encourage inter-caste marriages. We can ask the Public Service Commission to see that priority should be given to those people who inter-marry—both boys and girls—for jobs. Why? Scheduled caste people are given same reservation. So we must hereafter say that a good percentage of jobs must be given to those people who inter-marry, or some land, five acres or so, be given to them free.

There are a number of methods of giving encouragement. This amendment, though it would not serve the purpose or affect the position materially, I suggest, may find a place in the Estate Duty Bill, as a beneficial expectation to those people who want to marry outside their caste. I very strongly support the amendment moved by Shri More.

Shri Gadgil: I give my full moral support to the amendment by my esteemed friend from Poona, Mr. More. That does not mean that I am agreeable that it should be accepted by the House. I make that distinction with a special purpose. Since we have decided that taxation should be an instrument of policy and not merely something to have some yield in terms of money, we are using this piece of taxation for the purpose of securing economic equality. We might as well use this for the purpose of securing social equality.

You may be aware that in the Punjab before Independence certain quotas in several services were reserved for the Sikhs, for the Hindus and for the Mohammadans and every year the quota was notified and the prospective applicants were asked to give their castes. There were a number of cases in which the applicants wrote as follows: "I belong to that caste for which the seat has been reserved this year". You can understand what it was from the social point of view. I, therefore, feel that so far as legal impediments in the matter of inter-communal marriages are concerned, they are absolutely eliminated by certain laws already passed. Now, having removed negatively those things which were so to say a bar, the question now is whether the State can proceed to do something positive. I remember, Sir, in one of my speeches during the election campaign, I said: "If you really want to achieve the objective of a classless and casteless society, nothing is calculated to bring it sooner and better than by the State reserving a certain percentage of services for those who marry outside their caste, other things being equal". So, it is not for the first time that I am advocating it.—Mr. More knows it. Not only this. I honestly feel, if the State is really anxious, as it is, I assume, then, it should subsidise such marriages, though this would be not in the plane of high moral purpose, but on a mundane plane.

Shri U. M. Trivedi: Is all this relevant?

Mr. Deputy-Speaker: How I understand the hon. Member's remarks is this: subsidising may be right, but this amendment is wrong.

Shri U. M. Trivedi: Therefore, he is irrelevant.

Shri Gadgil: The concession can be given in a variety of ways and this is one of the ways. But I do feel that so far as this Bill is concerned, my hon. friend's objective is to create a proper atmosphere.

Shri C. D. Pande: This question is so difficult that it should not have been brought in here. Since it has been brought in there must have been some clarification. I want to raise a few questions in connection with the arguments brought forward by Mr. Gadgil. Not only do we want a casteless society, but a classless society: so will you subsidise a marriage between a very rich man and a very poor woman? After all this is also one way of bringing equality. In regard to inter-caste marriage, it may mean marriage between a Brahmin and a Kshatriya; or a Brahmin and a Vaishya, etc., which according to the *shastras* will make 36 combinations. What combination will you subsidise and which will you penalise?

Shri Velayudhan (Quilon *cum* Mavelikkara—Reserved—Sch. Castes): Then, are you opposing inter-caste marriage?

Shri C. D. Pande: Certainly not. I do not want to subsidise, you may marry by all means.

Shri Heda (Nizamabad): Since this question of inter-marriage has been raised I would like to bring one fact to the notice of the House. If a rich man from one community marries with a girl of another rich community, the object we have in view would not be served. I have made close observations of some of these rich communities and the recent trend is that rich people are forgetting caste, they are marrying among themselves. Therefore this will not help our purpose much.

Shri C. D. Deshmukh: Mr. Deputy-Speaker, Sir, I shall not enter into the merits of this controversy at all and I am sure I shall not be misunderstood. The amendment brought by Shri More in his reformist zeal is not relevant to the scope of this clause. The purpose of this clause is to restore to their original nature as proper disposition certain kinds of gifts to relatives, that is to say one looks upon with disfavour, so to speak, all gifts to relatives; in other words they are a likely method of evasion. Then, one thinks of certain matters which might not be evasion, as for instance, where consideration has been paid and so on. In this environment any question of inter-caste or inter-communal marriage is irrelevant That is my reason for opposing this amendment.

Mr. Deputy-Speaker: I shall put Shri More's amendment to the House. The question is:

In page 16, *after* line 4, *add*:

"(c) the disposition was made by deceased in favour of a relation who has married outside his own caste or community, or who is born of an inter-caste or inter-communal marriage:"

The motion was negatived.

Shri Tulsidas: My amendment No. 435 is for omitting sub-clause (3) of clause 26. Sir, I have put in this amendment because I feel that this sub-clause relates to a control company and corresponds to the United Kingdom Finance Act, 1940, Section 56(2). This section introduces what is called a "statutory hypothesis", assets in trusts for shareholders and debenture holders. How exactly this hypothesis is to be worked has not been finally decided even by the House of Lords. In the case the Attorney-General v. St. Aubyn it is observed as follows:

"The terms of section 56(2) are far from being a model for clarity

and they demand a feat of imagination by no means easy to perform. But it is admitted that the sub-section does apply in this case and effect must, therefore, be given to the hypothesis which it enjoys, however un-real and remote from the actual facts of the case the process may appear."

In the same case in the House of Lords, reported in 1952 A.C. page 15, Lord Radcliffe dealing with section 56(2) and "the statutory hypothesis", says at page 51 of the Report.

Paragraph 2 as follows:

"Of course this is a clumsy device. It is impossible to say with any precision what are the equitable rights which ought to be thought of as analogous to the existing rights represented by shares and debentures. It is particularly difficult in the case of shares, for the section throws no light on the extent to which one is supposed to retain or discard the managerial powers to which the rights of ordinary and other shareholders are subject but which they may ultimately control."

It is therefore respectfully submitted that the provisions of section 62 of the U.K. Act which are found to be difficult of interpretation even by the Law Lords should not be incorporated in our statute. It is a very difficult situation. We do not understand anything. I therefore appeal to the hon. the Finance Minister to agree to the deletion of sub-clause (3).

Shri C. D. Deshmukh: We are aware of the observations in the United Kingdom case. We have considered Lord Radcliffe's observations in 1952 A.C. 15 very carefully and yet we have come to the conclusion that that clause ought to remain. The immediate answer to Shri Tulsidas is that in spite of these defects, not only the House of Lords but also the law courts were able to work out some theory which they called the statutory hypothesis which is the basis of this clause. It is true that in this particular case the judgment was in favour of the assessees. But the point which is relevant for our purpose is that the courts were able to apply the law, that is to interpret it.

I should like to explain that clause 26 is designed to prevent a method of avoidance of duty whereby property is transferred to a relative or a debt is created by the deceased in consideration of an annuity, or an interest limited to cease on death granted in his favour. For instance a person A may transfer a building to a relative B and have an arrangement by which B gives him a life annuity. All that this clause does is to declare that where the disposition made by the deceased is in favour of a relative—and that is not this clause but another clause—within the meaning of the clause and is not for full consideration in money or money's worth, the annuity so created is not to be regarded as a consideration, and that the disposition should be treated as a gift. Such transfer of property for a similar consideration may not only directly be in favour of a relative but may be through the medium of a controlled company, and that is why sub-clause (3) has been inserted there to deal with this kind of possibility of evasion.

In applying this sub-clause in such a case where a statutory hypothesis is worked out, one has to put a question whether the company was holding the assets as a trustee for its members. If so—and broadly speaking the company would not deal with its shares or debentures as freely as an ordinary company can—then the statutory hypothesis applies. And even though the disposition was made through such controlled company, it would be regarded as having been made directly to the relative.

It is no use denying that the language of the clause is complex. But of course methods of evasion, as I pointed out once before, are equally complex. And the number of the ingenious devices adopted by tax evaders is legion. By the Act of 1940 and by

[Shri C. D. Deshmukh]

further amending it in 1950 the U.K. hopes to be able to catch up with these devices. It is not clear whether the tax evaders have exhausted their resources. It may be that in course of time the wording of the law may be even more complex. Nevertheless the point here is that the courts have not found the section incapable of operation in suitable cases, and that is why we have thought it safe to retain it here.

Sir, I oppose the amendment.

Mr. Deputy-Speaker: The question is:

In page 16, *omit* lines 15 to 27.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 26 stand part of the Bill."

The motion was adopted.

Clause 26 was added to the Bill.

Clauses 27 to 29 were added to the Bill.

Mr. Deputy-Speaker: Yesterday I said that we will be satisfied if we dispose of this section, that is ending with clause 29. The next clauses relate to quick succession and other matters. If the House is so inclined we will adjourn now.

Several Hon. Members: Yes, yes.

Mr. Deputy-Speaker: The House stands adjourned till 8-15 A.M. on Monday.

The House then adjourned till a Quarter Past Eight of the Clock on Monday, the 7th September, 1953.