Mr. Deputy-Speaker: The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 15th October, 1952."

The motion was adopted.

INDIAN INCOME-TAX (AMENDMENT) BILL

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

"That the Bill further to amend the Indian Income-tax Act, 1922, be referred to a Select Committee consisting of Shri S. Sinha, Pandit Algu Rai Shastri, Prof. Ram Saran, Shri Ghamandi Lal Bansal, Shri C. R. Basapa, Shri Shantilal Girdharlal Parikh, Shri Hari Vinayak Pataskar, Shri Radheshyam Ramkumar Morarka, Shri P. Natesan, Pandit Chatur Narain Malviya, Shri Ahmed Mohiuddin, Pandit Thakur Das Bhargava, Shri A. K. Basu, Dr. Panjabrao S. Deshmukh, Col. B. H. Zaidi, Shri C. P. Matthen, Shri Purnendu Sekhar Naskar, Shri Sohan Lal Dhusiya, Shri P. N. Rajabhoj, Shri Kamal Kumar Basu, Shri N. C. Chatterji, Shri K. A. Damodara Menon, Shri Tulsidas Kilachand, Shri S. V. Ramaswamy, Shri Mahavir Tyagi and the Mover, with instructions to report on or before the 21st July, 1952."

The first thing I would like to point out, Sir, is that this Bill is quite different in its scope, if not in content, from the Bill of 1951, which has lapsed. The main features of the present Bill are that it contains a number of beneficial provisions which have been found necessary for facilitating the repatriation of foreign accumulated profits of Indians trading abroad and for the promotion of industries and for the construction of buildings. Besides there are a few other exemptions and one or two other administrative provisions.

The main provisions are as follows: One, exemption of foreign profits remitted to India. Now, in this behalf a concession was announced as far back as May 1950 and this is now being implemented by the proposed amendment of the Act. The object is to enable non-resident persons trading abroad, who have recently returned to India and have become residents, to bring into India their foreign profits without incurring any taxation liability. In some of the foreign countries, conditions have worsened and is has become difficult for self-respecting Indians to pursue their avocations there. Also, we need capital. In these circumstances they may be anxious to bring their foreign profits to India for starting some industries or business here, which is of obvious advantage to us.

The next concession is regarding the remittance of foreign profits which applies to persons who are already resident in India. This concession also was announced in September last year. Its application is confined to such foreign profits as were taxable on remittance only, but not otherwise. The persons concerned can secure exemption from taxation by investing half the amount remitted to India in Government securities purchased through the Reserve Bank. The justification for this is, if this concession were not given, there is a temptation to bring foreign profits either surreptitiously or, if that cannot be done, to divert them to other countries.

In connection with the construction of buildings and the promotion of industries, the concessions are these. In the first place, to promote the construction of new buildings, we granted exemption in 1946 in respect of the rental income of properties constructed between 1st April 1946 and 31st March 1948. This period was extended by two years each time, for about three times. Now, it has been extended further by two years up to 1954. So, in all, it comes to three times. Similarly, in the case of buildings constructed for business purposes, the period has been extended up to 31st March, 1954. Buildings constructed before that date will be entitled to a higher initial depreciation of 15 per cent. in the year of construction. In the case of buildings situated in the area affected by the Assam earthquake of 1950, allowance for repairs has been increased from one-sixth to a maximum of one half of the annual letting value for the assessment year 1951-52.

As regards new industrial undertakings, the period of concession has been extended by five years in such a manner that every undertaking entitled to the concession gets it for five years. To enable the small industries to get the benefit of the exemption, the number of persons to be employed is reduced from 50 to 25. Also in the case of new buildings, machinery or plant erected or installed after 31st March 1948, which are entitled to double depreciation for five successive years, the period up to which such double depreciation is admissible

has been extended by five years, from 31st March 1954 to 31st March, 1959. Depreciation will also be admissible now in respect of assets acquired by gift or inheritance, which costs the assessee nothing. But, where a part of the cost of the asset is met in course of business by any person, depreciation will be admissible only on the net cost actually borne by the assessee.

We propose to give certain concessions to Life Insurance companies. Life Insurance companies are perhaps the chief beneficiaries under this Bill. They have been representing for some years that the deduction of half the bonus reserved for policy holders or the allowance of 12 per cent of the renewal premiums as management expenses, in computing the taxable income was inadequate, in the present circumstances, when the net rates of interest had gone down and management expenses had gone up owing to the rise in the salaries of the staff. Keeping in view this representation, the deduction of bonus reserved for policy holders is being increased from 50 to 80 per cent and the allowance of 12 per cent of the renewal premiums is being raised to 15 per cent. In the Bill which lapsed, allowance for bonus reserved for policy holders was restricted to two-thirds. That has had to be increased to four-fifths as even the two-thirds allowance was found to be inadequate. The proposal is to apply this concession with effect from the assessment year 1951-52, for the Insurance companies would have got this relief had the Bill introduced last year not lapsed. We recognise that.

Then, there are other exemptions of which I shall mention a few important ones. One of these affects hon. Members of this House, and those of the last one and the Constituent Assembly. I can see an awakening of interest now. As the allowance given to the Members was in the form of a daily allowance, there was a general apprehension in the minds of the Members as well as Income-tax Department that these allowances were similar to the Daily allowances given to Government servants when on tour. But, actually, we found that these allowances were given not only to Members who came from outside Delhi, but also to those who resided in Delhi. On that, the legal view was that it was possible to consider this as in effect partly at least remuneration for the time devoted by Members in Parliament, and therefore we were advised that it was liable to tax. It would have caused —we recognise that—great hardship to the Members if the legal position had been enforced for a number of years for which proceedings for re-assessment could be taken under the Indian Income-tax Act. To avoid this hardship, exemption of this allowance has been specifically included in the Bill.....

Shri Syamnandan Sahaya (Muzaffarpur Central): What happens if they had made disclosures; Mr. Tyagi will derive the benefit.

Shri C. D. Deshmukh: .....with retrospective effect to all the assessment years.

Shri S. S. More (Sholapur): What about the future?

Shri C. D. Deshmukh: That would depend on the recommendation made by the Committee.

Pandit Thakur Das Bhargava (Gurgaon): Suppose the report is that the allowance is to be given then will the allowance not be taxed?

Shri C. D. Deshmukh: I take it that in prescribing the allowances the same sort of mistake that occurred which led to its being regarded as remuneration will be avoided.

Pandit Thakur Das Bhargava: Of course.

Shri C. D. Deshmukh: In March 1951, the exemption granted by an executive notification to pensions payable outside India was withdrawn. It was then represented that in the case of officers of the Secretary of State's Services, and High Court Judges, appointed before the 15th August 1947, protection had been given to their existing pensionary rights in the Indian Independence Act of 1947, and that that protection was retained in the Constitution. Effect to this exemption is therefore being given by an amendment of the Act.

There is one more exemption which I would like to mention, and that is, in regard to the death-cum-retirement gratuity payable to Government servants under the revised pension rules. In fixing the quantum of gratuity, the question of its liability to tax was not taken into consideration. It seems to have been fixed on the assumption that it was a sort of commutation of pension and therefore not liable to tax. Exemption of this gratuity has been specifically included in the Act to accord with the facts of the situation.

Now, I come to what I may call the administrative provisions, although I hope that they will not be regarded

[Shri C. D. Deshmukh]

as non-beneficial, in view of the fact that they are necessary for the proper administration of the Act, or are calculated to assist in the prevention of tax evasion. In the first place, the exemption in favour of religious and charitable institutions is being slightly tightened up in order to secure that it applies to charitable purposes within India and to such income as is actually applied to these purposes. The Central Board of Revenue is, however, given power to exempt any existing trusts the income whereof is applied to charitable purposes outside India. As it stands, the exemption is too wide, and it has been found that sometimes abused by the creation of charitable trusts which apply the income thereof to other purposes.

Next, the Income-tax officer has been given power to require the production of current accounts and the furnishing of such information in writing as he may consider necessary for purposes of scrutiny. It was also necessary to empower the income-tax authorities to impound books of accounts where they are found to have been fabricated—not an uncommon occurrence. This power would be exercised very sparingly and cautiously so as not to cause any harassment. We feel that it is necessary to confer this power as it has been found that as soon as such fabricated accounts are taken away by the assessee, we are told that they are either lost or destroyed in some accident—maybe, an accident, yes—the object obviously being to escape the consequences of penalty or prosecution.

Then there is one more provision which perhaps needs mention, and that relates to the removal of doubt that the provisions of section 34 of the Income-tax, as amended in 1948, apply to all proceedings for earlier years commenced after 30th March 1928. In connection with this provision, it may be that we may be told that we are rushing through legislation even before the matter has been adjudicated upon by the highest tribunal. But our object is to save a lot of avoidable litigation, and that can be done if we were to clarify the provision now and state at this stage what the intention of the amendment is. It must be remembered that there are more than 50,000 assessments and a revenue of Rs. 16 crores which is involved in all such re-assessment cases.

Mr. Deputy-Speaker: Motion moved:

"That the Bill further to amend the Indian Income-tax Act, 1922, be refered to a Select Committee consisting of Shri S. Sinha, Pandit Algu Rai Shastri, Prof. Ram Saran, Shri Ghamandi Lal Bansal, Shri C. R. Basapa, Shri Shantilal Girdharlal Parikh, Shri Hari Vinayak Pataskar, Shri Radheshyam Ramkumar Morarka, Shri P. Natesan, Pandit Chatur Narain Malviya, Shri Ahmed Mohiuddin, Pandit Thakur Das Bhargava, Shri A. K. Basu, Dr. Panjabrao S. Desshmukh, Col. B. H. Zaidi, Shri C. P. Matthen, Shri Purnendu Sekhar Naskar, Shri Sohan Lal Dhusiya, Shri P. N. Rajabhoj, Shri Kamal Kumar Basu, Shri N. C. Chatterji, Shri K. A. Damodara Menon, Shri Tulsidas Kalichand, Shri S. V. Ramaswamy, Shri Mahavir Tyagi and the Mover, with instructions to report on or before the 21st July, 1952."

Shri P. T. Chacko (Meenachil): Since the hon. Minister has now made the motion to refer the Bill to a Select Committee, I have only to support the motion, but in supporting the motion, I may be permitted to point out certain matters of real concern for the consideration of the Select Committee.

The hon. Minister was saying that the provisions regarding the exemption of income-tax for the income of charitable and religious trusts have been a little bit tightened up. My submission is, from the Bill it can be seen that the provisions regarding the exemption of income-tax to charitable and also religious trusts have been restricted to a great extent. In almost all progressive countries, the income of charitable and religious trusts is exempted in varying degrees, and in some countries like the U.S.A. and the United Kingdom, even contributions made to charitable and religious institutions for charitable and religious purposes are exempted from the total income of an assessee. India being a country where the majority of the people are very poor, my submission is that it is our duty to encourage charity more than in any other country.

I am now referring to clause 3 of the Bill. Clause 3 amends section 4, sub-section (3) clauses (i) and (ia). It says:

"(b) in sub-section (3),—

(i) for clauses (i) and (ia), the following clause shall be substituted, namely:

'(i) Subject to the provisions of clause (c) of sub-section (1) of

section 16, any income derived from property held under a trust or other legal obligation solely for religious or charitable purposes, in so far as such income is applied to such religious or charitable purposes only, and in the case of a property so held in part only for such purposes, the income applied or finally set apart for application thereto:' "

As regards the income derived from a property which is held in part only for religious or charitable purposes, no change in the law is contemplated by the Bill. But as regards income derived from a property held under a trust solely for religious or charitable purposes, a change is made. Now, I want to know what is the logic of this change: In the case of a property which is held solely for charitable or religious purposes, the exemption is given only to the extent of that portion of the income which is applied for such purposes. It can be seen from the latter part of the clause that in the case of property which is held only in part, the income is exempted from income-tax not only to the extent of that portion which is really applied to such purposes, but also to the portion that is set apart for such purposes. So, from a reading of this clause, it can be seen that if a property is wholly set apart for religious and charitable purposes, the income is exempt from taxation only to a certain extent, that is to the extent of that portion of the income which is actually applied for religious or charitable purposes. But in the case of a property which is not solely set apart for such purposes, but is held only in part, the exemption goes to a greater extent. To my understanding—I do not know whether my interpretation of this clause is correct or not, but if it is correct—it appears that when a trust is created whereby a property is set apart for religious or charitable purposes, the exemption goes to a certain extent, whereas if the property is held in trust only in part for such purposes, the exemption goes to a greater extent. If this interpretation of mine is correct, it looks to me as if the Government wants to give the first price to the runner-up. In the proviso also something similar can be seen:

"Such income shall be included in the total income, unless in the case of property held under a trust or other legal obligation created before the commencement of the Indian Income-Tax (Amendment) Act, 1952, the income wherefrom is applied to religious and charitable purposes, without the taxable territories, the Central Board of Revenue, by general or special order in this behalf otherwise directs."

I would like to know from the hon. Minister as to what is the position of a trust which is created after this Act comes into force. According to me, the proviso obviously does not apply to such a case. Therefore, such a case is to be governed by sub-clause (i). In the case of a property which is held under a trust created after this amending Bill comes into force, the income derived from that property will be exempt from taxation to the extent mentioned in sub-clause (i). In the case of trusts created before the Act comes into force, the income derived from such a property is not exempt from taxation, unless the Central Board of Revenue otherwise directs. If my reading of the clauses of the present Bill and also the sections of the Act now in force is correct, it seems to me that this proviso is illogical. I wish the Select Committee to go into this matter and consider these two cases I have mentioned above. My submission is that it has to be amended. Conditions being similar, if a trust is created after 1952, the income from the property held under such a trust will be exempt from taxation, but the income from a property held under a trust created before 1952 will not be exempt from taxation, unless it is exempted specifically by a direction of the Central Board of Revenue. This matter has to be gone into by the Select Committee.

Then, there is another objection which I would like to raise. It is possible that a medical mission which was constituted during the pre-separation days, before Burma was separated, or during the pre-partition days before India was partitioned, may be still carrying on its work in Burma or Pakistan and in India. It may also be that the whole income of such a mission is derived from a property which is held under a trust in India. In such a case, if this Bill comes into force, my fear is that an institution which was created probably years back for carrying on charitable work in India, as it was at that time, will now have to close down its work outside India. My submission is that we should not take such a narrow view about social service, and charitable work. If a medical mission is deriving income from a property which is held under a trust in India, and is carrying on work in Burma or elsewhere outside India, I feel that we should not prohibit such works. Then again, what is the objection in exempt-

[Shri P. T. Chacko]

ing at least that portion of the income which is applied for charitable work in India? As could be seen from part (i) of the proviso even if only a small portion of the income is spent for charitable purposes outside the taxable territories of India, the whole income may be taxed in India. The exemption is taken away completely from such income of a property held under trust for such charitable purposes. I submit, that there is no necessity to take such a narrow view of charities, and make such a drastic change in the existing law.

I now come to part (ii) of the proviso. It is practically clause (ia) of sub-section (3) in the existing Act. Clause (ia) of sub-section (3) in the existing Act is now sought to be brought under the proviso to clause (i). My submission is that this is done deliberately with a purpose, namely that of overruling certain judicial pronouncements which have already been made in India. I wish to refer here to a decision in *AIR*, 44. *Lahore* 465. It was held therein that "the word 'property' in clause (i) did not bear the restricted meaning that it bore in section 9 of the Act, but included securities or business or share in a business. Clause (ia) as it stands cannot in any way derogate or subtract anything from clause (i). It rather adds to the list of exemptions and provides immunity for certain kinds of business which in the view of the legislature has not already been provided for. A new clause inserted by the legislature cannot be presumed to be inconsistent with or repugnant to a foregoing clause in the same subsection unless it is so expressly provided". This was a case in which a business carried on by a charitable institution was taxed. It was taken up before the Lahore High Court in appeal and it was decided that simply because a charitable trust was carrying on a business or a trade the income derived from that trade or business could not be taxed under clause (ia) because it came under clause (i) as the meaning of the word 'property' in clause (i) included business or trade. Therefore, the intention of bringing clause (ia) now under the proviso is to restrict the scope of the exemption of the income of charitable and religious trusts. The existing law therefore is, if an institution created under a trust carries on a business or a trade, the income derived from such trade or business is exempt from taxation under clause (i). But if an institution which is not created under a trust carries on—although it is a religious or charitable institution—trade or business, the income from such trade or business is governed by the provisions under clause (ia). That is, unless the business or trade is carried on by the beneficiaries of the trust and unless the primary object for which the trust is created is for carrying on such an institution, it will not be exempt in the case of business or trade carried on by such institutions. That was the distinction made. So by this amendment it is sought to overrule this decision of 12 *ITR* 385 and to bring all income derived from any business or trade under the proviso. So my submission is that this is also a clear attempt to restrict the scope of the exemption of the income of charitable and religious institutions from income-tax.

I may be permitted here to explain it further by means of an example. There is the Devaswam Board in Travancore-Cochin. Under the Constitution, out of the State revenues we are giving 51 lakhs of rupees to the Devaswam Board. The primary object of the Devaswam Board is not to conduct colleges or schools or to carry on social work or any other work, social or educational. Now the Devaswam Board may think of conducting certain colleges, educational institutions or a handloom industry for the purpose of giving employment to poor beneficiaries of the institution. Now there have been judicial pronouncements in England to that effect—that the conducting of a college or a religious institution is a trade or a business. If this is applicable here, if the Devaswam Board of Travancore conducts a college and gets some income out of it which they could spend for other social services, under this provision of the Bill, such income derived from conducting such a college will have to be subjected to tax. My submission is that this will be very hard. Under the Constitution, out of the general revenues of the State, 51 lakhs of rupees is given to the Devaswam Board. The Board now intends to expend this money for the uplift of backward people for their education, and for providing employment for them. Now, suppose this Bill comes into force. The purpose for which the Devaswam Board was constituted is not for conducting educational institutions or for providing employment for the backward communities or for doing social work or anything of the sort. It is constituted for the specific purpose of administering the Devaswams in Travancore. So my submission is: are we to encourage

charitable institutions like the Devaswam Board of Travancore-Cochin or a medical mission to do social work in India?

Shri Nambiar (Mayuram): It is not like a medical mission.

Shri P. T. Chacko: I understand it. I am speaking from a particular point of view, which I hope the hon. Member can understand if he goes through the provisions of the Bill and also through the provisions of the Act in force now.

I was submitting, Sir.....

Shri Velayudhan (Quilon *cum* Mavelikkara—Reserved—Sch. Castes): Will it not come under charitable trusts?

Shri P. T. Chacko: That is why I am speaking about it. Otherwise there was no purpose in my referring to it. Take the case of the Devaswam Board. Suppose the Devaswam Board conducts a handloom industry. The income derived from such business or trade will be taxable, if it does not come under clause (ii). And it will never come under clause (ii) because the primary purpose for which the Devaswam Board is constituted is not for conducting such a factory or educational institution. My submission therefore is that institutions like the Devaswam Board will have to be encouraged to take up social work. As I was referring to a medical mission and as my friend, Mr. Nambiar seems to question the similarity, I would like to say a word about it. Suppose there is a medical mission constituted under a trust, with the primary object of conducting hospitals or dispensaries. Supposing for lack of facilities, certain medicines are not available and they intend manufacturing such medicines for the benefit of the institution and also for the benefit of carrying on their social work. That becomes a trade or business under clause (ii) of the proviso.

An Hon. Member: Only profit.

Shri P. T. Chacko: Any income will be taxable, not only profit.

I will read clause (ii) which says:

> "In the case of income derived from business carried on onbehalf of a religious and charitable institution, the income is applied wholly for the purposes of the institution and—
>
> (a) the business is carried on in the course of the carrying out of a primary purpose of the institution, or
>
> (b) the work in connection with the business is mainly carried on by the beneficiaries of the institution."

This is clause (ii) now. Therefore, if a business or trade is carried on by a charitable trust and if the income therefrom should be exempted from income-tax, first of all the primary purpose of the trust should be to carry on such business or trade. Then, secondly, the business should be carried on by the beneficiaries of the trust. What I was saying was that in the case of conducting a college or in the second case where a medical mission manufactures certain medicines, these will not come under this clause. Therefore, since this clause is now governed by the proviso the income derived from such business or trade or such conducting of an educational institution will also be taxable. It was not taxable previously, as I have shown by referring to the decision in *AIR 1944 Lahore*. Previously if the institution was created by a trust and if it carried on any business or trade, the income from the trade or business was not taxable. It was taxable only in cases where the institutions themselves were not created by a trust and they carried on business or trade. That is the distinction. Formerly, as a matter of fact, many of the charitable and religious institutions were created by trusts and therefore the income derived from business or trade or from any other property was in short exempt from taxation in accordance with the provisions of the Act which is now in force. But when this Bill comes into force, what will be the position? Income from property is not exempt. Or rather it is exempt only to a small extent—only to the extent of that portion which is actually applied for charitable or religious purposes, and not even that portion which is finally set apart is exempt. That is as regards income from properties. Then as regards the income from business or trade, formerly, if the institution itself was created under a trust any income from any business or trade carried on by that institution was totally exempt from the income-tax. Now it is not so. It becomes exempt only if the primary purpose of the institution was to carry on this sort of business or trade. So my submission is that under these two clauses the scope of the exemption for charities has been restricted to a great extent. It is not as the hon. Minister of Finance said—tightening up a little—but practically all the income of charitable or religious trusts will become taxable under the provisions of this Bill. The income derived from

[Shri P. T. Chacko]

any business or trade carried on by a charitable institution will also be taxable under this Bill.

Then again I want to refer to clause (i). That is:

> "Subject to the provisions of clause (c) of sub-section (1) of section 16".

11 A.M.

By this it is clear that the income from a revocable trust is excluded from the scope of exemption. I do not know why it has been done so. Suppose a charitably inclined person is willing to create a trust, whereby he places a certain property under a trust, the income wherefrom may be utilised for a period of 15 years for certain charitable purposes. Why should Government prohibit it? If a charitably inclined person is disposed only to give a certain amount for charitable purposes only under a revocable trust, why not, allow it? There is no reason why the Government should discourage it or prohibit it. Of course, it may be argued that by creating a revocable trust the person might take undue advantage for himself. I submit that the Government have ample power under the provisions of other Acts to see that the deponers of such trusts do not interfere in such affairs and do not take any undue advantage from trusts created by them.

I wish to refer only to one other matter and that is regarding proposed section 46A, which says:

> "Subject to such exceptions as may be made by the Central Government, no person who is not domiciled in India, or who even if domiciled in India at the time of his departure, has, in the opinion of an income-tax authority, no intention of returning to India, shall leave the territory of India by land, sea or air unless he first obtains from such authority as may be appointed by the Central Government in this behalf.....a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940.....or the Business Profits Tax Act, 1947....."

[PANDIT THAKURDAS BHARGAVA *in the Chair*]

So it can be seen that whenever a person wants to leave India, if, not in his own opinion but in the opinion of a third person who is the Income-tax authority, he may not return, he will have to take a certificate according to clause (i). Then the provisions of proposed sub-section (ii) are:

> "If the owner or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside the territory allows any person to whom sub-section (1) applies, to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be personally liable to pay the amount of tax, if any, which is or may be payable by such person, and shall also be punishable with fine which may extend to two thousand rupees."

So the owner, charterer or the agent of a ship or aircraft before allowing a person to travel from India to Pakistan or to a foreign country should know whether in the opinion of the Income-tax authority this person would return to India or not. Supposing he makes a mistake. What will happen? Supposing he allows a person to travel to Pakistan on his own authority thinking that he would come back, what is the penalty? The penalty is that he will have to pay any income-tax dues which this person had to pay. Not only that, he is also punishable with a fine of two thousand rupees. I may be permitted to mention a simple example. Supposing a person goes to Pakistan or for that matter any other country. He has the intention of coming back to India and the owner or agent of the aircraft or ship by which the man travels knows that he would come back to India. But it may be that the opinion of the Income-tax authority is otherwise. Even if that person returns to India, I am asking, whether the agent or charterer or owner of the ship or aircraft is not liable? Strictly, under this sub-section, if the opinion of the Income-tax officer is otherwise, namely that the person would not return to India, to transport such a person from India to a foreign country without a certificate becomes punishable. I submit that this is something unheard of, because I am to be punished not for my acts, I am to be judged not for my intentions but for the opinion of a third party, namely the Income-tax authority. I am to be judged not by my intentions or actions not even by the intentions or actions of the traveller in my aircraft or ship, but I am to be judged by the opinion of the Income-tax authority.

If one wishes to travel out of India it is very difficult to ascertain the opinion of the Income-tax authority, whether he would return to India or

not. Every person who wants to leave India will have to go to the Income-tax authority and take a certificate.....

The Minister of State for Finance (Shri Tyagi): This the practice today. Nobody is allowed to go out of India unless he obtained a certificate of income-tax clearance. If he paid income-tax alone that certificate has to be taken and only then he is allowed to go.

Shri B. T. Chacko: Under what provision of law?

Shri Tyagi: I cannot tell you offhand. I will tell you later but that is the present practice and rule.

Shri P. T. Chacko: I do not know under what provision of law this practice is pursued. It may be an executive order, in which case it is illegal. (*Shri Tyagi*: No. no.) I know that a passport is necessary.

Shri Tyagi: A passport is necessary and along with it the man must have an income-tax clearance certificate.

Shri P. T. Chacko: To my knowledge there is no provision of law by which I could be compelled to produce a certificate from the Income-tax authority. At any rate, I am not sure.

However, I was speaking about the proposed section 46A. I submit that it is very hard to judge and punish me if the opinion of the Income-tax authority differs from my intentions.

We know that certain arrangements are being made by the Government and certain negotiations are going on with the Government of Pakistan with regard to a passport or permit system for travel between India and Pakistan. This provision will add to the difficulties. I do not know what is the practice now, whether it is necessary to obtain a certificate from the Income-tax authority. I may be a person who is not worth a pie and without any income at all and yet I will have to obtain such a certificate. I do not say that the Income-tax authorities are all corrupt but I will yet have to obtain a certificate from them. There is a provision for passport and I submit that that will serve the purpose. I do not know whether the Minister means that even now there is a provision of law in force, by which if the opinion of the Income-tax authority differs from the traveller's intention regarding his return to India, then the owner of a ship or aircraft which carries the passenger can be punished.

Shri Tyagi: As regards people going to Pakistan along with a permit, such a certificate is necessary and my friend is right, there is no such provision according to the income-tax law. What is intended is to have that provision in the section which the hon. Member is criticising. As regards people who go to Pakistan, no permits are issued unless the person gets a certificate from the Income-tax authority that he has paid his taxes.

Shri P. T. Chacko: May I know whether the owner of an aircraft or ship can be punished even now, if a person is allowed to travel without a certificate from the Income-tax authority?

Shri Tyagi: Not yet. After the House agrees to this clause, he will be punishable.

Shri P. T. Chacko: The question is not whether I should get a passport or certificate. It is whether the owner can be punished for allowing me to travel in his ship or aircraft if in the opinion of the Income-tax authority I will not come back to India? As per sub-section (2), if I am the agent or owner of an aircraft or ship I am to be judged not by my action or intention but by the opinion of an Income-tax authority. A penal provision of this nature should not find a place in the income-tax law.

As regards the law regarding charities, your attempt seems to restrict the scope of the exemption of the income of charitable and religious institutions, whether created under a trust or not. The question is whether we are going to encourage charities in this country or not. "Charities", according to the definition, includes education and other social works. The question is whether we are going to encourage charities, social work, social education, etc. If we are going to encourage charities, there is no reason why the present law should be changed. Then again, if a property is held in part only under a trust for charitable purposes, no exemption should be given, more than what is given to a property held under a trust solely for such purposes. Also as regards clause (ii) of the proviso, I do not know the sanctity of the moment when this law comes into force. I hope these questions will be looked into by the Select Committee. This is a question of real concern and I hope the Select Committee and the hon. Minister will consider the points I have raised.

Shri N. P. Nathwani (Sorath): On a point of information, may I know

[Shri N. P. Nathwani]

from the hon. Minister whether, when it is proposed in the Bill that any daily allowances received by the Members will be exempted from the Income-Tax Act, this does not imply that daily allowances represent either income, profits or gain, and does this not involve the further proposition that the hon. Members who receive daily allowances hold an office of profit? I want a clarification from the hon. Minister.

Shri Tyagi: Whatever is granted to hon. Members by way of pay or allowances by means of an Act of this Parliament is constitutionally regular and for those emoluments Members have been exempted from any disqualification. Therefore, by receiving such allowances or pay they will not be disqualified and would not be deemed to be holding an office of profit, because this office and the payment of these sums have been exempted.

Mr. Chairman: There is a provision in the Constitution itself by virtue of which allowances and salaries are paid.

Shri Datar (Belgaum North): So far as allowances are concerned, the hon. Minister told us that the daily allowance paid to Members of Parliament constitutes remuneration. He also said that there was legal opinion obtained. With due deference, I wish to submit that the daily allowance paid to Members of Parliament before 31st March 1952 could not be considered as remuneration at all. You are aware that allowance is entirely different from salaries or profits. Allowance is paid for the purpose of meeting certain ordinary costs. It will also be noted that the daily allowance that was being paid and that is even now being paid was not in respect of remuneration as such but also in respect of certain requirements so far as various costs are concerned. Therefore, it would not be correct constitutionally or legally to say that the whole of the daily allowance that had been paid to Members of Parliament before April 1952 constituted remuneration or profits for the purpose of being assessed under the Income-tax Act.

Then the present position also has to be considered. We have a Parliamentary Committee considering the question of pay and allowances. It appears that under article 106 of the Constitution salaries and allowances have to be paid, and not merely allowances. It is quite likely that the Committee that has been appointed by the hon. Speaker might recommend some salaries and some allowances. In case salaries and allowances are recommended and that is accepted by the House, then so far as salary is concerned, it may be subjected to income-tax, but not the allowance. Assuming for the sake of argument that the present system is maintained by the Parliamentary Committee, then the Finance Minister and the Select Committee should consider whether the whole of the allowance that is being paid to us should constitute income for the purpose of being subjected to income-tax. Both these contingencies should be taken into account when we are amending the Income-tax Act. We should say that allowances, whatever their nature, ought to be entirely exempt from income-tax, while salaries or pays would have to be subjected to income-tax. This should be borne in mind.

Shri Mohanlal Saksena (Lucknow Distt. *cum* Bara Banki Distt.): I am rising to put one or two questions to the hon. Finance Minister before making my submissions on the Bill. If you refer to the Bill as introduced in 1951, you will find that the Statement of Objects and Reasons clearly said that it was primarily intended to give effect to the recommendations of the Income-tax Investigation Commission. Now that that Bill has lapsed, this Bill has been introduced, but we find that not a single recommendation of the Income-tax Investigation Commission has been included in it. The reason given by the hon. Finance Minister is that in view of the fact that the provisions would require detailed examination in the light of comments received from various quarters, he has not incorporated them in the present Bill. I do not know to what quarters he is referring, but I am quite positive that if the Income-tax Investigation Commission is to function effectively, at least four recommendations which had been incorporated in the previous Bill should have been included in the present Bill.

One of the provisions was that the Income-tax authorities should have the power to enter premises for searching for account books. I have with me the Report of the Income-tax Investigation Commission for 1951. It is full of cases where it is said the assessees were dodging and adopting all sorts of subterfuges in order not to produce the genuine account books and the Income-tax authorities found themselves powerless to get hold of the

genuine books. In view of these statements contained in that Report, the first thing that should have been done was that the investigation Commission or the authorities recommended by it should have been forthwith given the power to enter premises for obtaining account books. Under the provisions of the Sales Tax Acts in different States, the sales tax authorities have got that power and I do not know why the income-tax authorities should not be given that power.

The second provision provided for punishing persons who make false statements. I do not know from which quarter objection to this provision has come. The Investigation Commission has given instances in its Report where respectable persons had come forward to testify to the false statements of the assessees which the assessees themselves admitted later on that those statements were false, and not only that—they said that they were able to get these "respectable" persons to support their statements by documents and otherwise by paying not very considerable sums. Therefore, I do not know why the provision for punishment has been omitted. I suppose all sections of the House would agree that power should be given to the authorities to punish persons who make false statements and abet to deprive the State of its legitimate dues.

Then there are two other provisions which do not find a place here. One relates to the fact that the accounts could be shown to a third party with the permission of the Commissioner. It has been brought out in the Report that these tax-evaders have evolved a technique of tax-dodging. They have engaged competent persons whose principal business is to find out loopholes, or to devise ways and means to defraud the Government of its legitimate dues. In the face of that statement, it is not only necessary that account books are got hold of and but also if the Income-tax Investigation Commission, or the Commissioner feels that it is not possible for him to get the true state of affairs without reference to another person, who may be conversant with a similar business, or who may be able to give advice, it should be open to him to show these books to such other person.

Lastly, there was a provision for giving rewards. The practice of giving rewards obtains in several countries. Even in our Customs Department such rewards are given. I do not know why this provision has not been incorporated in this Bill. In my view, if there is any urgency about the enactment of any provision, it is of this.

Now, I would like to put a question to the hon. the Finance Minister. When does he propose to bring the next Bill, for implementing these recommendations?

Shri C. D. Deshmukh: At the next session, I hope.

Shri Mohanlal Saksena: Then, I would like to know from which quarters these objections have come. I am sure all sections of the House would be agreed on the question of collection of evaded income-tax. Since 1948 the recommendations of the Income-tax Investigation Commission have been before Government; but for one reason or another effect has not ben given to them. I do not know why there should be a soft corner for persons who forge documents, or give false evidence.

I am sure if the hon. the Finance Minister introduces in this very session another Supplementary Bill incorporating only these four provisions and refers it also to a Select Committee, it would be possible to enact that Bill. If, on the other hand, the introduction of the Bill is postponed till the next session, it may not be enacted before the end of 1952.

Shri C. D. Deshmukh: Is it a question, or would it do if I deal with it in the course of my reply?

Mr. Chairman: It can be dealt with in the course of the hon. Minister's reply.

Dr. Krishnaswami (Kancheepuram): This Income-tax (Amendment) Bill, as explained by the Finance Minister is only a piecemeal measure meant to fill up certain gaps in our income-tax structure. We have to wait for a long while for a big, comprehensive measure, which would deal with all aspects of income-tax and probably we have to await the experience and developments which take place in the United Kingdom. Undoubtedly, in the United Kingdom there would be a clarification of some of the doubts that we have with respect to income-tax profits and other matters and we should be entitled to draw on the experience of the United Kingdom in this matter.

Here I should like to point out that so far as the present Income-tax (Amendment) Bill is concerned, it is much better than its predecessor in several

[Dr. Krishnaswami]

respects. I do not follow the arguments of some of my hon. friends who have preceded me when they pointed out that the previous measure was really a good one and that the Finance Minister had not done the right thing in not reintroducing the same measure.

It is not quite proper on my part to examine a measure which is not before the House, but I may point out that there were several provisions in that Bill which were really repugnant and which would have led to very many difficulties and also led to a great deal of hardship for the community as a whole. I want also to make it clear that some of the provisions of the present Bill are good. My only regret is that they do not go further. The beneficial provisions relating to exemptions granted to policy holders is a step in the right direction. In the United Kingdom the exemption is limit about 100 per cent. whereas here we have decided to give them about 80 per cent. quite a good step particularly when we are intending to encourage the savings of the community.

But there are other provisions of this Bill which are really very very far-reaching in character and which in my judgment are calculated to promote a great deal of hardship to the community. Neither on grounds of justice, nor on grounds of fair-play or on grounds of public finance, can some of these provisions really form part and parcel of our income-tax law. My hon. friend Mr. Chacko, who preceded me this morning, referred to clause 23 and the insertion of a new section 46A in Act XI of 1922. Proposed Section 46A reads as follows:

> 'Subject to such exceptions as may be made by the Central Government, no person who is not domiciled in India, or who even if domiciled in India at the time of departure, has, in the opinion of the Income-tax authority, no intention of returning to India, shall leave the territory of India by land, sea, or air, unless he first obtains from such authority as may be appointed by the Central Government in this behalf, (hereinafter in this section referred to as the "competent authority") a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940 or the Business Profits Tax Act, 1947 or that satisfactory arrangements have been made for the payment of, all or any of such taxes which may become payable by that person:
>
> Provided that if the competent authority is satisfied that such person intends to return to India, he may issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within such period as may be specified in the certificate.'

I have no objection to those who leave our country obtaining exemption certificate, or tax clearance certificate from the Income-tax authority, but why should others who really act as carriers of these people be reduced to the position of assessees. It is all right to suggest that the man who is entitled to pay the tax should be really brought to book if he does not pay it. But why should a charterer or others who really perform the functions of carrying an individual from one place to another, be put in the position of an assessee. Moreover, we have got the Home Department of the Government of India. At the time of granting the passport you can certainly find out whether that individual has paid the income-tax or not. Why try to burden the charterer or others who are really concerned with the carrying trade?

Besides, what are the effects of this provision? One is simply horrified at the consequences of the law if this provision forms part of our law. The explanation which is added to this section is something of a far-reaching character, and which is opposed to all canons of sound common sense and morality. The Explanation says:

> 'For the purposes of this subsection the expressions "owner" and "charterer" include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft'.

What is the implication of this provision? Suppose for instance, the owner of a particular Air company employs an ordinary clerk to issue certain tickets to gentlemen who wish to travel abroad and that clerk, by negligence, does not check up properly the Income-tax certificate, then, undoubtedly, the owner is really brought to book and he is made to pay exactly the amount which the man who has evaded the Income-tax would be made to pay. Or again, take another ins-

tance. Supposing, for instance, the clerk enters into collusion with that individual who goes abroad. Then again, the owner is really brought to book. I ask this House whether it is really worth our while making the legal duty so strong or so rigorous as to put the owners and charterers in that position. From the viewpoint of investment, from the viewpoint of really undertaking great undertakings, I think we will be simply burdening many of these enterprises unduly and great hardships will be caused to these owners or charterers. I think that is a provision which will have to be modified in great detail particularly by the Select Committee when it considers this Bill in detail.

There is also another point in respect of this particular provision which I should like to bring to the notice of the House. There is this difficulty which has to be faced by those who are in charge of income-tax and other matters. Remember, that, after all, we are thinking of those who evade income-tax by fleeing from this country. After all, in the very nature of things, this would be of a temporary character. In order to safeguard yourself against some of these things which happen, I suggest that you should not try to load the Statute-Book with permanent provisions of this nature. It is a very serious interference with many aspects of our activities. Certainly, it is not just or proper that the charterers or owners should be loaded with such onerous duties.

Let me take another provision which has formed the subject of very great controversy in the Press and which I certainly think ought to be considered seriously by all those who have some regard for individual liberty and fair-play. I refer to the section which deals with the validity of certain notices and assessments, which reads thus:

> "For the removal of doubts it is hereby declared that the provisions of sub-sections (1), (2) and (3) of section 34 of the principal Act shall apply and shall be deemed always to have applied to any assessment or re-assessment for any year ending before the 1st day of April, 1948, and any notice issued in accordance with sub-section (1) or any assessment completed in pursuance of such notice within the time specified in sub-section (3), whether before or after the commencement of the Indian Income-tax (Amendment) Act, 1952, shall, notwithstanding any judgment or order of any court, Appellate Tribunal of Income-tax Authority to the contrary, be deemed to have been validly issued or completed, as the case may be, and no such notice, assessment or re-assessment shall be called in question on the ground merely that the provisions of section 34 did not apply or purport to apply in respect of an assessment or re-assessment for any year prior to the 1st day of April, 1948."

One wonders wheher it was ever necessary to have introduced this provision in this Income-tax (Amendment) Bill. The provision as it stands is a very serious encroachment on the principle of independence of the judiciary. Let us remember the history of this section. The Madras High Court and the Calcutta High Court, interpreting the previous provisions of the Income-tax Act came to the conclusion that they could not construe it retrospectively, that financial burdens should not be construed retrospectively and that the assessee should not be asked to pay. That case is pending before the Supreme Court. Certainly, the State could have afforded—and this is my humble judgment—to await the appeal being heard by the Supreme Court. It would have been very proper if it had been done. Once the Supreme Court had pronounced its judgment, the Government would have been in a better position to introduce any amendment which they thought proper. Lord Reading had remarked in one of the most celebrated cases which came up before him thus:

> "When there is any question as to the legality of a statute, the executive should wait until the highest court has finally spoken and accepting that judgment as correct, they should then put forward legislative proposals to meet the situation created by that judgment."

This is a splendid principle which ought to be adopted by our executive. If, for instance, the Government had wished this matter to be heard expeditiously, the Attorney-General of India could have moved the Supreme Court to fix an early date and I do not see any reason why the Supreme Court would not have complied with the request made by the Government. The whole case would have been reviewed and everything could have

[Dr. Krishnaswami]

been gone into. After all, nothing would have been lost and the heavens would not have fallen if we had awaited the judgment of the Supreme Court. That is my first submission.

There is another point, more serious, which I should like to bring to the notice of the hon. Finance Minister. Sometimes, during the course of the debates, hon Members have pointed out that there have been men who have secreted their income and have not done their duty by the State. I entirely agree that we should punish such men. But, what is the process that has to be adopted in order to bring these guilty men to book? You have, for instance, the Commission of Enquiry. Only if you have a suspicion that there are many people who are secreting their income, you can set in motion that process and find out how far they are secreting their income, and then bring them within the purview of section 34, assess them and make them do their duty by the State. But, this measure goes very far. It can be used very harshly against those, who, if I may say so, without any disrespect to my hon. friend the Finance Minister, are political opponents to any ruling party in power. Let me analyse the implications of this measure. For instance, through no fault of an assessee, through no negligence on the part of the assessee, he may not have paid income-tax in the past. The whole case is re-opened *de novo*, as it were by the Income-tax Commissioner or some other authority, and he is assessed immediately. We all know what happens in many of these cases. Many hardships are experienced by the assessees. I speak with some knowledge of the difficulties of the clients whose cases I have had to handle and I know that in 99 out of 100 cases, the Income-tax authorities never grant any stay and you have got to appeal to the court only after you have paid the income-tax fully. Some of the poorest men have been very hard hit because they have had to sell their properties and it is only later on that they can go before the appellate authority for justice being done. After the property has passed into the hands of third parties, I do not see how they can be restored to the position *status quo ante*?

There is another point also which we have to consider. Is it really in conformity with the fundamental principles of justice that an enactment should be retrospective in operation? Certainly, is it in conformity with fundamental principles of justice that we should have an enactment that is retrospective in character, particularly when it is a taxing statute? There is always a tendency in courts of law to so construe a statute that it is prospective in operation. Particularly, in the case of taxing statutes there is a bias in favour of seeing to it that it is not retrospective in character because it is not considered to be fair and proper to create new financial burdens where they did not exist at all. That is the position which I have to place before you.

And also taking into consideration the present situation in our country and the Constitution under which we are living, I ask this House, and I ask the Finance Minister whether it is not possible that this may not be abused, and abused very gravely. It is not, after all, the richer man that can come within the purview of this measure. The ordinary man also can come within the purview of this measure. We have had, for instance, a recent judgment of the Madras High Court which enunciated the fundamental principle that so far as taxation laws are concerned, they are of a dominant nature and they over-ride even Fundamental Rights. The case came up, and it may be of interest to hon. Members of this House to know, in connection with a writ filed by the People's Society of Madras regarding non-payment of fees in connection with the enrolment of an advocate. There, it was laid down by the court that so far as taxation laws could, they should be of a dominant character, because after all, if we want any Fundamental Rights, the Court of law aptly remarked, we must have a Society, and to have a society, we must have a State which must be supported by revenues and taxes. Now, in this particular matter, when so much right is given to the State, we have also necessarily to consider whether this taxation right ought not to be exercised in as circumspect a manner as possible. In this case, if it is retrospective in character, and if you are able to collect what are known as arrears for the past seven or eight years, you can ruin individuals. The Fundamental Rights which are given under article 19, *viz.*, the right to carry on trade or business can be reduced to a cypher as a result of the application of this retrospective measure. It would be a different matter if you are made to pay your income-tax out of your current revenues, because then, of course, your property would not be affected to that same ex-

tent, your trade and business would not be affected to that same extent. But so far as this particular measure is concerned, where it is very retrospective in character, I venture to submit to this House and to the Finance Minister and to others on the other side, that we are in a position to ruin a large number of people as a result of the application of this measure. May be, as a result of this measure being passed, we can swell the ranks of the assessees, but that is not the primary consideration, and that ought not to be the primary consideration which ought to dictate us in passing measures or in passing laws. I feel very strongly on the subject, because I know that in several of these cases, abuse of this power is likely to occur. The section as it is worded is very loose, and certainly gives scope, ample scope for re-opening many of these cases without any possible justification. I, therefore, think that some of these sections should be reviewed by the Select Committee, and if possible, deleted, because we would not in the least suffer as a result of such deletion. But the other measures that have been instituted, particularly the beneficial provisions relating to the earlier Bill are a welcome feature of the Income-tax (Amendment) Bill.

Pandit K. C. Sharma (Meerut Distt.—South): I welcome this measure, and while doing so, I entirely agree with the submission of my friend Mr. Saksena, that the authority which was envisaged to be given in the Bill introduced in 1951, *viz.*, to enter the premises in order to find out books of accounts was a necessary one. The principle underlying this is this : There is a misconception about the income of an individual. My respectful submission is that it should be properly understood that no man who earns income, creates any property by himself alone. He earns, or he creates property in co-operation with certain other people who work for him, whether they work for him in creating the property or they work for him in keeping the property safe in his hands. Therefore, so far as any person prevents the benefit from that property in whole or in part going to the State, he commits a very serious crime. Therefore, his position is the same as that of a thief who steals away the property and conceals it somewhere else. If the public authorities under the law have access to find out the whereabouts of the property concealed by the thief somewhere, the income-tax authorities should have the same right to enter premises to find out the details of income, its description and where the books are concealed, and if the person is an assessee or is likely to be an assessee, his books may be seized.

The second proposition is punishment for making false statements. It is also a very important thing. It is common knowledge that when justice is being done, if a man goes and makes a false statement before a court of law, he is punishable for making that false statement. In the same way, coming to the Income-tax authorities, if a person makes a false statement, supports a false claim, he should be liable to punishment. It is a very serious charge at the present time because most of our people are given to the habit of evading income-tax. Whatever the reason, I say that we owe it to the community, to the State, that better services, better administration should be afforded to the community, and in this way, anybody who has by evasion of taxation, deprived the State of its lawful income, stands in the way of better services to the society, and certainly commits a crime. It is something which is not quite consonant with his duty as a citizen, and as such, he should be punished.

With regard to section 46 A, I do not see eye to eye with my friend who says that the burden lies on the third party. It is a simple question of the law of agency, that if a man commits a crime of offence or tax evasion of a certain sort, all his agents would be liable for it. There is nothing strange in it. If it is necessary that a man who leaves the country should clear his income-tax account, then, anybody who is helping in the evasion of that income-tax is guilty of abetment and as such is liable to punishment. There is nothing unjust, there is nothing unfair or contrary to the conception of justice as it prevails in modern jurisprudence. It is a very simple affair. Whoever abets the commission of an offence, or whoever helps in the evasion of tax should be punished in the same way as any agent is liable for the commission of crime. A clerk or assistant is responsible because he is the agent of the assessee.

It is said that we should await the verdict of the Supreme Court before making the provision contained in the Bill. There is nothing in it against the law or jurisprudence. The final authority elected by the people is Parliament. The will of the people is conveyed on the Statute-Book through the verdict of Parliament. We are the final authority. Once we give a

[Pandit K. C. Sharma]

verdict, that is the law, because the people so desire it. That verdict of the people goes on the Statute-Book. Now, that statute comes for interpretation before the courts of law. During the interpretation, one of the courts of law creates certain doubts. Those doubts are contrary to the wishes of the people as represented by us. It is open to us to clarify the matter now, instead of waiting for the final verdict of the Supreme Court or the Highest Tribunal to say that whatever the subordinate court has said is not what we meant it to be. I do not understand where anything against jurisprudence or natural justice comes in. We are the final authorities to say what the will of the people is, which finds an expression in the Statute-Book. If we are to clarify our will, I do not see where anything against jurisprudence or anything against the conception of law or justice comes in.

Shri C. D. Deshmukh: I take it that by and large the proposed Bill commends itself to the House, because most of the provisions are, as I have said, beneficial provisions. There are two or three provisions which have been criticized. There was quite a long and involved argument in regard to the provision for charitable trusts. Our intention is quite clear and that is to ensure that the income of these trusts, if it is applied to the purposes of the trust, and in India, then it should be exempted. If the drafting is such that it brings into jeopardy income of this kind in regard to existing trusts, well, we shall have to take care of it in the Select Committee. It is my intention to suggest an amendment to make the intention quite clear, namely that:

(a) Where the income is not actually applied to charitable purposes, but is accumulated, then exemption will be admissible;

(b) That the Board will give directions in the case of the existing trusts, the income wherefrom is applied to charitable purposes outside, but this will not apply to any future trusts; and

(c) That the exemption is available generally if the charitable purposes are in India.

I feel sure, that we shall be able to take care of the points that have been urged by the hon. Member in regard to this matter.

The other clause which has given rise to certain misapprehensions is clause 23. By and large, the object is that every one should be required to produce a clearance or an exemption certificate. I do not know how else one can secure this. I suppose the ordinary procedure would be that in the case of a person who is domiciled in India, the Income-tax authority will act on information that may be communicated to them by the carriers of such information. But I said, we are doing nothing more than following a practice which is already in vogue in other countries. That is the principle we have adopted. We have special difficulties in regard to the transit of passengers to our neighbouring countries, and that is where a certain amount of care would have to be exercised. In regard to journeys to other countries, it may be possible to lay down a wide list of exceptions. But it is difficult to deal with these cases in general terms, so one has to deal with such cases as they arise in practice. However, I can assure hon. members that we shall take every care to see that no harassment is caused to people. We cannot make any discrimination amongst countries, and if there are any other ways of lightening the burden of this new provision, we shall certainly explore them.

12 NOON

The other question was about the agencies. I understand that this is the ordinary law of agency. If we were to give some relaxation here, it would be admitting many forms of evasion. However, the observations of the hon. Member who made that point are on record, and I have no doubt that the Select Committee will take it into consideration also.

Then, I beg to refer to Members' allowances or salaries, about which certain questions were asked. The position is as expounded by Shri Datar, that we are well seized of this situation, and I have no doubt that the Joint Committee will take this into consideration.

Shri Achuthan (Crangannur): May I know whether consolidated monthly allowances will come under this exemption?

Shri C. D. Deshmukh: I shall reiterate what I said earlier in my speech. The difficulty arose because the Delhi Members got exactly the same allowance as the other Members. Now if we were to call that a compensatory allowance, we wondered what the Delhi Members were intended to be compensated for.

Shri Achuthan: My point was whether consolidated monthly allowance will come under this exemption.

Shri C. D. Deshmukh: I will try to expound the thing. I am beginning at the very beginning. We said: "Here is a person from Madras who gets Rs. 40 *per diem*, and here is a Member from Delhi. All that the Delhi Member does is that he engages a conveyance and comes to the House." So, we were driven to the conclusion that at least some element out of this could not be a compensatory allowance. When we fix salaries and allowances or salaries exclusively or allowances, we shall take this into consideration, —this particular difficulty in regard to the Members from Delhi. If it is all in the form of salary then obviously it is subject to income-tax, and the fact that it is subject to income-tax will be taken into consideration, when the size of it is decided upon. In regard to allowances, it may be—and here I am forced to say something which really is a matter for the Joint Committee to consider—that some discrimination would have to be made in respect of Members from Delhi, in order to ensure that the allowance would really amount to a compensatory allowance.

Shri Radha Raman (Delhi City): Delhi Members are getting for two days less in a week than other Members.

Shri C. D. Deshmukh: All that the Delhi Members will have to do is to arrive from old Delhi to New Delhi, and I do not think that that is a great hardship. My point is that there should not be a compensation for nothing, which is very obvious.

I was asked certain questions by Shri Saksena. My answers is that, however important these provisions may be, we felt that any attempt to compress too much in the way of both Budget discussions and legislation in this session would lead to its undue prolongation. Therefore we said we would try and include in this Bill only what we regarded as non-controversial provisions. I think today's discussion has shown that, by and large, they are regarded as non-controversial. If we were to bring in these and a few others to which other Members attach importance, then I fear that we might have to sit well on into August. That was the only reason which led us to decide on a simpler Bill now and to the introduction of a more comprehensive Bill perhaps next session when, we hope, we shall be able to devote greater time to legislation. It does not imply that we are scared away from criticism from whichever quarter it might come, except that it is convenient to consider opinions expressed on a complicated measure of this kind from all sections of the community.

Then, lastly, there was this question of clause 34. An answer has been given by an hon. Member and that point comes up very frequently, as to the propriety of Parliament passing some legislation in order to make clear the meaning of a statute. I myself have failed to see what disrespect it could ever involve to the courts, and, as my own colleague said the other day, indeed if against the advice given by Lord Reading we took the earliest opportunity of expressing clearly the intention of the legislature, I think we might be entitled to appreciation on the part of the judiciary rather than otherwise. The position in regard to this section is that it was amended in 1938 and the time-limit for reopening assessments was increased to four years in ordinary cases and to eight years in fraud cases. Then it was again amended in 1948 when the conditions and the procedure necessary for reopening the assessments were changed. But the time limit of four years and eight years was retained, except that it was provided that if the proceedings were started in time they could be completed within a further period of one year from the date of the commencement of the proceedings. Now, this section had been held by the Privy Council only to be a procedural section and therefore the procedure laid down there is applied to the earlier years. Then there was no occasion to meddle with it. But very recently the Calcutta High Court has held that such increase of the time-limit for the completion of the assessment affects the substantive rights of an assessee, section 34 as amended in 1948 cannot be said to be merely procedure and cannot have retrospective effect unless such effect were specifically given. An appeal has been filed to the Supreme Court, but their decision may take a long time. Meanwhile, as I have said, there is a very large number of cases —50,000—and Rs. 16 crores of revenue involved. I think the hon. Member who was so eloquent on this issue said nothing was to be lost. Well, one gets into the habit of regarding crores as nothing these days, but, frankly, we are worried and therefore we thought that we might take this opportunity of clearing up the situation and making it beyond doubt that this applies to assessment years prior to the first day of April 1948.

[Shri C. D. Deshmukh]

I think, Sir, these were the main points raised in the course of this debate, and what I have said now does not obviously represent the final decision as the whole matter would have to be considered by the Select Committee.

Mr. Chairman: The question is:

"That the Bill further to amend the Indian Income-tax Act, 1922, be referred to a Select Committee consisting of Shri S. Sinha, Pandit Algu Rai Shastri, Prof. Ram Saran, Shri Ghamandi Lal Bansal, Shri C. R. Basappa, Shri Shantilal Girdharlal Parikh, Shri Hari Vinayak Pataskar, Shri Radheshyam Ramkumar Morarka, Shri P. Natesan, Pandit Chatur Narain Malviya, Shri Ahmed Mohiuddin, Pandit Thakur Das Bhargava, Shri A. K. Basu, Dr. Panjabrao S. Deshmukh, Col. B. H. Zaidi, Shri C. P. Matthen, Shri Purnendu Sekhar Naskar, Shri Sohan Lal Dhusiya, Shri P. N. Rajabhoj, Shri Kamal Kumar Basu, Shri N. C. Chatterjee, Shri K. A. Damodara Menon, Shri Tulsidas Kilachand, Shri S. V. Ramaswamy, Shri Mahavir Tyagi and the Mover, with instructions to report on or before the 21st July 1952."

The motion was adopted.

CODE OF CRIMINAL PROCEDURE (SECOND AMENDMENT) BILL

The Minister of Home Affairs and States (Dr. Katju): I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, be taken into consideration."

This is, in spite of a large number of amendments of which notice has been given, a very innocuous measure and the reason why the Bill has been introduced is set out succinctly in the very short Statement of Objects and Reasons. As the House is aware, under sections 128 to 132 of the Code of Criminal Procedure, it is open to the civil authorities, whenever they think necessary for the purpose of dispersing unlawful assemblies, which they cannot with the forces at their disposal, to call in the aid of military forces; and inasmuch as this Code was initially passed in the year 1852 or so and at that time the only military forces were the army, reference is made in the Code to the Commissioned and non-Commissioned officers and ranks of the army. They can be utilised subject to the order and general supervision of the magistrate. Now, the armed forces of the State include—everybody knows—the army, the navy and the air forces. We have got the stations scattered over the country where we get some personnel of the air force (*An Hon. Member*: For bombing) and then we have got our ports Bombay and Calcutta where some naval officers and ranks may be available. These are people who have got military training and they can be utilised. The object of the Bill is to enlarge the description of the people who can be requisitioned for giving military aid and instead of describing them as army and Commissioned officers and non-Commissioned officers of the army, we say they should be used as 'armed forces of the State'—armed forces maintained by the Union of India. And the armed forces would include these three different groups. The rest of the Code remains exactly as it has been during the last nearly 100 years.

Now, I should have thought, as I said, that this would not have aroused any comment at all. But I was astonished—I use the word deliberately—to hear that this wicked Government now wants to take authority for aerial bombing of the civilian population. I respectfully suggest that that is a suggestion which had never occurred to me at least, and I believe, never occurred to 90 per cent. of the Members of this House.

Shri Nambiar (Mayuram): Then why amendments?

Pandit A. R. Shastri (Azamgarh Distt.—East *cum* Ballia Distt.—West): 99 per cent.

Dr. Katju: The question was that for the purpose of dispersing the unlawful assemblies you require some authority. Ground soldiers may not be available, there may be naval detachments, there may be some people in the aerodrome or airfields, you get them and they might be employed by the magistrate for dispersing. That is all. And I say that there is not the remotest idea—no one ever thought of it—there is not the remotest possibility that any such wicked thing should be done which we condemn everywhere.

I have seen notices here of amendments given that the Bill should be circulated. I am myself anxious to obtain opinions. But circulation for what? You may say 'for public opinion'. But do you not want the unlawful assemblies to be dispersed or is it your suggestion that the aid which may be requisitioned by a magistrate should be limited to the soldiers of the army who