

## SALES-TAX LAWS VALIDATION BILL

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

“That the Bill to validate laws of States imposing, or authorising the imposition of, taxes on the sale or purchase of goods in the course of inter-State trade or commerce, be taken into consideration.”

This Bill deals with the validation of State laws imposing or authorising the imposition of taxes on the sale or purchase of goods in the course of inter-State trade and commerce.

Hon. Members are aware that it was held by the Supreme Court in the case of the Bengal Immunity Co. Ltd. vs. the State of Bihar and others on 6th September 1955 that until Parliament by law made in exercise of the powers vested in it by clause 2 of Article 286 provides otherwise, no State can impose or authorise the imposition of any tax on sales or purchases of goods when such sales or purchases take place in the course of inter-State trade or commerce. It has further been held that the majority decision in the case of the State of Bombay vs. the United Motors (India) Ltd. in so far as it decides to the contrary, cannot be accepted as well-founded on principle or authority.

Before the Constitution came into force, the liability for sales tax was determined on the basis of the definition of ‘sale’ as given in the Sale of Goods Act. A transaction was taxed by a State, if it was determined that the sale under the general law took place in that State. This caused innumerable difficulties to the trade. There were cases where one transaction was taxed by more than one State.

To avoid these difficulties, as you will recall, a provision was made under explanation to Article 286 (1) of the Constitution, and it was laid down that for the purpose of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State; notwithstanding that under the general law relating to the sale of goods, the property of the goods has by reason of such sale or purchase passed in that State, . . .

**Mr. Deputy-Speaker:** The other State ?

**Shri C. D. Deshmukh:** Yes, passed in the other State—the sale will be deemed to have taken place in the State where the goods were actually delivered for the purpose of consumption as a direct result of the sale.

From this, it will also be clear that it could not have been the intention of the Constitution to leave a complete lacuna in respect of sales-tax on inter-State transactions. If such a loophole had been left, it would have been possible for unscrupulous traders to show even intra-State transactions as inter-State transactions and thus evade the payment of sales-tax on such transactions.

In the case of the State of Bombay vs. United Motors (India) Ltd. and others, the Supreme Court decided on 30th March 1953 that all transactions where goods were brought within the State of delivery from outer-State-sellers, except those where the goods were intended for re-export out of the State, would be within the scope of the explanation, and liable to be taxed by the State where the delivery takes place.

With the exception of West Bengal who took a contrary view, the other States thereupon took steps to tax non-resident dealers in this class of transactions. This gave rise to many administrative and legal difficulties, and caused harassment to the trade, because a dealer having business connections with several States had to be acquainted with the sales-tax laws of all the several States for complying with the necessary legal requirements in connection with the registrations, the filing of returns, assessment etc.

I have circulated a statement which has been compiled on the basis of such information as was available with us about the system of sales-tax prevailing in various States, and it will show the differences in the pattern from State to State.

In view of this, there were several protests against the levy of sales-tax on non-resident dealers. Indeed, there has been quite a determined campaign by the traders in various States. Representations have also been received by the Central Government from various chambers of commerce and trade associations against the State levy.

So, in view of the ruling, and the difficulties of trade and industry, the Government of India devised an interim scheme

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in consultation with the various State Governments and we provided therein that the dealers of a particular State carrying on business in other States would not be called upon to produce accounts or to appear for assessment or appeal purposes in the taxing State, that is to say, where the goods were delivered, and that the officers of the taxing States would visit the central places of the States to which the dealers belonged. This gave some relief to the traders.

Now, the decision of the Supreme Court on 6th September 1955 in the case of the Bengal Immunity Co. Ltd., vs. the State of Bihar and others, to which I have referred earlier, has the effect of making it illegal for the State Governments to levy and collect sales-tax on inter-State transactions. As a result of this decision, doubts were also raised as to whether the taxes already levied and collected by States before 6th September 1955, that is to say, the date on which the decision was given by the Supreme Court, were legal. There was some difference of opinion on this point.

But some of the State Governments requested us to take steps to put the matter beyond all doubt by legislation validating the levies and collections already made by them, since otherwise their revenue and budgetary positions would be upset. Applications for refund and in some cases even suit notices for refund of taxes already collected had actually been received by some of these States, and there was the danger of the time-limit for some of these notices expiring, that is to say, there was the danger of suits being actually filed.

According to the information received from some 13 States—we have not received information from all the States—the amount of sales-tax collected on inter-State transactions comes to over Rs. 3 crores. The total tax collected in all the States may therefore amount to Rs. 4 or 5 crores, if we make a guess.

Had the States been called upon to refund all the sales tax collected so far on inter-State transactions, this would obviously have put a great strain on their resources and upset their plans for financing the various schemes of development which they have on hand. But that is not the only consideration. Even dealers having already collected the sales tax from their customers could have retained all this money in the event of a refund of these collections because there is no sure way by which the ultimate

payer of the tax could be traced over all these four years. Thus the refund would have benefited neither the State Governments nor the consumers but only the middlemen.

During the course of my discussions with the delegations from the various chambers of commerce in Kanpur, it was represented to me that in view of the second ruling, of 6th September 1955, parties who had purchased goods from industrialists and paid sales tax started deducting the said amounts out of the settled payments made by the dealers and the dealers then requested that the sales tax policy, particularly in respect of refund amounts, might be settled as quickly as possible. So in general, emphasis was laid, and rightly in my opinion, rather on an expeditious decision by Government than on the refund of the tax collected through some undesignated people. We were advised that it would be desirable to take action to regularise the collections already made before the normal period of suit notices already served for refund of sales tax expired, as there might be some legal complications if the suit notices were allowed to reach the stage of pending proceedings, and the position would be even more complicated if on these proceedings courts pronounced judgments and awarded decrees. It was therefore considered imperative to take action to regularise the collections of sales tax on inter-State transactions which had already been made. We were also advised that Parliament has plenary powers under Article 285(2) of the Constitution and entry 42 of the Union List to make legislation retrospectively. That is the advice given to us.

**Mr. Deputy-Speaker:** If under an article of the Constitution levying of a tax could be made only in a particular manner and it was contravened, is it open to Parliament, without amending the Constitution, to set it right?

**Shri C. D. Deshmukh:** That is the view Government hold.

**Mr. Deputy-Speaker:** It can be done?

**Shri C. D. Deshmukh:** Yes.

**Shri N. C. Chatterjee (Hooghly):** It cannot be done.

**Shri C. D. Deshmukh:** That is a matter to be argued in this House.

**Shri K. K. Basu (Diamond Harbour):** Some more money has to be spent.

**Shri C. D. Deshmukh:** I may point out that even in the judgement of the Supreme Court, there was a reference to the fact that the economy of the States might be upset by having to refund the taxes already collected, and the Supreme Court answered this very point by saying that in that event, the appeal must be made to Parliament which under article 286(2) of the Constitution has ample powers to make suitable legislation. Now, that may be an *obiter dictum*, because it did not come up for discussion, but it does indicate the way the Supreme Court was inclined to look at this matter.

So it was in these circumstances that Government decided that the revenues of the States should be safeguarded and any doubts in regard to the legality of taxes already levied and collected should be removed urgently. Accordingly, the President promulgated an Ordinance on the 30th January 1956 to validate past levies and collections during the period mentioned. It is to regularise the said Ordinance that this Bill has now been introduced, of which I move consideration.

**Mr. Deputy-Speaker:** Motion moved:

"That the Bill to validate laws of States imposing, or authorising the imposition of, taxes on the sale or purchase of goods in the course of inter-State trade or commerce, be taken into consideration."

There are no amendments tabled to this motion.

**Shri U. M. Trivedi (Chittor):** We all oppose it.

**Shri N. C. Chatterjee:** I am taking a fundamental point. I am submitting for your consideration and for the consideration of the House that this Bill itself is illegal and repugnant to the Constitution. I had the privilege of presenting the case of the Bengal Immunity Company Limited before the Supreme Court and I ought to tell you what was the position there. The Bengal Immunity Company does not claim any immunity from taxation because its name was 'Immunity'. But what happened was this. It was manufacturing drugs and certain other chemicals. It had its factory near Calcutta and its registered office in Calcutta. It had no godown, no office, no agent and no manager in the State of Bihar. I am reading from the Supreme Court judgement 3-11 Lok Shbha

printed in VI Sales Tax case, page 446, also reported in A.I.R. page 661, 1955:—

"The company is carrying on the business of manufacturing and selling sera and vaccines etc. Its registered office is in Calcutta (West Bengal). Its factory is in West Bengal. It has no agent, nor manager in Bihar; it had no any office in Bihar, nor godown in Bihar."

They received orders by post or otherwise from some people in Bihar and they sent the goods according to their instructions by rail. As you know, generally when you get the goods placed on rail, it means delivery; delivery to the carrier means delivery to the consumer or delivery at the other end. Now, the Bihar sales tax authorities took the view that the sales made by this company in Calcutta as a result of which the goods have gone to Bihar as a result of the sale, for purpose of consumption in that State, were liable to taxation under the Bihar Sales Tax Act. The assessing officer of Bihar issued notice to the company calling upon it to get itself registered as a dealer in that State and to submit returns, to deposit tax due in a treasury in Bihar, and threatened prosecution and other things. Now, what I am anxious to point out is this. It is not merely a technical or constitutional point for the sake of raising objection. It is a very vital matter. The present Chief Justice, Mr. Justice Das, has pointed out that it was a jungle law. It was a law which caused great hardship and embarrassment. Suppose there is a manufacturing company in Delhi manufacturing some kind of medicine and that medicine is sent to Travancore-Cochin. Suppose there are twelve orders from Travancore-Cochin. The Travancore-Cochin sales tax authority calls upon the Delhi Company to produce the account books there and to submit returns there, to get registered there and threatens prosecution if it does not get itself registered—in most of the sales tax laws, there is a provision that unless you get yourself registered, you are liable to prosecution if at all your goods are sold in that particular area.

**Mr. Deputy-Speaker:** The only point for consideration now is whether retrospective effect can be given to it.

**Shri N. C. Chatterjee:** I am pointing out that it is not so simple as the hon. Finance Minister has put it before the House. What the Supreme Court has decided is that under article 286 of the

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Constitution, there is a fetter, a constitutional bar. Clause (2) of article 286 says:—

“Except in so far as Parliament may by law otherwise provide, no law of a State shall impose or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce.”

We wanted to embody the very salutary principle of the American Constitution that so far as inter-State trade or commerce was concerned, it shall be free. We did not go to that extreme position that there shall be no taxation. But we say that India should be treated as one unit for the purpose of economic prosperity of India and economic development of India. There should be no regional taxation schemes so as to impose a burden on inter-State trade or commerce. Therefore, if there is any question of any burden or tax to be levied, Parliament must legislate. What the Supreme Court has said, construing this clause, is this.

The Supreme Court in the recent judgment has said: Except in so far as Parliament may by law provide otherwise, no State law can impose or authorise the imposition of any tax on sales or purchase when such sale or purchase takes place in the course of inter-State trade and commerce irrespective of whether such sales or purchases do or do not fall within the Explanation to clause (1) of article 286.

If you look at Explanation to article 286(1), it says:

“For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.”

Therefore, the Supreme Court has pointed out that it will be wrong to read Explanation to article 286(1) into 286 (2). You will see that the Explanation begins: For the purposes of sub-clause (a).

**Mr. Deputy-Speaker:** My first impression is this. I understand from this

that if the delivery takes place or if it was despatched under this Explanation, the Bengal Government has no right to tax the sale and it is only the Government of Bihar that is entitled to levy the tax.

**Shri N. C. Chatterjee:** The Supreme Court has held . . . .

**Mr. Deputy-Speaker:** As I read the section along with the Explanation, I come to the conclusion that if it is inside the State that the sale takes place, under the ordinary law it is complete in Bengal and it is only that Bengal can tax it but under the Explanation this shall be deemed to have been done in Bihar and the Government of Bihar alone can impose and levy it.

**Shri N. C. Chatterjee:** It does not necessarily follow. Their Lordships have said that it gives by legal fiction only an artificial status to the State for the purpose of saying “what is outside sale”. You will see that “outside” sale cannot be taxed. Therefore, only for that purpose it says so. But, that Explanation should not be read into sub-clause (2) of article 286.

May I read out to you, Sir, what the Supreme Court has said? I am reading the Bengal Immunity Company case judgment on page 446 of VI Sales Tax Cases.

“Whichever view is taken of the Explanation to Article 286(1) (a) of the Constitution, it should be limited to the purpose the Constitution-makers had in view in incorporating it in clause (1). The Explanation which creates a legal fiction is to be limited to the purpose for which it was created and it should not be extended beyond that legitimate field. The avowed purpose of the Explanation is to explain what an outside sale referred to in sub-clause (a) is and it does not confer or enlarge the legislative power of the States. The Explanation cannot be legitimately extended to clause (2), either as an exception or as a proviso thereto or read as curtailing or limiting the ambit of clause (2). The dominant, if not the sole, purpose of Article 286 is to place restrictions on the legislative powers of the States subject to certain conditions, in some cases. And, with that end in view, Article 286 imposes several bans on the taxing

power of the States in relation to sales or purchases viewed from different angles and according to the different aspects. In some cases, the ban is absolute—clause (1) (a) read with Explanation and clause (1) (b) and in some cases, it is conditional, e.g., clause (2). Again, in some cases, the bans may overlap but nevertheless they are distinct and independent of each other. The operative provisions of the several parts of article 286, namely clause (1) (a), (1) (b), clause (2) and clause (3) are intended to deal with different topics and one cannot be projected or read into another."

Sir, may I read out to you that portion which is the *ratio decidendi*?

"Therefore, except in so far as Parliament may by law provide otherwise, no State law can impose or authorise the imposition of any tax on sales or purchases when such sales or purchases take place in the course of inter-State trade or commerce and irrespective of whether such sales or purchases do or do not fall within the Explanation to article 286 (1) (a)."

Sir, I wish you had a copy of that judgment.

**Mr. Deputy-Speaker:** I have got a copy; but anyhow I prefer to hear the hon. Member.

**Shri N. C. Chatterjee:** They say that under the Constitution there is a complete bar on the State levying any tax on sales in the course of inter-State trade and commerce. That is a constitutional bar and fetter. Therefore, they acceded to the application for *Mandamus* filed by the Bengal Immunity Company and ordered that the Bihar Sales-tax authorities be restrained from calling upon them to get themselves registered or from imposing any tax or burden upon these inter-State sales or purchases.

That judgment is binding upon us and it is the law of the land. So long as that judgment is there, what is the effect? The effect is that all the sales-tax laws promulgated by the States in respect of tax on Inter-State trade are illegal.

**Mr. Deputy-Speaker:** I am trying to narrow down the point. I am not coming to any conclusion at all. We are not concerned with clause (1) except in so far as it affects inter-State trade. If Bihar

Government has passed any sales-tax law it ought not to be so so far as inter-State transactions are concerned, except in so far as Parliament may, by law, otherwise provide.

**Shri N. C. Chatterjee:** That has been considered by the Supreme Court of India as meaning that there is a fetter and unless that fetter is lifted no State Legislature in India can enact any State law imposing any burden on any sales or purchases during the course of inter-State trade and commerce.

**Mr. Deputy-Speaker:** The only point is this. Assume that before this inconvenience had occurred, the Parliament had passed a law empowering the State of Bihar to pass a law imposing sales-tax on inter-State trade.

**Shri N. C. Chatterjee:** The Supreme Court judgment is this. Unless and until that condition precedent is satisfied, unless and until the constitutional fetter putting a ban on the State's taxing power is removed, no State can legislate. That is what they have said.

**Shri C. D. Deshmukh:** The hon. Member is not answering your question.

**Mr. Deputy-Speaker:** I am coming to it. The point is: did it directly arise there as to whether. . . .

**Shri N. C. Chatterjee:** Let us proceed step by step. The Finance Minister's intervention is not necessary. I am dealing with the point. The position is this, Here is an unconstitutional law. By virtue of this judgment, all the laws passed by all the State Legislatures are illegal. You know that it means that they are nullities. An unconstitutional law is no law. That taxation is not taxation; that is "legalised freebootery" if anybody wants to levy or collect it. Therefore, that is all wrong.

What the Parliament is now doing is to try to legalise those illegalities. What I am saying is that it cannot do that. What Justice Das and the majority of the Judges of the Supreme Court said was that Parliament has got the power by virtue of article 286 (2) to remove ban so that States can tax under item 54 of List II of the Seventh Schedule. Let it pass any law it likes, but it cannot possibly enact this law under the guise of article 286 (2). The Supreme Court judgment says that under article 286 (2), Parliament has complete power to remove any fetter. Once that fetter is removed, Parliament cannot legislate but

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State legislature can. Therefore, ban on the State Legislatures' power is gone and they get legislative competence. Sales-tax is one of the items under List II . . . .

**Mr. Deputy-Speaker:** The hon. Member is an eminent jurist and lawyer and I am not able to comprehend as he is a little too swift for me. Let me analyse this. Is it not open to Parliament to make a retrospective law unlike, as the hon. Member knows, in the case of fundamental rights, if an offence is committed, no retrospective law can be framed to increase the punishment? Wherever the Constitution wants to prevent a retrospective operation being given, it has definitely stated so as in the case of commission of an offence, that is, if at the time of commission of the offence it is only punishable with fine retrospectively we cannot say that the punishment shall be imprisonment. In this case, that is, with respect to taxation law, it is not stated that you cannot make it retrospective. Let us assume that this Parliament is entitled to frame a law retrospectively and, therefore, under clause 2, it is stated here that this shall be deemed to have come into operation five years ago.

**Shri N. C. Chatterjee:** I am not putting it so high as that Parliament has no right to make *ex post facto* law which augments the penalty by making it retrospective. There is some constitutional force, no doubt. But what I am pointing out here is this. You are really trying to legalise certain illegal things and my submission is that Parliament cannot do this.

**Mr. Deputy-Speaker:** Parliament can pass legislation saying that under article 286 (2) it is open to the State Legislatures to pass a law to impose sales-tax. The State Legislature has to say that the law will have retrospective effect. One more link is necessary, it seems.

**Shri N. C. Chatterjee:** Kindly see 286. Under this, the Supreme Court says that article 286 (2), properly construed, imposes a fetter, and Parliament can remove that fetter if it likes, but Parliament cannot legislate under article 286 (2). The point is that Parliament can only remove the fetter on the State Legislature.

**Mr. Deputy-Speaker:** It is open to the Parliament to say that unrestrictedly the State Government can impose sales-tax by law or with certain restrictions Parliament can say that the law framed may

be such and such. Therefore, it is open to Parliament to say that the Bihar law might be deemed to have been passed seven years ago, and the Bihar law would now be extended.

**Shri N. C. Chatterjee:** What is the language of article 286 (2)? It simply says:

"Except in so far as Parliament may by law otherwise provide, no law of a State shall impose or authorise the imposition of a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce."

That only means that a State law shall authorise the imposition, not the Parliament.

**Mr. Deputy-Speaker:** Let us assume there is no law on sales-tax in Bihar, and they want to impose a tax. They want to pass a law for this purpose. What is the advice you will give to Bihar Government or Bihar Legislature in regard to the type of the law that they have to pass?

**Shri N. C. Chatterjee:** If any State Legislature wants to assume that power, then it must approach Parliament, and Parliament will simply say . . . .

**Mr. Deputy-Speaker:** This Parliament will enact a one-clause measure and authorise the Legislature of Bihar. Is that so?

**Shri N. C. Chatterjee:** Or any legislature.

**Mr. Deputy-Speaker:** You can pass one law for Bihar and a general law for the rest of the country. All that this House has to say is that in future the Bihar Legislature is hereby competent to pass legislation imposing sales-tax. Now this Bill can be split into two parts. The first part is that the Bihar Legislature is competent to pass that law. And the second part is that it shall have retrospective effect.

**Shri N. C. Chatterjee:** Would you kindly see what is being done by this measure? It is really nullifying the judgment of the Supreme Court.

**Mr. Deputy-Speaker:** It is competent for Parliament to nullify the judgment of the Supreme Court. The judgment does not say that it is illegal to give retrospective effect. We can make it legal.

**Shri N. C. Chatterjee:** That is the main purport of it. It says:

"Notwithstanding any judgment, decree or order of any court, no law of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between the 1st day of April, 1951, and the 6th day of September, 1955, shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of inter-State trade or commerce;"

What I am pointing out is that this is not the type of legislation which is contemplated by article 286 (2).

**Mr. Deputy-Speaker:** The hon. Member will suggest the wording then.

**Shri N. C. Chatterjee:** I am not on that point; I am not on the point of technicality. But I say that this is *ultra vires* of the Parliament, because Article 286 simply authorises the Parliament to remove the fetter. You can say that all State Legislatures or those Legislatures mentioned in schedule of the Bill shall be competent to impose sales-tax in the course of inter-State trade or commerce, but you cannot say under the guise of article 286 (2) that all State legislation which had been passed in defiance of article 286 (2) is valid. That is not proper; that is not the ambit of authority given to Parliament under article 286 (2).

**Mr. Deputy-Speaker:** May I ask the hon. Member whether, so far as the case in the Supreme Court was concerned, that was the subject-matter there?

**Shri N. C. Chatterjee:** Pointedly the question was whether the explanation in 286 (1) can be imported into 286 (2) so as to authorise the State to impose sales-tax on inter-State trade.

**Mr. Deputy-Speaker:** Until some law is made by Parliament, that State has no jurisdiction to impose sales-tax on inter-State trade. That is all the decision.

**Shri N. C. Chatterjee:** The decision as I read out to you is this:

"Except in so far as Parliament may by law provide otherwise, no State law can impose or authorise

the imposition of any tax on sales or purchases when such sales or purchases take place in the course of Inter-State trade or Commerce and irrespective of whether such sales or purchases do or do not fall within the Explanation to article 286 (1) (a)."

Therefore, power has been given to the State Legislature, but remember that it is a peculiar kind of a situation. Here Parliament has not got the power to do it. The State Legislature has got the power to do it, but it is subject to a fetter or a ban or a handicap. And Parliament can only remove that ban or handicap, and once that ban is removed, then in full force will spring the power of the State Legislature.

**Mr. Deputy-Speaker:** But it was an issue as to whether it ought to be retrospective.

**Shri N. C. Chatterjee:** I am not pointing out that this particular Bill or anything like this was in question. While considering articles 286 (1) and (2) they had to go into the respective jurisdiction or authority of the Parliament and the State legislatures.

**Mr. Deputy-Speaker:** All that the hon. Member says is that it ought not to have said that that law is valid. All that can be said is that the Bihar legislature shall be deemed to have always had the right to pass such laws imposing sales-tax, etc.

**Shri N. C. Chatterjee:** Even that is not permissible. The article says that you can remove a ban.

**Shri C. D. Deshmukh:** The word 'ban' is not mentioned in article 286.

**Mr. Deputy-Speaker:** If the Parliament can pass a law providing for the imposition or authorisation to impose sales-tax even on inter-State operations and trade, it can do so today and the Bihar legislature can pass legislation tomorrow. That is agreed. When it can pass today it can pass retrospectively also that the Bihar Government and the legislature must be deemed to have had the power to do that.

**Shri N. C. Chatterjee:** Is that this legislation?

**Mr. Deputy-Speaker:** No. I understand the hon. Member to say this. Bihar legislature shall be deemed to have always had the power to impose the tax

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as it likes on inter-State trade. If that is so, all that is needed is to modify the clause.

**Shri N. C. Chatterjee:** With great respect to you, Sir, it is not so. I have not made myself clear and will again attempt to make it clear. The construction of article 286 (2) puts an absolute restriction on the taxation power of the States where such sale or purchase took place in the course of inter-State trade or commerce. Unless and until that ban is lifted by Parliament, it cannot be done.

**The Minister of Legal Affairs (Shri Pataskar):** That is what is being done here.

**Shri N. C. Chatterjee:** I am glad the hon. Minister for Legal Affairs is here. I hope he has read the judgment.

**Shri Pataskar:** I have read it very carefully.

**Shri N. C. Chatterjee:** If he has read it very carefully he ought to realise the spirit of article 286 (2). What is the meaning or ambit of article 286 (2)? It is covered by the judgment of the Supreme Court. Unless and until that ban is lifted by Parliament, no State can possibly impose any taxation. They are not in a position to tax a sale or purchase. That is covered by the explanation and so the provisions were illegal. They are charging the people under certain sections in the Bihar Act. These sections were declared illegal. You must proceed on that foundation. All that the Parliament can do is to remove that ban so that the imposition of taxation may be authorised. But that is not what you are doing. You are saying that all the illegal taxes which had been levied as a result of the operation of the old law must be kept by the State and must not be refunded; you say: "all such taxes levied or collected . . . shall be deemed always to have been validly levied or collected in accordance with law." I do not know the figure. The hon. Finance Minister at one stage said that it would be about three crores; it may be more.

**Shri C. D. Deshmukh:** Three crores for thirteen States. Possibly it may be four or five crores for twenty-eight States.

**Shri N. C. Chatterjee:** Whatever it is, I submit that it will not be right to do so and I maintain that it would be arrogating power which this Parliament has not got and which is beyond the purview of article 286.

**Shri Pataskar:** May I intervene ?

**Shri U. M. Trivedi:** On a point of order. (*Interruptions.*)

**Mr. Deputy-Speaker:** The hon. Member will speak to me for the benefit of other hon. Members.

**Shri U. M. Trivedi:** The point is that this law is unconstitutional.

**Mr. Deputy-Speaker:** Is it a different point? If so, why not dispose of the first point?

**Shri U. M. Trivedi:** These two points can be disposed of by the Ministers together.

**Mr. Deputy-Speaker:** What is the point of order? How is it unconstitutional?

**Shri U. M. Trivedi:** We have to look into the provision of article 248.

**Mr. Deputy-Speaker:** The hon. Member is a lawyer. I am not asking him to support the point. First of all, the point of order must be stated. If I am not able to understand the point, I will ask him to state in one or two words what it is. I do not want a full explanation now.

**Shri U. M. Trivedi:** We have to say on what basis it is.

**Mr. Deputy-Speaker:** I do not want the basis. What is the point of order?

**Shri K. K. Basu:** It is a baseless point of order. (*Interruptions.*)

**Mr. Deputy-Speaker:** Order, order. We are spending time unnecessarily.

**Shri U. M. Trivedi:** This law which we are making today is unconstitutional, *ultra vires* of this House and beyond the competence of this Parliament. What is it that we are trying to do? By making this law, we accept the principle of *factum valet*. This House has got no power to impose tax so far as certain sales are concerned.

**Mr. Deputy-Speaker:** The hon. Member interprets this law to mean that by this law tax is imposed?

**Shri U. M. Trivedi:** Taxes had been imposed. Taxes which we cannot impose ourselves we say that we can consider them to be valid. You can validate a thing which might have been irregular but you cannot impose a tax directly or indirectly.

**Mr. Deputy-Speaker:** You authorise the other State legislature to impose.



**Shri U. M. Trivedi:** No authorisation. You levy it; that is what this law means. That which you cannot levy yourself, you are levying by virtue of this provision. Therefore, my submission is that you cannot make this law and have the taxes imposed retrospectively or prospectively. It is immaterial whether it is retrospectively or prospectively; that is immaterial. That which you are doing is the imposition of the taxes.

Then I will draw the attention of the House to article 248 of the Constitution which says:

"(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List."

Item 54 in the State List is: "Taxes on the sale or purchase of goods other than newspapers". That is to say, the taxes of the nature which we want to validate can only be done by the State. Therefore, validation of the taxes on sales cannot be done under the residuary powers vesting in this House under article 248. Under this article we have residuary powers to make any law but they can only be exercised if the State List is silent on that point. If the State List lays down that item then this residuary power cannot be exercised.

**Mr. Deputy-Speaker:** The hon. Member need not labour that point. What he means to say is that wherever it is specific the general provision cannot be invoked.

**Shri K. C. Sodhia (Sagar):** My submission is that unless we validate the laws themselves we cannot validate the arrears arising out of them.

**Shri U. M. Trivedi:** There is one thing more which I want to say.

**Mr. Deputy-Speaker:** Is it something new?

**Shri U. M. Trivedi:** All right, Sir, I will raise it again if necessary. If the House is in a hurry about it . . . .

**Mr. Deputy-Speaker:** There is no question of being in a hurry. I am not going to hear again and again arguments to supplement his previous arguments. He has been given enough time. Has he any other point?

**Shri U. M. Trivedi:** Yes, Sir, my other point is this. This is a sort of a Money Bill under article 199 of the Constitution.

**Mr. Deputy-Speaker:** The hon. Member says that it is a taxation measure and a Money Bill and without the sanction of the President this cannot be introduced. Very well, I have followed him.

**Shri U. M. Trivedi:** With very great respect I think, Sir, you have also jumped the stile before it is reached. This is a Money Bill of the nature mentioned 199 of the Constitution. This can only not in article 110 of the Constitution but be introduced in a State Legislature as provided for in article 199 and by no other method. Unless the President's Rule is established in all the States it cannot be done here. Then you can do it in the Parliament. If the President's rule is not there then article 199 is the only provision which will apply whether you take it prospectively or treat it retrospectively. Therefore, my submission is that this procedure has not been followed and this being against the provision of article 248 read with item 54 in the State List this House has no power, no competence to proceed with this legislation.

**Shri K. C. Sodhia:** Sir, I would request you to note my objection also. My objection is that unless we validate the laws themselves we cannot validate the arrears arising out of them.

**The Attorney-General (Shri M. C. Setalwad):** Sir, I understand a point of order has been raised and that it is based on the contention that the enactment of the proposed Bill would be outside the scope of the powers of Parliament. I respectfully disagree with that contention. Under the provisions of the Constitution the position is that sales-tax is a tax which can be levied by the States under the State List. But, a sales-tax cannot be levied on what are called inter-State transactions unless Parliament has by law enabled the States to levy such a tax. Article 286 (2) enacts:

"Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition etc."

That provision relates to sales-tax on inter-State transactions. Thus Parliament has power by law to provide that a State may levy a sales-tax on inter-State sales. That is exactly what Parliament proposes to do by the proposed Bill. Certain States levied a sales tax on inter-State sales. They could not do that in the absence of a parliamentary law. Now Parliament proposes to make a law which would put the States in a position as if Parliament

[Shri M. C. Setalvad]

had empowered them to levy a Sales-tax on inter-State sales. The Parliament is thus acting entirely within the scope of its power under article 286 (2). The matter is not *res integra* because in the Bengal Immunity Company's case Justice Das, now Chief Justice, observed that the opening words of sub-clause (2) clearly indicate that Parliament may lift the ban and that the lifting of the ban may be total or partial; that is to say, the Parliament may lift the ban wholly or unconditionally or it may lift it to such an extent as it may think fit to do and on such terms as it please. So, in my submission Parliament's power to make the proposed law is not a matter at all in doubt.

**Shri N. C. Chatterjee:** May I ask the Attorney-General one question? Does it not mean that the fetter must be removed first by the Parliament before the State can legislate? Is not that the judgment of Justice Das according to his contention and my contention?

**Shri M. C. Setalvad:** That question did not arise in the Bengal Immunity case. If the Parliament can do something prospectively, it can, according to the ordinary rule, do the same thing retrospectively unless there is something in the language of the article which prevents it from doing so. The language of the article is perfectly neutral. Therefore following the general rule the Parliament is competent to do retrospectively what it can do prospectively.

**Shri T. S. A. Chettiar (Tiruppur):** Do you think that clause (2) of article 286 allows the legislation to have retrospective effect?

**Shri M. C. Setalvad:** It does not prevent retrospective legislation. The general rule is that unless the power of legislation is conferred in language indicating that the legislation under it cannot be retrospective the power will authorize both prospective as well as retrospective legislation.

**Shri K. C. Sodhia:** May I just ask whether this legislation is of the kind contemplated in article 286 (2)?

**Mr. Deputy Speaker:** That is what the Attorney-General has pointed out.

**Pandit Thakur Das Bhargava (Gurgaon) rose—**

**Mr. Deputy-Speaker:** Is it necessary to hear anything more? Has he got anything new?

**Pandit Thakur Das Bhargava:** I cannot say whether it is new or not.

**Mr. Deputy-Speaker:** The hon. Member has been hearing it as much as I have done.

4 P.M.

**Pandit Thakur Das Bhargava:** I have been hearing—that is why I have risen to speak. I cannot say whether it is new or not. I would beg of you kindly to consider the effect of article 286. When article 286 was enacted by us there existed clause 16 in the Draft Constitution which said that all inter-Provincial trade shall be free, all intercourse by way of trade and commerce shall be free in the whole of India. Therefore, you have to consider this point from that background. Now, the States were debarred from exercising any jurisdiction in regard to the taxation in respect of inter-State sales and purchases, as also sales and purchases outside the State and in regard to sales and purchases which were in the nature of imports or exports, article 286 is there as a whole dealing in this matter. In regard to article 286 (a) and (b), there is an explanation. In so far as article 286 (2) is concerned, there is no explanation, which means that there is an absolute ban on the States enacting any law which imposes any kind of taxation on the inter-State trade or commerce. Now, what is being sought to be done by this law is not that for the future we are taking away the ban. There is not a word about it. We do not say anything about it. But what we say is, the taxes collected will not be refunded and will be regarded as collected.

There is another principle of law. What cannot be done directly cannot be done indirectly. When this Parliament is not able to impose a tax on such inter-State trade, etc., Parliament is also unable to legalise the imposition of such tax. What we cannot do directly cannot be done indirectly. We cannot impose it and we are not entitled to collect that tax. It comes to this: the tax collected by any State is in the nature of an anti-national measure. Then, what is the idea of one India? It means all Trade & Commerce will be free; that there will be no inter-State tax between one State and the other. That is to say, if it is not one India, Madras is not part of India, and if Madras can impose a tax in relation to the goods imported into Punjab, then Punjab can also impose a tax. It is *vice versa*. Therefore, to ensure the oneness of this country, it has been laid

down that no State will be able to impose a tax on the sale or purchase of any goods if such a sale or purchase takes place in the course of inter-State trade or commerce.

Parliament must first of all consider this aspect. It is not that Parliament can say today that the fetter was waived by them. I can, of course, understand, as has been pointed out, that if prospectively a law can be made, an effect could be given to it retrospectively also though morally it may be correct or not. We certainly passed a law a few days back in this Lok Sabha. It was the Bar Councils (Validation) Act. We did pass such a Bill. So my submission is, at the time when the sales-tax laws were passed by the State legislatures, Parliament did not exercise its mind at all. It never considered the question whether it is going to take away the fetter or not. Is it contended that when those Acts were enacted, though Parliament was silent then, Parliament can today exercise its power to remove such fetters? Even if it legally permissible, my submission is that it would be a violation of the essential nature of this law. If we say now that it must be deemed that Parliament could exercise that power then, my submission is, it is playing with the law. We should not validate anything which is absolutely illegal. This is not the first time or the first case of this kind. Many such things have come before us, where, the tax being illegal and money having been collected, the Government have come here for legalising it.

I can understand the objection of the hon. Finance Minister when he says that it is difficult to refund the money. But, at the same time, even if it were possible to say that powers can be taken retrospectively, my submission is that in a law of this kind, the interpretation should be not in favour of legalising it, but should be just opposite of that. We are doing something which is absolutely illegal. Money was taken and now we are seeking to legalise it. Therefore, on both these points—on the point that the interpretation should not be the one which has just been stated before us and also on the merits—my humble submission is that we should not be a party to legalising a thing which is absolutely illegal, on merits as well as in law.

**Mr. Deputy-Speaker:** An objection was raised by the hon. Shri N. C. Chatterjee that under article 286 (2) of the Constitution, this Parliament had no power to pass legislation validating the laws framed by any other State legislature imposing or levying taxes on sales

or purchases which are of an inter-State nature. The decision of the Supreme Court reported in AIR 1955 page 661 relating to the Bengal Immunity Company has also been cited as an authority for this proposition. It is not denied that Parliament can pass a law authorising a State or States to levy taxes on sales which are of an inter-State nature. Thereafter, if a State passes a law and levies a tax, the levy of that tax is quite legal. But in the Bengal Immunity Company's case, what happened was that there was no law passed by Parliament and without any such law, a unilateral law, as it were, was passed by the Bihar legislature imposing a tax, and it collected a tax from the Bengal Immunity Company on articles of drugs which were exported from Bengal to Bihar, while in Bihar they had not even an office. But, under the explanation to article 286 (1) it is stated that in deciding as to which of those places the transaction regarding an inter-State trade ought to be reckoned for a tax, the other end must be taken into account, that is, at the other end, where the delivery is made, the sale or purchase must be taken to have been completed or done. The explanation is clear. Under these circumstances, the Bihar Legislation could not have been enacted antecedent to the Parliament's legislation which could authorise the Bihar Government—by law passed by Parliament—to levy sales-tax even on inter-State sales or purchases. But without waiting for any such Act of Parliament being in force, the Bihar legislature passed a law and levied taxes upon a transaction which took place, not in that State purely, but could only be deemed to have taken place in that State. Under article 286 (1) the property originated from Bengal. This Bill seeks to validate that law and incidentally to validate the levy of the tax under that law. It is open to this Parliament to pass this law today and if the Bihar legislature could pass this law tomorrow authorising its Government to impose or levy a tax, it is not contended that that levy would be illegal. Though it is contended that it is not open to this House to pass this law retrospectively, I do not agree with it. It has been rightly pointed out by the Attorney-General that unless there is a prohibition, this Parliament can always pass laws and give effect to them retrospectively.

I would enforce this argument by a reference to article 20 of the Constitution which says:

“No person shall be convicted of any offence except for violation of

[Mr. Deputy-Speaker]

a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than which might have been inflicted under the law in force at the time of the commission of the offence."

Therefore, retrospectively no law can be passed by this Parliament for that offence. Though at the time the offence was committed, a particular punishment was provided, he could not be convicted of a more serious offence or a different offence and be amenable to a larger punishment. Similar provision is not attached here. Bar is not imposed upon the exercise of the power of the Parliament under article 286 (2) of the Constitution. If today the Parliament can authorise any State or all the States to impose sales-tax on inter-State transactions, it can do so with retrospective effect also. Therefore, there is nothing improper in this Act requiring or authorising the Bihar Legislature to pass a legislation even in advance, *i.e.* with retrospective effect. Exception is taken possibly to the language. The language, as I interpret it, means that this House can pass a law removing the ban or authorising that State Legislature to impose taxes, with retrospective effect. The objection that has been raised directly by Mr. Trivedi and to some extent by Mr. Sodhia regarding the interpretation of this Bill is not correct. I will read clause 2:

"Notwithstanding any judgment, decree or order of any court, no law of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between the 1st day of April, 1951 and the 6th day of September, 1955, shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of inter-State trade or commerce;"

This exactly corresponds to the provision under article 286 (2). If we have to pass a law now authorising the States to impose this tax, I ask Mr. Chatterjee, what language would he advise to be incorporated in this Bill. Either it must say, "States can pass legislation imposing taxes" or it must be in the words which have been used here. Therefore, the same language can be used in the

Bill authorising a State or States to impose and levy taxes. As I have already pointed out, there is no objection to giving it retrospective effect. This Bill can stand and there cannot be any objection to this. I will now read the latter portion of clause 2:

"all such taxes levied or collected or purporting to have been levied or collected during the aforesaid period shall be deemed always to have been validly levied or collected in accordance with law."

This only follows the previous one. It ought not to mean that this House is imposing the taxes or levying the taxes. This is retrospectively giving authority to the Bihar Legislature and the consequence is that these amounts have been duly levied. Therefore, this is not a Money Bill imposing or levying taxes for which President's sanction is required. Mr. Trivedi pointed out article 199 of the Constitution and said that if it is a Money Bill, it is only the Bihar Legislature that can pass it and we have no right to validate it. Notwithstanding the passing of this general law removing the ban on the levy and giving retrospective sanction, what has been levied has to come to the legislature and should be presented to the Governor. But, in view of my interpretation of the wording of this clause, it does not actually levy or impose tax, but only authorises the law to be passed retrospectively, and whatever has been done under that law is only validated by an Act of Parliament.

An objection was raised by Pandit Thakur Das Bhargava that originally it was intended by clause 16 of the draft Bill that so far as inter-State sales or purchases were concerned, there ought to be free inter-State trade. But that was not accepted by the Constituent Assembly. It is a very wholesome principle that Parliament should pass the law to permit it. Authority is not given to the State Legislatures. It is a compromise between the one and the other. In proper cases, Parliament can do it, and this is a proper case. According to the Judgment that has been read out, it is clear that the Parliament can authorise such a law absolutely or with such conditions as it deems necessary, including conditions specifying a particular period or periods. The Bill satisfies Pandit Thakur Das Bhargava's objections; it is never intended that as a matter of policy there ought to be imposition of tax on inter-State trade. If that is why it is restricted

to a particular period, it is also a matter not of legal objection to proceed with this Bill. What Pandit Bhargava says in substance is not right, namely, that we are authorising an illegal levy. Even now, it is not made leviable for all future. There is consciousness behind this and the Government in a way accepts that there ought to be free inter-State trade. Therefore, power is not given under this Bill authorising the Bihar or any other State Legislature to do it immediately. Hon. Members may take this into account in finally accepting or rejecting this Bill, but it does not go to the root of the matter. The Bill is not unconstitutional; it is not *ultra vires*. The discussion on the Bill can go on.

I want to make one announcement. The time allotted for this Bill is 4 hours.

**Shri C. D. Pande :** (Nani Tal Distt. cum Almora Distt.—South-West cum Bareilly Distt.—North): One hour has been taken by the point of order; therefore, the time allotted should be extended to 5 hours.

**Mr. Deputy-Speaker:** I have no objection to extending the time. I want to know how many hon. Members would like to participate in the discussion. I see 12 hon. Members standing; I will put it as 13 by way of abundant caution and give 15 minutes to each hon. Member.

**Shri K. K. Basu:** So far as we are concerned, we fully agree that it is very difficult at this stage to refund the taxes that have been collected, in view of the judgment of the Supreme Court invalidating the legislation. We also feel that a large number of consumers who might have ultimately to bear this burden of payment of sales-tax will not get the benefit. Only some middlemen will get the advantage. Therefore, we feel that this question of refund is a rather ticklish problem, because the persons who had actually to bear this burden of tax payment may not be benefited by it. Therefore, there is no point in trying to champion their cause and see that the taxes are refunded.

[PANDIT THAKUR DAS BHARGAVA in the Chair]

Of course, after the arguments that have been advanced and after the decision that has been given by the Deputy-Speaker, it is very difficult to argue about this particular Bill being constitutional;

but, I am still doubtful as to what would be the position if we pass this Bill. This Bill says that we are only validating the collection of a tax for a specific period, 1st April, 1951 to 6th September, 1955, when the judgment was delivered. My only doubt is this. So far as the laws in the different States regarding the collection and imposition of sales-tax are concerned, they remain as they were before. If the laws remain as they are and if they want to collect the tax, that is not barred by this particular amending Bill. But if they do not want to collect those taxes, and if this Bill is passed, it will look rather anomalous. It might be construed that the real intention and the purpose of this Bill is not exactly in consonance with the provisions of article 286 (2) to which you have made a reference already.

Therefore, I feel that we should not, in a hurry, pass a legislation which may ultimately be beneficial personally to my hon. friend Shri N. C. Chatterjee or to the Attorney General, which might again come back to this House after another judgment by the Supreme Court. It should not become a mutual admiration society as between these two people. Whenever we pass a retrospective legislation, as you yourself argued, it should be done with caution and proper consideration. We, for ourselves, do not argue on the theoretical proposition that if a particular law is invalidated by the Supreme Court, it should not be validated by a subsequent legislation of Parliament. We feel that Parliament is sovereign and the entire will of the community expressed in the Parliament should be given effect to. If Parliament, in its wisdom, thinks that a particular legislation should be validated, with retrospective effect, it can do so. But, we should not do it in such a way that it may be construed otherwise. We should not circumvent any healthy provisions of the Constitution which the Constitution makers have deliberately accepted. I am still worried in spite of this Bill validating a certain illegal law, if I may be permitted to use that expression, whether it will really serve the purpose for which this Bill has been put forward. I would urge upon the Government—the seniormost law officer of the Government, the Law Minister is here—to consider this question very carefully. We should not be faced with another judgment invalidating this Bill after it is passed into law. I would ask him to consider—if necessary, even at this stage, we can put off discussion and

[Shri K. K. Basu]

bring an amendment—the exact language in which this clause should be worded. We should make it in consonance with the provisions of sub-clause (2) of article 286 of the Constitution, which empowers Parliament to authorise the various States to levy sales-tax on inter-State transactions: I am still doubtful whether, the clause as it is worded here, in spite of the ruling of the Deputy-Speaker, will serve any purpose, and is in consonance with the provisions of the Constitution and whether it may not be construed that we are indirectly by the backdoor trying to validate something which is invalid and that Parliament has no power directly.

**Shri M. S. Gurupadaswamy (Mysore):** I should like to say a few words on a point of propriety. The point of order raised by Shri N. C. Chatterjee has been disposed of. I am not very much concerned with the legal aspect of the whole matter. I am only concerned whether the validation of an illegal collection is proper or not. The Finance Minister said that it would be very difficult to refund all this amount to the persons because it might go to the middlemen and not to the consumers, and that the country would not derive any benefit. Though from that point of view, it may appear justifiable to bag all the money, we must remember that we are also concerned with the propriety of the action. It may be the action of the Central Government or the action of a State Government. This collection went on for five years, from 1951 to 1956. Suppose we accept the argument that we can validate illegal collections, indirectly it means that we can collect money retrospectively. On that basis, one might argue that we can authorise the collection of money, not since 5 years, but even extending back to 50 years. There is nothing wrong in that. If the argument in this particular case is proper, I think we can as well say that all un-taxed income since 50 years should be taxed, and that would be perfectly legal. But I would beg of the Members to consider whether it would be moral. It would seem to me that, for the faults committed by the various State Governments, we, would take upon ourselves to bear all their sins and perform a sort of penance. That is very unfortunate. The various States ought to know the legal position in respect of matters on which they legislate. They should take proper care especially in regard to taxation measures. Taxation, as you know, Sir, touches the very vitals of

the community. The State Governments ought to observe abundant caution before they resort to taxation. I am not here justifying any vested interests. If you want to collect a tax, let it be collected. If you want money for the Five Year Plan or for any development plan, let there be collection. But, let the community be very clear about their position. Let them feel that they are giving money without any doubt, without any misgiving. Let them feel that the money that is collected is perfectly legal. Today, by validating the State Act, we are making a law which is improper, legal. I would say, even after legalising the whole collection, it would still be improper. This is similar to the position of a man who takes away some money from the other in an improper way and later on says that the money that he has taken away should be treated as a legal collection. I think the same principle which governs the relationship between individuals should govern also the State. I think that the measure is improper. It may be rendered legal, but nevertheless it is improper.

Moreover, it takes away the sanctity of the judiciary, sanctity of the judgment delivered by the courts, especially, the Supreme Court. When a judgment is delivered by the highest court in the land, that judgment should be considered as very sacred and it should be followed. It should be implemented: It should be observed. We should not overcome the effect of the judgment by an Act. Suppose you want to set right a legal lacuna in the Act, you can do it on another occasion without circumventing the decision of the court in the particular case. So, I consider that by passing this Bill we will be endangering the sanctity of the judgment of the Supreme Court.

You know how much importance we attach to the judiciary, and if you go on narrowing the jurisdiction of the Supreme Court or defeating the purpose of the judiciary, I think we are not doing any proper act. Though the arguments advanced by the Finance Minister may be very interesting, I feel that the judgment of the Supreme Court should have been considered in a serious spirit and should have been observed. So, from this point of view I considered that the Bill is very unfortunate and should not have been brought before the House.

**Shri Vallatharas (Pudukkottai):** I agree with the decision given by the hon. Deputy-Speaker that this Parliament is totally competent to discuss this Bill and

that there is no legal bar to its discussion. We are not a mechanical body as a court of law to say that on the interpretation of this section, this sort of result must follow. We are endowed with a greater sense of responsibility and mon sense by which Parliament will have to restore and maintain public confidence in the administration of this country and also see that the public co-operates with the administration in order to consolidate the power of national strength in all its resources.

I am not going to deal with the legal aspect based upon interpretation of article 286 (2). What was our intention in passing article 286 (2) and articles 301 to 307? What is the principle behind these? I solicit reference to article 13 which reads:

"All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

Following this, the discussion on the draft article 264A on 16-10-49 in the Constituent Assembly deserves particular consideration. There, hon. Dr. Ambedkar very succinctly and clearly defined the position.

It is not a question of revalidating the abrogated laws or securing to the Government about Rs. 4 crores which is, after all, nothing compared to the vast resources of this country. It is not a question of a few persons foregoing what they are entitled to draw back. On the basis of this Rs. 4 crores being distributed between the 28 provinces if anybody conceives that the foundation of the State Governments or the Central Government is going to be shaken, I should characterise it as simply whimsical. Four crores is nothing.

The real policy which was adopted at the time of the consideration of the amendment to the proposed article 264A was this. Trade and commerce in this country was much affected prejudicially, especially inter-State trade and commerce. That was to point in question when the draft article was considered. I simply read the following few lines:

"Some of the sales taxes which have been levied by the provinces do not quite conform to the provisions contained in article 264A.

They probably go beyond the provisions. So it is felt that when the rule of law embodied in the Constitution comes into force, all laws which are inconsistent with the provisions of this Constitution shall stand abrogated. On the date of the inauguration of the Constitution, this might create a certain amount of financial difficulty or embarrassment to the different provinces which have got such taxes and on the proceeds of which their finances to a large extent are based. So, it is proposed in an explanation to the general provision, that notwithstanding the inconsistency of any sales tax, that sales tax will continue to be levied till 31-3-51, and after that it will not be levied".

There, the policy envisaged is this. In order to preserve the growing trade and commerce, in the interests of the nation and of allowing freedom for commerce and industry, the Constituent Assembly thought it fit, after great deliberation, that the prevailing system of sales taxes was very bad, and the laws that were in force in the States at the time of the consideration of the draft Constitution were inconsistent with the provisions which ought to be embodied in the Constitution. On a matter of policy it was held that the levy of this tax was bad and the laws were abrogated. I now put the question: will it be a policy moral and acceptable and also in the interests of the nation to say that somehow or other the laws that were deliberately abrogated on certain principles should be brought back and revalidated by a mere provision, a suicidal provision? Did the Constituent Assembly mean that even though they abrogated these laws on certain principles which they enunciated (laws which were proving detrimental to the nation), they intended to give power to the Parliament to restore these laws and to neglect the superiority or prerogative of the Constitution? By their constitutional prerogative they abrogated the laws on certain principles and they allowed them to exist only up to 31-3-1951. After that the laws had to go off. That was the constitutional provision, simply providing to extend these laws by a year. The extension of the abrogated laws was made by a provision of the Constitution. The question arises whether article 286 (2) was contemplated by the Constituent Assembly to provide residuary powers to Parliament to pass laws which would abrogate the constitutional prerogative of the

[Shri Vallatharas]  
 Constituent Assembly and the Constitution ?

Whatever that may be, I highly consider that this Bill is shockingly unmoral and anti-social. If we pass this legislation then certainly the confidence of the entire nation in the administration will be fundamentally shaken. Nothing is safe in this world, in India. Any Government can come and say after 25 years: "We validate the law which was abrogated by this Parliament or any other institution and you will be subjected to so much of retrospective punishment"—of course if it was a criminal punishment; but here it is a civil punishment. What is punishment? Punishment never envisages exclusively that it is criminal. When a principle is applied and if there is a lacuna which can be reasonably held to be a lacuna, certainly attention must be diverted to that. On that basis, it is quite essential that we will have to consider the policy underlying this. What is the policy? Of course, courts of law are debarred from entering into questions of policy. They cannot determine questions of policy. It is we, the Parliament, who are entitled to determine policy under Part IV of the Constitution.

The sales tax has been a subject matter of great agitation throughout the country. I may draw an illustration. In the year 1937 or 1939 when this sales-tax was introduced, it was an ordinary insignificant source of revenue, but in 1947 it rose to 500 per cent, and at present it is 600 per cent. It is now the mainstay of State revenues. The States by the Constitution are not given great powers to impose taxes. Land taxes etc., are given to them, but they are not adequate sources of revenue for the States in view of the fact that very major problems have to be faced by them and have to be dealt with by them under the plans we have got on hand. Quite true. And the Central Government is often rushing with aids and grants to them. And it has become a frequent occurrence in the Public Accounts Committee to find that vast amounts advanced as grants and aid, as auxiliary means or loans to the states are not properly accounted for. Even that we have tolerated, because in the existing condition we do not attribute any *mala fides* to the administration of the States, but we feel they are conducting the business. It will be within our competence and proper also on our part to grant more powers of taxation to the States rather than appropriate all the taxes for the Centre.

During these twenty years or so, there has been a clamour all over the country, and especially in Saurashtra that this form of taxation is abominable and that a proper and legitimate tax system must be introduced. But that position has not been considered so far effectively.

I remember that in about 1952 or so, there was a conference of the Finance Ministers in this country. What happened to their decisions? There was the man in black glasses, Dr. Rajagopalachari, who spoilt the entire scheme at that time. That was the complaint made by some of the officers of the Central Government, and it was said that the proposal that was sought to be implemented could not be carried forward, because some of the objections raised by the Chief Minister of Madras were approved by the other Finance Ministers who happened to be in that conference. Then, there was an eight-man committee appointed. What has happened to that?

What have the Government been doing all these six years? Have they been sleeping? Have they been shutting their eyes and allowing the States to go on looting the traders' money on the basis of abrogated laws? To me, it is not a question of payment of money only; it is not a question of Rs. 3 or 4 crores only: To me the question is this:—What were the Central Government doing all these years? Did they keep a watchful eye on the activities of the State Governments? Why should they come now and say that because it will affect the foundation of the financial structure of the States and will stand in the way of implementing the various plans that have been undertaken, revalidation of these abrogated laws must be made now?

I am constrained to say that there has been no proper liaison between the Central Government and the State Governments in this matter. I would suggest that all the activities carried on by the States should be watched by the Central Government, and whenever there is a misuse or abuse of the legislative processes by them, certainly they must be set right. In that respect, I would say that the Central Government have totally failed in their duty. That is why they have come forward with this bill after six years.

And what is the urgency here? It was on 6th September 1955 that the judgment of the Supreme Court was delivered. After some three or four



months, some people had given notices. And there might be so many cases like that. I am glad that the Finance Minister was kind enough to say that the amount involved in respect of all the States would be of the order of Rs. 3 to 4 crores. After all, each State will get only a moiety of the amount, that is, a few lakhs of rupees. And is it contended that on a moiety of these small amounts will depend the foundation of the financial structure of the State?

I submit that the issue of the ordinance was not at all proper. There was no sufficient ground for the issue of the ordinance at all. The question whether such an ordinance should have been issued to validate abrogated laws without any necessity for the same, is however, something which must be reserved for further consideration.

If really the Central Government feel that the States have got to be helped they can dole out a sum of Rs. 4 or 8 crores from out of their revenues or from out of their receipts from death duties, income-tax collections and so on. But this is not the way in which we should retrace our steps over a period of six years and try to validate something that was considered as a highly anti-social and anti-national act committed by the different State Governments. Surely, we are not going to encourage the confidence of the people in the administration in that way.

The whole sales-tax system needs to be revised. I would like on this occasion to draw the attention of the House to another important aspect, namely, that it is because of the way in which sales-tax has been administered that there has been so much of agitation in different States. It is not the quantum of sales-tax that is levied that has been responsible for this agitation. You may levy two annas a rupee or half an anna a rupee; that is quite immaterial. But it is because of the way in which the local officers have gone about that there has been this agitation; the local officers employed for the collection of sales-tax are not to be compared even with the dacoits of Rajasthan in northern India.

**Mr. Chairman :** All this is not relevant. We are only concerned what is to be done with the money that has been collected already. We are not to go into the general question of sales-tax administration and so on.

**Shri Vallatharas :** I was only pointing out that it was against the mode of collection that there was a lot of agitation. And six years have passed so far without any consideration of this matter.

It has been stated in the Statement of Objects and Reasons that in the light of the observations of the Taxation Enquiry Commission, Government are intending to bring forward a suitable amendment to article 286 of the Constitution. If Government think that Parliament has power to legislate under article 286 (2), why should they bring forward an amendment at all to clause (2) of article 286? It sounds rather inconsistent.

Whatever that may be, I would submit to this House that it is our business to see whether it will be morally and socially proper, and whether we will be ensuring the confidence of the people in the administration of the country, if we are going to reopen such abrogated things after such a long period.

**Shri V. B. Gandhi (Bombay City—North):** I thank you for this opportunity. So far, most of the debate on this Bill has been concerned with the legality or otherwise of this measure. For almost one full hour the legal luminaries both from among the Members as well as from the Government side had a field day. It was a battle of giants. But in this battle, the poor States and the poor consumers for whom this measure is designed have been forgotten. It is therefore the duty of some of us, laymen, to bring this debate down to the firm earth and give a little thought and spare a little attention to those for whom this Bill is intended.

The Finance Minister, while introducing the Bill, has told us how the States are in difficulties and how almost Rs. 5 crores are involved by way of taxes levied and collected by the States. When we are thinking of Rs. 5 crores being involved, we have also to think of the millions of consumers who are the people who have paid these Rs. 5 crores.

The occasion for this Bill is, of course, the recent decision of the Supreme Court given on 6th September 1955. And this Bill is intended to replace the Sales-Tax Laws Validation Ordinance of 1955.

If we understand all this, we cannot do better than give our support to this measure. But after our having done that, the problem of sales-tax still remains. That problem is not solved at all. All of us, although we are not all dealers, are consumers, and therefore we know

[Shri V. B. Gandhi]

what the problem of sales-tax is. We know of the evasion, we know of the harassment, and we know also of the injustice to which all this leads; and the problem continues. That problem is acquiring a greater urgency now.

We are promised by Government in the Statement of Objects and Reasons that some other measure is soon likely to follow, and that suitable amendments to article 286 of the Constitution in the light of the recommendations of the Taxation Enquiry Commission are under the consideration of Government. So far so good, but neither in the Statement of Objects and Reasons nor in the speech of the Finance Minister has any indication been given to us as to the nature of this new measure, and the shape of this new measure that is promised. Of course, we can make a guess inasmuch as the new measure is going to be an amendment of article 286 in the light of the recommendations of the Taxation Enquiry Commission.

Now, the recommendations of the Taxation Enquiry Commission on this subject are rather strictly limited in their scope.

They are to the effect that (1) the Union Government will be concerned with the levy of taxation on goods in the course of inter-State trade and commerce and (2) that some important kinds of goods, which are of importance in inter-State trade and commerce will be included as exemptions from the authority of the States sales-tax laws. Of course, the Taxation Enquiry Commission has mentioned just about six of such important kinds of goods. Now, if the new measure that is promised is going to be limited to just these two recommendations, I am afraid, it is going to leave the very vexed problem of sales tax unsolved. We would have liked a more fundamental approach. Some of us were expecting that the Taxation Enquiry Commission would give some such fundamental approach to this problem of sales-tax. It has not done so. It has probably just proceeded on the assumption that since sales-taxes form such a very substantial proportion of the revenues of the States, they should be left untouched, with perhaps a little adjustment, a little tinkering, a little improvement here and there. The Taxation Enquiry Commission was probably appalled by the prospect of having to suggest alternative sources of revenue to the States if it was to make any fundamental approach to this problem.

One of the serious objections to sales-tax, although I would just say here in passing that sales-tax is a bad tax and it is a tax that violates almost all canons of taxation, but leaving that aside, if sales-tax has to remain, one of the serious objections to it is that it sets up barriers to trade and commerce within the country. Clearly the aim of all fiscal policy should be the removal of barriers to trade and commerce. Just think of the sales-taxes as they exist today. Look at the utter lack of uniformity. There is this lack of uniformity in respect of principles, the basis of such taxation, the mode by which taxes are collected and in respect of the rates at which these taxes are levied. This has all led—as the experience of all of us coming from every State in the Union shows—to a jungle warfare among the States. Certainly, it is not a very edifying sight, and we also see how instincts which are almost jungle instincts of grab and greed have come to the uppermost. Just look at the very valuable information supplied by the Ministry. We find that of the six important commodities mentioned by the Taxation Enquiry Commission, which according to it deserve to be exempted from inter-State sales-taxes, there is not one State which has exempted all of these commodities, but there are some States which have taxes levied on all of them, States like Hyderabad, Travancore-Cochin and perhaps one or two others. That shows how little regard we in the States pay to the general good of the community, the general good of the country. It is just an attitude of 'me and my State'—that is the position. I hope that the new measure which is promised, limited though it will be in its scope because it is going to be in the light of the recommendations of the Taxation Enquiry Commission, will bring some rule of law in this jungle warfare and some consideration for the other fellow and the other State.

**Mr. Chairman:** The hon. Member is speaking on a Bill which is yet to come.

**Shri V. B. Gandhi:** We are asked here to support a Bill levying and legalising imposition of sales-tax.

**Mr. Chairman:** So far as that is concerned, he is entitled to express his views. But he is speaking on the merits of a Bill yet to come.

**An Hon. Member:** If not merits, demerits.

**Shri S. V. Ramaswamy (Salem):** Anticipatory criticism.

**Shri V. B. Gandhi:** I would simply say that a very strong case exists for speedier action in the matter of the promised new legislation, speedier action for ending this trouble, this harassment, this large-scale invasion which leads to injustice and these continuing barriers.

The Finance Minister just made a brief reference to what is happening and what could happen to the programmes of State Governments in respect of the Five Year Plan if the present measure validating the levy and collection of sales tax was not passed. Here I will just draw the attention of the House to a statement by the Finance Minister of Bombay, Dr. Jivraj Mehta, in his budget speech last week. In Bombay, the State was led to expect from Central taxation on inter-State sales a sum of Rs. 4 crores, and since the Central taxation is yet to come into force, these Rs. 4 crores have not been there. The target for the Bombay State by way of additional taxation for the First Five Year Plan was of the order of Rs. 23.5 crores. Now, it just happens that by increasing the rates of sales tax in the State and also increasing the rates of several other taxes, like the taxes on motor vehicles, sales tax on petrol and sales tax on other commodities, the State of Bombay was able to raise an additional revenue of Rs. 25.58 crores to meet the target of Rs. 23.5 crores. Now, what is happening in Bombay today probably is happening in various other States, and it is not likely that all of them would have the same success in overcoming these things.

For all these reasons, my plea would be that this House should not remain satisfied with just passing this Bill and should not feel that it has done all that was to be done in respect of the great mess that this sales tax legislation has led us into, and the Government may be requested to take speedier action.

5 P.M.

**Mr. Chairman:** May I just know if this tax has been collected under any of the Acts that existed prior to the commencement of the Constitution or by virtue of Acts that came into being after the Constitution came into force?

**Shri C. D. Deshmukh:** Some must have been passed after the Constitution, some before and some might have been changed or amended, the rates might

have been raised and some might have been influenced by our legislation on essential goods. All I have got is the complex of the situation arising.

**Mr. Chairman:** May I also enquire if any of the taxes have been collected in consequence of any law which comes under the purview of article 286(3)?

**Shri U. M. Trivedi:** 286(2), proviso?

**Shri C. D. Deshmukh:** A list is here. There might be articles here which are now taxable because of the Essential Goods Act which we have passed.

**Mr. Chairman:** Supposing the Legislature passed any law which comes under 286 (3), that is, 'essential for the life of the community'.

**Shri C. D. Deshmukh:** That is all with permission.

**Mr. Chairman:** No question of permission arises there. It is only, 'unless it has been reserved for the consideration of the President and has received his assent'. I would like to know if there are any taxes collected which are sought to be legalised now—taxes under 286 (3) that were not reserved or that have not received the President's assent.

**Shri C. D. Deshmukh:** Not to my knowledge.

**Mr. Chairman:** I would like the hon. Minister to find this out also.

**Shri C. D. Deshmukh:** It is for somebody else to find out whether some tax was or was not . . . . .

**Mr. Chairman:** It is for the Government to see whether any of the taxes come under the purview of article 286 (3).

**Shri C. D. Deshmukh:** I shall have to ask them: have you taxed in violation of the law?

**Mr. Chairman:** Supposing the tax has been collected under a particular Act, then the hon. Minister can see whether it comes under the purview of 286(3) and whether it was reserved for the consideration of the President and received his assent.

**Shri C. C. Shah (Gohilwad-Sorath):** This Bill will not validate such illegal collection.

**Mr. Chairman:** I am not saying that. I am only asking by way of information.

**Shri C. C. Shah:** The position as regards 286(3) is that if there is any legislation of a State passed before the Constitution which taxes any of the articles declared to be 'essential commodity' by the State after the Constitution came into force, that Act remains valid. But, if that Act is passed after the coming into force of the Constitution, unless it had been reserved for the consideration of the President and has received his assent, it would not be valid.

**Mr. Chairman:** Under article 286(3), there is no question whether the Act was passed before or after. I only wanted to know if there was any such Act which related to these articles and which was not reserved for the consideration of the President and if any tax was collected under that.

**Shri C. C. Shah:** So far as I could gather from some of the judgments of the Supreme Court, I presume some States have passed laws taxing what are now declared by Parliament to be 'essential commodities'. But those laws, though they were passed prior to the coming into force of the Constitution are valid and all those taxes can be collected notwithstanding article 286(3).

**Mr. Chairman:** There is another provision, article 286(2) proviso. Under the proviso, they cease to have effect on 1st March, 1951.

**Shri K. C. Sodhia:** In the Act regarding essential commodities there is a section validating those laws which were passed before and other laws which were to follow ought to go to the President. (*Interruption*). There is an exception in that law.

**Shri C. D. Deshmukh:** On page 10, against Ajmer in the list, there is a note here that the Act has received the assent of the President.

**Shri C. C. Shah:** That would be an Act passed after the coming into operation of the Constitution.

**Shri C. D. Deshmukh:** That includes 'Iron and Steel', which is among the essential commodities. Therefore, all I can say is *prima facie* no law violating the Constitution has been passed.

**Mr. Chairman:** So far as Ajmer is concerned.

**Shri C. D. Deshmukh:** Yes; but, so far as the others are concerned, it is an inference. (*Interruption*). It is a matter

of fact as regards what is the state of affairs in all the States. I can produce tomorrow a list of Acts which had been reserved for the President's approval. I can also produce a list of Acts sent to us and not approved. But, nevertheless I would claim that whatever is now being levied—apart from 286(2)—is legal or would have been legal if such legislation had been passed before.

**Mr. Chairman:** There are two kinds of cases, those that come within the purview of laws enacted prior to the commencement of the Constitution and those which came subsequently. In regard to the former ones, 286(2) proviso, applies. They should all be held to be non-existent after 1st March, 1951.

**Shri C. D. Deshmukh:** Therefore, if we validate them now, they will all be legal.

**Mr. Chairman:** I do not know; so far as the present provisions in the Bill are concerned, there is no reference to such laws as were enacted prior to the Constitution and ceased to have effect on 31-3-1951.

**Shri Bansal (Jhajjar-Rewari):** Mr. Chairman, I am glad that the purely legalistic aspect of the Bill has been disposed of by the various lawyer Members of the House who participated in the latest judgment of the Supreme Court attention of the House to the social aspect of this Bill. But, before I do that, I would request the House to bear with me if I take them through the history of sales-tax legislation after the adoption of the Constitution.

While the Constitution was being framed, one fundamental aspect was that there would be no sales-tax imposed on inter-State sales or purchases, the basic principle being that inter-State commerce should be allowed to go on unhampered and a sort of anarchy should not be allowed to develop in the various States. There was, however, one exception and that was, if some resident of a different State imported some commodity or some goods from another State for direct consumption then that commodity or goods was liable to be taxed in the exporting State. This aspect of the question has been dealt with in the latest judgment of the Supreme Court also. But then there was a difficulty.

**Shri K. K. Basu:** He need not be influenced by lawyers.

**Shri Bansal:** I am trying to steer clear of the corrupting influence of lawyers including my hon. friend.

**Shri S. V. Ramaswamy (Salem):** As a lawyer, I object to the expression corrupting influence of lawyers. I protest against it (*Interruption*).

**Shri Bansal:** I think the lawyers themselves will decide this. Supposing there was sales-tax on motor cars in two States, say, in Delhi and Bombay. Supposing a person imported a motor car from Bombay and brought it into Delhi. He will not be charged in Bombay and thereby he was evading sales-tax on the purchase of the motor car as he was not purchasing it in Delhi. Therefore, it became necessary either for all the States to have almost uniform laws or for the exporting States to consider as to why sales-tax should not be levied even on goods which were exported out of those States. This became more so in the case of States like Bihar which depended for their entire economy mostly on one or two commodities, for example, in the case of Bihar, coal, iron and steel. I think the House would be unfair if this aspect of the question was not taken into consideration, while considering this question of sales-tax on inter-State transactions. But the fact remains that in spite of our sympathy, this kind of imposition was bound to lead to fissiparous tendencies, every State trying to outdo the other in order to levy the maximum amount of sales-tax.

Therefore, the business community has been wanting Government to do something to put an end to this kind of law of the jungle, as my friend, Shri Gandhi referred to, and evolve a formula so that the States did not suffer in their revenues and also the business community did not experience the type of harassing inconveniences that it has been made to suffer. I will give you an example. Under the sales-tax procedure, by which inter-State sales are being taxed now, a merchant in Delhi is importing goods from four or five or even six States—Delhi, as you know, is a textile centre and it is a re-exporting centre and feeds the markets of the entire Northern India. Whole-sale merchants here import the textiles from Madras, Coimbatore, Nagpur, Calcutta, and in fact from every part of the country. They have now to maintain separate accounts. Not only that; until some sort of informal arrangement was arrived at between the Government of India and the various State authorities

their books used to be called for by the sales-tax departments of all the States. I know a case where a merchant received notices for production of his books from various States at the same time. If you send the books to one State, then the notice comes from another State, with the result that the man absolutely did not know what to do. I am glad that some steps were taken by the Government with the result that the taxing States said "We will not call for your books as long as you get yourself registered in our State; we will not call you to come to our State, but we will send our inspectors to your establishment". What is the result of that? It is quite likely that on the same day three or four inspectors come to the establishment.

**Mr. Chairman:** All these difficulties are known to the Government and many hon. Members also know about them. But here we are concerned with the question of the collected taxes. Otherwise, all the difficulties and hardships pointed out by the hon. Member are known to Government and for that purpose they contemplate to bring in a new Bill. Here we are concerned with the provision in the Bill and I would request the hon. Member to kindly concentrate his argument on this one fact only.

**Shri Bansal:** I wanted to draw the attention of the Finance Minister and others that these difficulties have been there for a long time and I think it is high time that Government came forward with a comprehensive Bill so that this kind of anarchy and chaos might no longer prevail in the country in the matter of sales-tax.

With regard to the specific provision of this Bill, in spite of all that has been said by the various lawyer Members, the Attorney-General and the hon. Mr. Deputy-Speaker himself, I fear that even though we may pass this Bill, this is going to be challenged in the Supreme Court and it is quite likely that the Supreme Court will again declare it *ultra vires*.

**An Hon. Member:** How do you know?

**Shri Bansal:** I know it because the lawyer Members have expressed very strongly their points of view on it and I am doing also mine.

**Mr. Chairman:** We have to do our duty and pass another law.

**Shri Bansal:** Whenever Government finds itself in a difficult position, it comes out with a law undoing the judgments of the courts. On the other hand . . . .

**Mr. Chairman:** We are respecting the judgment of the Supreme Court. The Supreme Court never decided that the money should be refunded or not refunded.

**Shri Bansal:** But the Supreme Court has said that these laws are invalid and, therefore, I should have imagined that Government would accept the judgment of the Supreme Court.

**Shri C. D. Deshmukh:** The Supreme Court themselves have suggested that the States might go to Parliament.

**Mr. Chairman:** Parliament is within its right to step in with a new measure. If any judgment of the Supreme Court gives rise to hardship or difficulties, the final authority to solve the problem is Parliament. Whenever a judgment of this nature has been given in the past, we have behaved like this, as in the case of the Zamindari Act. We respect the judgment of the Supreme Court and therefore alter our law.

**Shri Bansal:** I am not suggesting that we have no right to do that or we have never done that. But when the issues involved are not of a character involving a great national policy, we should try to see that as far as possible we respect the judgment of the Court. And this is an instance. After all, how much amount is involved here? As the Finance Minister has said, it is about Rs. 3 or Rs. 5 crores. And the Government may have to make a refund of about Rs. 2 crores.

**Shri C. D. Deshmukh:** The amount of refund involved is about Rs. 3 to Rs. 5 crores.

**Shri Bansal:** I realise that it is a big sum, but at the same time I would like to know as to what Government are doing with regard to the period between the date the judgment was delivered and the future. After all, that loss will be sustained by the various State Governments—and even now it is being sustained.

**Mr. Chairman:** Is it correct that taxes are being collected under these very laws after the date of the delivery of the judgment by the Supreme Court?

**Shri C. D. Deshmukh:** After the delivery of the judgment, no State can collect.

**Mr. Chairman:** According to the Finance Minister, no State is collecting these taxes after the 6th September.

**Shri C. D. Deshmukh:** Even before the judgment was delivered, we were trying to use our influence with the States not to go on collecting inter-State taxes, and the Prime Minister addressed a letter to all Chief Ministers stating that there had been a great deal of difficulty caused to traders and so on and that, therefore, our advice was that they should not collect such taxes. Some State Governments said, "Yes, we are prepared to fall in line with your advice". Some other State Governments said, "Well, we will await the judgment of the Supreme Court". But it is quite certain that after the judgment was pronounced, no State could possibly collect any of these taxes.

**Shri Bansal:** That is exactly my point. Inasmuch as no State is going to collect, they are losing revenue on that account. Under that head they are not going to have any revenue which they were having in the past. Therefore, I say that a sum of Rs. 4 or Rs. 5 crores over a period of four years would not be a very great sacrifice. I should have imagined that the Government of India should have come forward and said that those State Governments should be reimbursed to the extent that they have collected.

**Shri C. D. Deshmukh:** Who will get it?

**Shri Bansal:** The money? The Finance Minister can always find it, and he is going to find the money tomorrow.

**Mr. Chairman:** The question is as to who will get the money.

**Shri C. D. Deshmukh:** There are a very limited number of people who will get it. Except that, the money will not go to the actual consumers. They have collected it from thousands of consumers who cannot be traced easily.

**Mr. Chairman:** Whoever can be traced may be paid. Why should their case be prejudiced?

**Shri C. D. Deshmukh:** We do not take that view.

**Shri Bansal:** I am grateful to the Finance Minister for pointing out that the sales-taxes have been collected from the consumers and in any case the money will not go back to the consumers.

**Mr. Chairman:** Further he says that if refund is allowed it will go to the middle-men.

**Shri Bansal:** I fully agree with him that it may be one of the shortcomings of any legislation which authorises the State Government to refund the amount. Perhaps to that extent it could be said that wherever taxes have actually been levied, there is one particular lacuna. The Bill says "all such taxes levied or collected or purporting to have been levied or collected". It means only in those cases where the sales-tax authorities have taken certain action that the laws would be violated, but where the sales-tax authorities have not taken any steps to recover the sales-tax, these cases will be outside the purview of this.

**Mr. Chairman:** As a matter of fact it is quite clear. If no tax has been collected, it is all right; no tax should have been collected.

**Shri Bansal:** Perhaps it introduces an element of discrimination. An honest businessman is making his returns normally to the sales-tax officer and so he is made to pay; he will be roped in this legislation. But a businessman who has not been keeping any account or making any return—I know in Delhi there are a large number of unscrupulous middle-men who are trading in one name today and begin to trade in a different name tomorrow—will be going scot-free even after the passage of this Bill.

**Mr. Chairman:** Is it the intention of the hon. Member that the tax should be collected from such persons to remove discrimination?

**Shri C. C. Shah:** The words are "levied or collected". If it is still uncollected, it can be collected.

**Shri Bansal:** From those people on whom no tax has been levied so far?

**Shri C. C. Shah:** The Act levies the tax. Those who are liable to pay will be bound to pay even if the tax has not been collected.

**Shri U. M. Trivedi:** That cannot be.

**Mr. Chairman:** Is it the interpretation?

**Shri C. C. Shah:** Yes, Sir. That is the position.

**Shri Bansal:** I am not going to have your word for that.

**Shri C. D. Deshmukh:** My word is the same as his word because the word is there; that is what one can read from the provisions of this section. If the hon. Member will read it, he will find that the sale or purchase must have taken place in an inter-State trade or commerce during that period from 1st of April 1951 to the 6th of September 1955. Then such laws imposing these taxes would be regarded as valid. Really, the last three lines need not have been put in there; they are put in there by way of abundant caution, as lawyers are fond of saying.

**Shri Bansal:** Even as it is worded, this law will lead to a lot of discrimination.

**Mr. Chairman:** May I just enquire? Will the taxes be collected from such persons as are liable to pay it?

**Shri C. D. Deshmukh:** I should take it so; but it will not be levied on sales after that date—6th September 1955. No transaction after that date will come within the mischief of this Bill. That is another expression the lawyers are fond of saying.

**Shri K. C. Sodhia:** What will happen to that Bihar company who went to the Supreme Court and got the judgment?

**Shri C. C. Shah:** It will have the satisfaction of having got a judgment!

**Shri Bansal:** I know it is a very ticklish issue. But even then, my advice would be not to proceed with this Bill and leave the position as it is. Government should try to bring early a comprehensive Bill to regulate inter-States sales-tax.

**श्री हेबा (निजामाबाद):** समापति महोदय, सुप्रीम कोर्ट ने बंगाल इन्सुनिटी कम्पनी के मुकदमे में जो फैसला दिया है उसकी वजह से अनकरीब सारी की सारी स्टेट गवर्नमेंट्स की पोजीशन बहुत ही परेशान कून हो गयी है। उनको यह खतरा लाहक हुआ है कि जो इंटर स्टेट सेल्स टैक्स उन्होंने बसूल किया उसको कहीं

### [श्री हेडा]

वापस न भ्रवा करना पड़े। और यही बजह है कि उन्होंने सेंट्रल गवर्नमेंट की और पार्लियामेंट की मदद चाही है। आज हम उनकी मदद के लिए आ रहे हैं। इसके पहले एक आर्डिनेन्स के जरिये से उनकी मदद की गयी और अब उस आर्डिनेन्स को इस बिल के जरिये रिप्लेस करने की कोशिश की जा रही है।

सेल्स टैक्स और खासकर इंटर-स्टेट सेल्स टैक्स होना चाहिए या नहीं इसके मैट्रिस् में मैं नहीं जाना चाहता। मैं जाती तौर पर सेल्स टैक्स का मुखालिफ नहीं हूँ। लेकिन एक भ्रन्देशा आम लोगों में महसूस किया जा रहा है और मुझे खुशी है कि उसका पूरजोर अल्फाज में हमारे दोस्त श्री गुरुपादस्वामी और श्री बल्लथ-रास ने इजहार किया है और दूसरे दोस्तों ने भी उसका इजहार किया है। वह भ्रन्देशा यह है कि अगर कोई स्टेट गवर्नमेंट बगैर दस्तुरी अस्तियार के कोई टैक्स लगा देती है और उसके इस काम को अगर हम बाद में कानूनी करार दे देते हैं, और इस गलती से उस स्टेट गवर्नमेंट को जो परेशानी होनी चाहिये थी और जो सजा मिलनी चाहिए थी उससे अगर उसको नजात दिला देते हैं तो जनता में यह अहसास बढ़ता चला जायेगा कि हुकूमत चाहे कोई काम कर ले वह चाहे कानून या दस्तूर के तहत जायज हो या न हो, उसके खिलाफ कोई चारेकार हासिल नहीं है। अंग्रेजी दस्तूर का एक उसूल है और वह दस्तूर अंग्रेजी जबान में इस तरह बयान किया जाता है :

"The King does no wrong".

उनके यहां कोई लिखा हुआ दस्तूर नहीं है। इस लिहाज से पूरे के पूरे अस्तियारात, जिनकी कल्पना की जा सकती है, हुकूमत को या बादशाह को होते हैं, इस तरह का तसब्बर किया जाता है लेकिन हमने कांस्टीट्यूशन पास किया है और हर एक स्फियर के अन्दर अलग-अलग सतह के लिए अलग-अलग तरीके से सीमाबन्दी की है, और हमने यह निर्णय किया है कि यह पार्लियामेंट भी, जिसको हम साबरिन कहते हैं, उसी कांस्टीट्यूशन के तहत कानून पास करेगी। वह कांस्टीट्यूशन को तबदील कर सकती है यह अलग बात है, लेकिन जब तक कांस्टीट्यूशन अपनी जगह पर कायम है तब तक उसी के मुताबिक कानून पेश होंगे और पास हो सकेंगे। इस तरह से हमने अपने ऊपर और सभी तरफ पाबन्दी लगायी है। इसलिये

अगर कोई काम गलत हो गया है और बाद में जाहिर होता है कि वह गैर कानूनी था, और उसको अगर हम कानूनी करार दे दें तो जनता का भ्रन्देशा बढ़ता रहेगा।

श्री सी० डी० देशमुख: सुप्रीम कोर्ट के फैसले के मुताबिक तो वह जायज था। सुप्रीम कोर्ट के फैसले के मुताबिक सितम्बर सन् १९५५ तक वह कर वसूल करना जायज था।

Shri C. D. Pande: According to the judgment of the Supreme Court?

श्री हेडा : मैंने बंगाल इम्प्युनिटी कम्पनी के फैसले का जिक्र किया है। मैं पहले फैसले का जिक्र नहीं कर रहा हूँ। मैं यह कहना चाहता हूँ कि जितनी भी स्टेट गवर्नमेंट्स हैं उन सबके पास लीगल डिपार्टमेंट्स मौजूद हैं। उनको कानूनी मशविरा मिल सकता है और उनको हर तरह की सहुलियत मिली हुई है। इन सब चीजों के बावजूद जो अहतियात की जानी चाहिए थी वह नहीं की गयी। उनको पहले पार्लियामेंट के जरिये एनेबलिंग कानून पास करा लेना चाहिए था। ऐसा उन्होंने नहीं करवाया।

Shri Pataskar: In 1953, the Supreme Court itself held the opinion that no such thing was necessary.

Shri Heda: I am not referring to the decision of 1953. I am referring to the recent judgment. According to that, the State Governments had no power unless Parliament passed an enabling law to levy inter-State sales-tax. My point is that the State Governments were fully equipped with their own legal departments; they had their own legal advisers and all that.

Shri Pataskar: Even the Supreme Court agreed with that in the beginning.

Shri Heda: The whole point is that I am referring to the latest decision.

Shri C. D. Deshmukh: The hon. Member suggests that the Law Officers of the State Governments should have violently disagreed with the first judgment of the Supreme Court and advised the States not to impose the taxes.

Shri Heda: No, Sir. I am sorry to point out that the article in the Constitution is quite clear and if the State Governments would have in spite of the decision of 1953 desired the Parliament to pass an enabling Act there would have been nothing wrong. But, nobody



bothered over it. What I was pointing out was that the feeling is increasing in the minds of people that whatever the Government does, whether it is under the Constitution or whether it is under the laws or not, it will be validated simply because people's will is the sovereign thing and the Parliament is there to legalise anything which later on might be found to be as an illegal one.

मैं इस चीज के बाद यह अर्ज करना चाहता हूँ कि.....

**Mr. Chairman:** How much more time will the hon. Member take ?

श्री हेडल : मुझे सात, आठ मिनट और चाहिये ।

5-32 P.M.

**Mr. Chairman:** Then he may continue tomorrow.

*The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, the 29th February, 1956.*