

PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

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HOUSE OF THE PEOPLE

Friday, 28th August, 1953

The House met at a Quarter Past
Eight of the Clock

[MR. DEPUTY-SPEAKER in the Chair].

QUESTIONS AND ANSWERS

(See Part I)

9-47 A.M.

MESSAGES FROM THE COUNCIL
OF STATES

Secretary: Sir, I have to report the following two messages received from the Secretary of the Council of States:

(1) "In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Council of States, I am directed to inform the House of the People that the Council of States, at its sitting held on the 26th August, 1953, agreed without any amendment to the Central Silk Board (Amendment) Bill, 1952, which was passed by the House of the People at its sitting held on the 5th August, 1953."

(2) "In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Council of States, I am directed to inform the House of the People that the Council of States, at its sitting

held on the 27th August, 1953, agreed without any amendment to the Collection of Statistics Bill, 1952, which was passed by the House of the People at its sitting held on the 6th August, 1953".

PAPERS LAID ON THE TABLE

AGREEMENTS re OIL REFINERIES IN INDIA

The Minister of Production (Shri K. C. Reddy): I beg to lay on the Table copies of the agreements arrived at between the Government of India and certain oil companies for the establishment of oil refineries in India.—[See Appendix IV, annexure No. 7.]

ESTATE DUTY BILL.—contd.

Mr. Deputy-Speaker: The House will now proceed with the further consideration of the Estate Duty Bill. Clause 2 and amendments were under consideration.

I understood the hon. Finance Minister wanted to explain a particular amendment that was moved yesterday.

The Minister of Finance (Shri C. D. Deshmukh): I have explained it already and Shri Bhagat has given notice of the amendment. It has been circulated as desired by you. If you can allow him to move it, then, perhaps the debate can proceed and very much discussion may not be necessary.

The Parliamentary Secretary to the Minister of Finance (Shri B. R. Bhagat): I beg to move:

In page 2, after line 46, insert:

'(16A) "public charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include any purpose which is expressed to be for the benefit of any particular religious community;

Explanation: A purpose which is expressed to be for the benefit of scheduled castes, backward classes, scheduled tribes or of women and children shall not be deemed to be for the benefit of a particular religious community within the meaning of this clause.'

Shri Dhulekar (Jhansi Distt.—South): I rise to a point of order.

An Hon. Member: It has not been put before the House.

Mr. Deputy-Speaker: When a point of order is raised every other thing will be suspended.

Shri Dhulekar: Sir, my point of order is this. Here, the words

'but does not include any purpose which is expressed to be for the benefit of any particular religious community,'

are *ultra vires* and against the spirit of the Constitution. I shall refer to the Article of the Constitution. Sir, in the chapter of Fundamental Rights, it is said that all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion. In Article 25 (2), it is said:

"Nothing in this article shall affect the operation of any exist-

ing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

So, I submit, Sir, that it is against the main principle of law. I shall put the case in this manner.

Now, under this 'for the benefit of a particular religious community', I shall take the broadest view and say that a person makes a gift of one crore of rupees out of which he says that 30 lakhs will be reserved for the benefit of a religious community called the Parsis, 20 lakhs for the Muhammadans and the rest for the Hindus. I say this portion of the amendment will go against it. Read the Estate Duty Rates Bill also with this. The most tolerant man who makes the gift dies a few days after. The rates are how much? Calculated for one crore of rupees, the duty will be about 47 lakhs of rupees. Calculated according to these rates a very large portion of the property, about Rs. 46 lakhs will be taken out of the fund.

Mr. Deputy-Speaker: The hon. Member who raises a point of order should simply state the point and not go on illustrating.

Shri Gadgil (Poona Central): He is not talking on the point of order, but on something else.

Shri Dhulekar: I am a lawyer, you should know that.

My point is this. By this provision you are defeating the purpose of the Constitution. The Constitution provides for the freedom of practising ones religion. Suppose I leave one

crore of rupees for the construction of a temple. If out of it Rs. 46 lakhs are to be paid to Government, the idea of building a temple will never fructify.

Mr. Deputy-Speaker: Does the hon. Member mean to say that it is a question of discrimination. What is his exact complaint, I am not able to follow. Does he mean to say that notwithstanding the fact that freedom of worship is given in the Articles of the Constitution, a particular provision of this kind is of a discriminatory nature? Am I to understand him that way?

Shri Dhulekar: No, Sir. My submission is this. I raise this point of order from this point of view. When you make a law, you cannot defeat the object of the Constitution by making a provision which will harm persons for whom freedom is guaranteed under the Constitution.

My point is this: if you take out a large corpus of the property out of the funds bequeathed or gifted by a person, then you defeat the very object of giving him freedom under the Constitution. That is my submission.

Shri C. D. Deshmukh: Sir, what we are trying to do here is to give special concession to certain kinds of public charitable purposes. Otherwise all gifts have to be two years prior to the death. Here we say, if gifts are of certain kinds then we will admit them between that period of two years and six months. Therefore, there is no discrimination against religion. It is discrimination, so to speak, in favour of certain charitable purposes which we define. If there is any kind of surrender of potential revenue it is in respect of certain categories of public charitable purposes. That is all we are trying to define here. I cannot see that anything in the language of Article 25 comes in the way of this. Everybody is free to worship as he likes; we are not restricting it by this. We cannot restrict the freedom of worship of any religious community.

Shri Gadgil: Might a building by-law be considered as something against the spirit of the Constitution if it lays down that a temple must be built according to a particular pattern? This provision is something like that. Nobody is prevented from practising, professing or propagating his religion. But if he wants to make a gift and seeks some immunity, the thing must come within the definition as proposed, not otherwise.

Shri S. S. More (Sholapur): I would refer you to the preamble of the Constitution regarding equality of status and opportunity. All the communities, irrespective of their religion, will have equal status and opportunity. This part of the preamble governs all the fundamental clauses. If at all the Finance Minister is making any discrimination, it is in favour of gifts for charitable purposes. If we divide gifts into two categories, gifts for non-charitable purposes and gifts for charitable purposes, then he is making a special concession or special discrimination in favour of charitable purposes.

10 A.M.

Mr. Deputy-Speaker: The hon. Member evidently means whether it would not be discouraging the object?

Shri S. S. More: We are not concerned with discouragement or encouragement of particular objectives. As far as the Estate Duty Bill is concerned certain gifts have been visualised and certain concessions have been given. For instance in the case of a gift to a son two year period is prescribed. While in the case of gift to a charitable objective, six months has been prescribed. It is discrimination, if at all an undesirable discrimination, in favour of charitable gifts.

Mr. Deputy-Speaker: Why was not this thought of when the Bill was before the Select Committee?

Shri C. D. Deshmukh: Why anything was not thought of is difficult to answer. These words are contained

[Shri C. D. Deshmukh]

in the Income-tax Act which we passed last session. I might as well ask the question why anyone should not have raised the same point of order at that time.

Therefore, I say that if a point strikes someone, then only does he bring it forward. I do not blame the hon. Member for raising the point of order now instead of at the last session when similar words were incorporated in the amendment to the Income-tax Act.

Shri V. G. Deshpande (Guna): I did raise it then.

Mr. Deputy-Speaker: What are the words in the Income-tax Act?

Shri C. D. Deshmukh: The same: "which is expressed to be for the benefit of any particular religious community."

Shri Dhulekar: The analogy between the Income-tax Act and this Act is not correct. Income-tax is taken out of a running current; here you take out of the whole body of the corpus. The difference is that a man is running a business, he goes on; you can take every day one hundred per cent. from a running stream. Suppose there is a tank and you take 40 per cent. out of it; it will become empty. There is no analogy between the two Acts.

Shri N. C. Chatterjee (Hooghly): If you are pleased to look to clause 9 of the Bill, as it emerged from the Select Committee, you will find that it provides that certain gifts *bona fide* made two years or more before the death of the deceased shall not be deemed to pass on the donor's death; that is, they will not come within the ambit of the estate duty. Then we realised that some provision should be made for gifts for public charitable purposes. But we were contending that there should be no time-limit at all. If make a public charitable gift to the University of Delhi and if

I die within one month after the date of that gift, then that should not be brought within the taxation measure. Now the question was whether there should be no time-limit or whether there should be a time-limit and the Select Committee ultimately approved that six months should be the time-limit in the case of gifts made for public charitable purposes.

All that happened thereafter was to clarify, if necessary, what is 'public charitable purpose'. In the Income-tax Act, as has been clearly elucidated by the Privy Council, by the Law Lords and different High Courts, we know what is 'public charitable trust'. I would refer you to page 320 of Sir Jamshedji Kanga's "Law and Practice of Income-tax" he says:

"It is not necessary that the object should be to benefit the whole of mankind or all the persons living in a particular country or province. It is sufficient if the intention is to benefit a sufficient large section of the public as distinguished from specified individuals."

Then you may remember the leading case, the Trustees of the Tribune case, where the Lahore High Court gave a majority judgment but Sir Tekchand delivered a dissenting judgment. The Privy Council accepted as correct the dissenting judgment of Sir Tekchand and held that "the spreading of news among the English-speaking public of the Punjab was an object of general public utility. A trust is nonetheless a trust of a public character if its main object is to benefit only Hindu women, or a certain sect... etc."

In order to make it clear the Finance Minister has put in an amendment which you have seen (No. 465 in List No. 11), where he says:

In page 2, after line 46, insert,—

'(16A) "public charitable purposes" means relief of the poor,

education, medical relief and advancement of any other object of general public utility.....'

If you stop there it is exactly in terms of the Indian Income-tax Act and in conformity with what is known in India as 'public charitable purpose' and what has been laid down by the highest judicial tribunals. But he adds something. He says:

'.....but does not include a purpose which relates exclusively to religious teaching or worship'.

This has been taken from the Charitable Endowments Act. If you accept Mr. Bhagat's amendment No. 578 in List 16, which seeks to include the words "but does not include any purpose which is expressed to be for the benefit of any particular religious community", it will lead to discrimination, and it will lead to an infringement of one guaranteed freedom namely the right to equality. The judgment of the Patna High Court in the Bihar Land Reforms Case still stands. It was contended before the learned judges that you really make a discrimination by paying less compensation to a certain class and more compensation to another; that is discrimination. That judgment still stands. The judgment has been reversed by the Supreme Court not because the judgment on its merits was wrong but because the Constitution was amended in order to negative that judgment. But the interpretation of article 14 still stands and it says if you make a conscious discrimination between different classes it comes within the ambit of this Article 14. The amendment of Mr. Bhagat (No. 578) which says that 'public charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include any purpose which is expressed to be for the benefit of any particular religious community, is repugnant to article 14. This portion ought not to be there. What is the

good of saying we are thinking of exemption now? We are defining 'public charitable purpose'. Suppose in a predominantly Hindu town a Hindu makes a gift of two lakhs of rupees two months before he dies and says "it should go to the Hindus". Why should you say that it should not have any exemption? It is not proper. Suppose in a predominantly Muslim town two months before he dies and says it should be given to the Muslims, that will be a perfectly valid public charitable trust, under all connotations, according to the Tribune and Charusila Dasi's cases and other judgments.

When you are defining 'public charitable purpose' you should not penalise gifts. You are not making it illegal. But when you are taking away the exemption I ask the House to consider whether it is fair. Suppose some Assamese gentleman in Assam finds that the Muslim community is backward and says 'I am making a donation for Muslim students' that will be hit by this Explanation given in amendment No. 578 which says:

"A purpose which is expressed to be for the benefit of scheduled castes, backward classes, scheduled tribes or of women and children shall not be deemed to be for the benefit of a particular religious community within the meaning of this clause".

This mitigates the hardship to some extent, but why does it narrow it down to Harijans, women and children?

Shri R. K. Chaudhury (Gauhati).
Because they belong to the same class!

Shri N. C. Chatterjee: I am thinking for instance of the Governor of my Province. Dr. H. K. Mookerjee. He had been making generous donations for the Christian community in Bengal. And I submit that it is a perfectly valid public charitable purpose because that gentleman, generously disposed, has done it for the

[Shri N. C. Chatterjee]

good of his community. But if he dies within the stipulated period of six months it will be assessable. I do not think it is fair. It certainly infringes the spirit, if not the letter, of the Constitution, and you should not enlarge the accepted connotation of what is known in law and is accepted as 'public charitable trust' according to decisions.

In England I find that on this very point a Committee was appointed and that Committee reported in December 1952.

It was known as the Committee on the Law and Practice relating to Charitable Trusts. Do not try to be too secular and too punctilious in this matter. I shall read only a line or two from that Report. They start by saying:

"Historically, it is the religious motive which has been primarily responsible for widening the bounds of good neighbourliness and the obligation to meet human need. Though frequently neglected in practice, such tenets lay at the heart of the more ethical religious of the past, as well as of the great living religious of today."

Then they refer to Judaism, Christianity, Islam, Buddhism and Hinduism and say "these are deeply unbued with a sense of the oneness of mankind". They have not penalised it. In England if this kind of gift is made it becomes a good and valid gift for 'public charitable purpose'. There should be no discrimination made in India.

Shri Venkataraman (Tanjore): I want to say a few words on this. So far as the point of order raised by the hon. Member is concerned, I would submit that there is no restriction whatsoever either in professing or practising any religion, in this clause. All it says is that your charitable endowments should not be confined to one particular community. It

does not put a restriction on professing or practising any religion.

So far as the point raised by the hon. Member Mr. Chatterjee is concerned, I would submit that we as lawyers have a habit of looking to precedent. We want to look forward in the future India, after the Constitution, we do not want to have any restriction in respect of communities. We do not want to think in terms of any charities for any religion, any class, and all that kind of thing. If any person is going to do some charitable thing, let him do it for the whole of the community, the people of India. Let him not confine it to any particular individual or set of individuals. (*Interruption*). I feel strongly about it. If it is a charitable purpose let it be for the whole of the people of India and not for a few limited individuals.

Shri Barman (North Bengal—Reserve—Sch. Castes): May I submit a word, Sir?

Mr. Deputy-Speaker: On the point of order?

Shri Barman: Yes. As I read articles 25 of the Constitution, it says: "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience, etc..." The stress is that all persons are equally entitled. The Constitution says that the State cannot make any discrimination between one person and another in the matter of certain things; that is, a restriction on the State. The rest of it is rather enabling the State in certain circumstances to deviate from it. I do not find that there is any restriction put by the Constitution against making any such law.

Pandit Thakur Das Bhargava (Gurgaon): May I say a word, Sir, on the point of order? Objection has been taken that this provision will offend against article 25, that is to say, that

the present provision will not allow some persons to have freedom of conscience or the right to freely profess, practice and propagate religion. This is the simple point before the House. The other points will be dealt with on merits: whether this exemption should be allowed or not. The only point before the House is whether article 25 of the Constitution is a bar to our having this provision. I humbly submit that article 25 has nothing to do with this provision. May I humbly enquire from the gentleman who has raised this point of order how the freedom of conscience of any person will be affected by this provision? How will he be debarred from professing any religion? Will the matter of not making gifts to any religious purposes prevent the person from practising that religion or professing that religion or even propagating that religion? It may be argued that because the exemption will not be there, in regard to these gifts, the Estate of that person will have to pay something in respect of gifts made for a certain class of persons or a certain religious community. If you kindly look at article 19, it says:

"All citizens shall have the right... to acquire, hold and dispose of property."

All the same, the Finance Minister is too strict and he takes taxes from us every day. According to the law, every person has the right to hold property. But, yet, the legislature and the Government charge a tax from him. It is a question of taxation more or less. It is not a question of practising or propagating religion. If for secular purposes the people are bound to pay according to the law of the country, I do not see how freedom of religion is interfered with. What will happen is this. A certain property is taxable in a certain contingency. Does the mere fact that you want to make a law which taxes the property, debar one from freedom of conscience, religion, etc.? I am not going into the other question whether, as propounded by Mr. Chatterjee, the gifts should

have this restriction or not. That would be dealt with on merits. So far as this point of order is concerned, I fail to see how possibly this article could be invoked to say that it interferes with our right to make a law of this nature. We have made a law of this nature in regard to the Income-tax Act also. There also, these questions were discussed, whether this goes against the Constitution or not. We have already accepted this principle. There is no reason how this article 25 could be invoked for this purpose. Article 25 has got nothing to do with the right of the State to tax any property because the cases that are covered by article 25 are not at all affected by the policy of taxation.

Shri U. M. Trivedi (Chittor): May I be permitted to say a few words, Sir? Very strong language has been used repeatedly by my hon. friend Pandit Thakur Das Bhargava that article 25 has nothing to do with the point of order that has been raised. I very emphatically say that article 25 is attracted by this amendment which is now being brought. The position is this. If you read article 25, you do not stop with freedom of conscience. We go further and read, "freely to profess, practise and propagate religion". Propagating religion means teaching of religion also. You are putting a complete embargo on making gifts for the teaching of a religion.

Shri Venkataraman: You pay the tax and propagate.

Shri U. M. Trivedi: That is why I say, you are not allowing me freely to propagate. You put in a restriction in the way of my freely propagating. You cannot put any restriction on his ideas of propagating religion.

Pandit Thakur Das Bhargava: My submission is propagating religious education freely is not prohibited.

Shri U. M. Trivedi: We have got so many missions in the whole of the country. We have got Christian missionaries, we have got Hindu mis-

[Shri U. M. Trivedi]

sionaries in the shape of Ramakrishna Mission, Ramakrishna Mission hospitals and Vivekananda mission etc. We make gifts to these with a great desire that our religion should be propagated and that our religious teaching should be imparted. But, we are trying to bring in this new definition of public charitable purposes, an entirely innovated definition that has not found favour anywhere in the international interpretation of the words, public charitable purpose. By that definition you are trying to put a restriction on a man's exercise of the right that has been given: that is the right to profess, practise and propagate religion. You are taking away 40 per cent. of whatever he wants to give. In what manner you can bring in public order, morality and health, to be interfered with by these charities I fail to understand.

Shri Gadgil: May I ask Mr. Trivedi one question? Suppose the State Governments levy a sales tax on your publications for religious propaganda. Will it mean that your freedom is interfered with?

Shri Dhulekar: Again, the analogy is wrong. It will be a running tax.

Shri V. G. Deshpande: It will be a discrimination...

Mr. Deputy-Speaker: Order, order. Would this stand in any way different from an ordinary gift if it is made more than 2 years before death? Assuming that this definition is quite in order and this gift is for a particular religious community, if it is before 2 years of death, it comes as an ordinary gift and it will be exempted. The only point is that it would not partake of the category of the exemptions granted to public charitable gifts if it is within six months. That is the only difference.

Shri T. S. A. Chettiar (Tiruppur): May I submit, Sir, if you are just asking for the clarification before you

give your ruling, I want to know whether gifts for charitable purposes made before two years would not come within the mischief of section 9 under this definition.

Mr. Deputy-Speaker: Would it be in a less favourable position than ordinary gifts?

Shri T. S. A. Chettiar: If you want a clarification, I think it is better that we discuss the implications of the amendment itself before you give your ruling. I would like to ask for clarification on two matters.

Mr. Deputy-Speaker: I would like to hear the hon. Finance Minister.

Shri T. S. A. Chettiar: Will you please hear me, Sir? I would like to ask for definite information on this question. A makes a gift of one lakh of rupees out of which a sum of rupees 10,000 is given for a religious purpose. It includes a benefit for a particular religious community. I want to know whether under this section the whole gift will be vitiated because of the gift or only that part?

Shri Gadgil: The doctrine of severality will apply. If the one gift could be separated from the other...

Shri T. S. A. Chettiar: Please wait before you reply. There is another point also. The question is whether it will vitiate the whole gift or only that portion of that gift. That is one point. The other point is, a man makes a gift for a religious purpose, say, 10 years ago. I am putting the same question as you did. Even if it is made 10 years ago, it must come under clause 9 as now defined to get the benefit of clause 9. It does not get the benefit of section 9 under this definition even if it was made 10 years ago.

The Deputy Minister of Finance (Shri M. C. Shah): Any gift made before two years whether charitable or not is covered.

Mr. Deputy-Speaker: We are only on the question of the point of order.

Shri T. S. A. Chettiar: For deciding your point of order, these things are necessary to be considered.

Mr. Deputy-Speaker: Any other point?

Shri T. S. A. Chettiar: The whole question seems to be...

Shri C. D. Deshmukh: In Clause 9 it is quite clear that if it is made two years before death, it may be of any kind. We are not concerned with whether it is for a religious purpose or religious worship or anything. All that I say is that for certain gifts we are shortening that period. That is to say, we are giving a special concession. Now, that we liked to define as public or charitable purpose. Then we veered round to "public charitable purpose". We are trying to define what it is. As I submitted before, it is open to us to say how narrow it would be or how wide it would be. Whether on merits it would be right or wrong can be debated later.

So far as the point of order is concerned, by "public charitable purpose" was only meant the construction of public parks. Nobody can say that that is discrimination against anything. Also as effectively it will exclude gifts for religion or any other purpose—women, education, health, everything, excepting, of course, health, so far as the free open air in the park is concerned. But it is open to us in the Legislature to make this exemption as narrow or as wide. But we could not say, for instance, we shall only exempt gifts for the Parsis or Muslims, because that would be an exemption in favour of a community. All that we say is that when we describe the category which should be entitled to this benefit, it shall not be definable by virtue of religion. If it is a park, it should be open to all communities. If it is a swimming bath, it should not be like the Mafatlal Swimming Bath in Bombay, but like some other bath, like the Cricket Club, a bath which is open to everybody.

An Hon. Member: It is open only to Members.

Shri C. D. Deshmukh: Well, it is open to Members. That is another matter. It is a private thing. But that is the point. That is to say all that we are saying is it should be public in the sense in which we understand "public" in the country today. One may quarrel with the definition of "public", but by no stretch of the imagination, I submit, it offends against Article 25 or against any other Article.

Mr. Deputy-Speaker: May I ask one more thing? The Explanation of Mr. Bhagat's amendment says:

"... scheduled tribes, or of women and children shall not ..."

Does it mean women and children in general terms, of women and children of any community?

Shri C. D. Deshmukh: That is so. Even if it is for a religious community, if it is for women and children, then it will be permitted.

Mr. Deputy-Speaker: That is, all women and children of any particular community.

Shri C. D. Deshmukh: Yes. That was the point that was raised by the hon. Member Shri Chatterjee in the debate—in a similar debate—on the Income-tax Amendment Bill. And he said: "Supposing someone wants to leave something for Hindu widows, will you exclude it?" Then, my heart was touched, and I said "No, it should not be". I said, therefore, women and children should be exempted.

Mr. Deputy-Speaker: I think the hon. Finance Minister will consider the desirability of making it clearer, coming as it does in the Explanation which is after all a general exclusion. In the earlier portion of the Amendment it is said:

"... any purpose which is expressed to be for the benefit of any particular religious community".

[Mr. Deputy-Speaker]

It is necessary to make this clearer, otherwise it would mean all women in general in the whole of India, as Mr. Venkataraman says.

Shri C. D. Deshmukh: The Explanation is really by way of an excision to this which is expressed to be for the benefit of any particular religious community. That is to say, the generality of that provision is sought to be restricted by the Explanation. The Explanation excises something from that. Therefore, certain things, though they are expressed for the benefit of a religious community, will be permissible by virtue of that explanation.

Mr. Deputy-Speaker: Why do we not make it clearer, because women as a whole are only a section of the community. Children as a whole are a section of the community. Therefore, let us see if it can be made clearer.

Now, a point of order has been raised in regard to the admissibility of the amendment proposed by Shri B. R. Bhagat, Amendment No. 578, in that the definition of "public charitable purpose" as proposed, particular benefits or gifts made to any particular religious community is sought to be excluded. This is said to militate against Article 14 of the Constitution, as also Article 25. Article 14 reads as follows:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

It is true, as Mr. Chatterjee read out from the Privy Council decision, that gifts for even a particular religious community is a public charitable purpose. Therefore, but for this definition, public charitable purpose will include any benefit or gift made to any particular religious community also.

The point that has now been raised is, whether any restriction can be imposed notwithstanding the fact that a gift to a particular religious community, as opposed to a benefit for the general community as a whole, is for a

public charitable purpose. A reference is made to a similar provision in the Indian Income-tax Act. When was that passed?

Shri C. D. Deshmukh: Last session.

Mr. Deputy-Speaker: Last session. That is, after the Constitution was framed.

Shri Gadgil: In the presence of Shri Dhulekar.

Pandit Thakur Das Bhargava: This restriction will apply to all men in India, to any person who makes a gift, —Hindu, Muslim, Parsi or anybody. Therefore, there is equality, and not inequality.

Mr. Deputy-Speaker: This, no doubt, does not make any difference as between persons who want to make any gift to any particular religious communities, but the objection that has been raised is that if a man is not allowed to make a gift to a particular religious community notwithstanding the fact that under the law it has been interpreted that a gift to a particular religious community is a public purpose, then his freedom to make a gift is restricted.

Shri C. D. Deshmukh: He is allowed to make a gift, but he will have to pay the tax.

Mr. Deputy-Speaker: It is looked upon, so far as this particular provision is concerned, with disfavour. Whereas a concession is shown to other objects, of public charity, the concession is not given to this particular portion.

Shri C. D. Deshmukh: That is right.

Mr. Deputy-Speaker: Whether that amounts to a discrimination or not is the point that has been raised here. I feel that it would not be right for me to decide this matter, particularly because a similar provision has already been incorporated in the Indian Income-tax Amendment Act. This matter may be taken into consideration, and may be disposed of on the merits, and

the House may come to any conclusion it likes to come on this particular matter. The amendment has been moved by Mr. Bhagat.

Shri S. V. Ramaswamy (Salem)
rose—

Mr. Deputy-Speaker: Order, order. The hon. Member should not stand up when I am standing. I will give him an opportunity.

Shri S. V. Ramaswamy: It is on this point.

Mr. Deputy-Speaker: What if on this point? When I am standing what is the meaning of quarrelling?

I would only urge upon the Finance Minister to consider—no doubt, the Explanation should be read along with the previous definition—the words “notwithstanding the fact that the women and children belong to any particular religious community” should not be added. He may consider that matter.

Shri Gadgil: Not necessary.

Shri S. V. Ramaswamy: Would you ask the Attorney-General to explain the position to the House?

Mr. Deputy-Speaker: I am not going to be guided. I leave it to the House. The House has got sufficient good sense.

Shri K. K. Basu (Diamond Harbour): Yesterday, when we were discussing this amendment of Mr. More on this particular subject, it was said that it was drafted saying “if it is exclusively or predominately for religious purpose”. Now this amendment is sought to be moved by Mr. Bhagat in substitution, and it says:

“... but does not include any purpose which is expressed to be for the benefit of any particular religious community”.

I have only to ask one question. Take the case of the Ramakrishna Mission which is usually run by the Hindus. Along with this religious institution, there are hospitals and schools wherein

anybody, irrespective of the community he belongs to, can participate and get the benefit. I want to know whether that will be affected by this particular provision. What is the intention? It was said that “predominately or exclusively” means, supposing an institution were not only for worship, but for other purposes also like education, hospital etc., we can differentiate. As it is drafted now, I am doubtful whether the whole thing will come in? Though all Indians, irrespective of their community will benefit by such an institution, but because it is run by a particular community and religious teaching is imparted, will it be affected? I do not know what the position is about the Gurukul University, whether only Hindus are allowed. If other communities are also allowed, but the institution is run in a fashion which comes under the pattern of a Hindu religious community, I would like to know whether such an institution will be wholly exempted. Yesterday in the hon. Finance Minister's amendment, the words used were ‘exclusively to’, and in another amendment the words used were ‘predominantly for’. Now we have made a change. I would like to know what will be the position.

Shri Barman: I have got an amendment to this amendment. I beg to move.

In the amendment proposed by Shri B. R. Bhagat, omit ‘expressed to be’ occurring for the first time.

Shri R. K. Chaudhury: On a point of order, Sir, I would like to know whether the amendment of the hon. Finance Minister moved yesterday is still before the House, or only the amendment which is to be substituted in its place. Let us be clear on that point. Are we discussing all the amendments which are before the House, and which were moved yesterday, and also Mr. Bhagat's amendment, or only Mr. Bhagat's amendment?

Shri C. D. Deshmukh: Mr. Bhagat's amendment replaces my amendment. Mine is not withdraw I cannot withdraw it at this stage.

Mr. Deputy-Speaker: Mr. Deshmukh had moved his amendment yesterday. Mr. Bhagat has moved his amendment today. It is for the House to accept the one or the other. If the one is passed, the other is automatically negated.

Shri V. P. Nayar (Chirayinkil): Are both these amendments Government amendments?

Shri R. K. Chaudhury: Let the hon. Finance Minister withdraw his amendment then. There is no point in wasting time over both.

Mr. Deputy-Speaker: I shall now place Mr. Bhagat's amendment before the House. Amendment moved:

In page 2, after line 48, insert:

“(16A) “public charitable purpose” includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include any purpose which is expressed to be for the benefit of any particular religious community;

Explanation.—A purpose which is expressed to be for the benefit of scheduled castes, backward classes, scheduled tribes or of women and children shall not be deemed to be for the benefit of a particular religious community within the meaning of this clause.’

Now there is an amendment to this amendment, which has been moved by Mr. Barman. If this is accepted, then Mr. Bhagat's amendment will read:

“.....but does not include any purpose which is for the benefit of any particular religious community.”

That means, even impliedly it can be for the benefit of any particular religious community.

Shri C. D. Deshmukh: It may be expressed to be for something else.

Mr. Deputy-Speaker: Whether it is expressed or not, if it has got a remote possibility of advancing the benefit

of any particular religious community, then this provision is attracted. Such amendments should have been given earlier.

Shri Barman: I gave it only this morning.

Shri Dhulekar: Mr. Bhagat's amendment has been given to us only today.. So I also want to move an amendment to this.

Mr. Deputy-Speaker: Mr. Bhagat's amendment was given notice of and circulated only last night. Therefore I am prepared to allow amendments to that amendment, on the floor of the House.

Shri T. S. A. Chettiar: Sir, I want to move an amendment to Mr. Bhagat's amendment. I beg to move.

In the amendment proposed by Shri B. R. Bhagat, in the Explanation, after “women and children” insert “of any particular religious community”.

The intention of this amendment is to make clear what the hon. Finance Minister has said just a few minutes back. He said, as a result of a claim made in this House that endowments or charities for the advancement of Hindu women or Hindu widows or something like that will be barred, if a specific provision is not made. We entirely agree with the general proposition that as a general rule, all endowments by religious institutions and public charities should generally be directed for the benefit of all communities in this country and not confined to small petty religious groups, for, such a limitation will not tend towards national consolidation. So, as a measure of national consolidation, we would like to encourage gifts for all communities. We agree entirely with that position. We also agree that in the case of certain communities which are backward, and for whom special attention should be paid, gifts specifically for them can be allowed. Those backward com-

unities are referred to in the Explanation which reads:

"A purpose which is expressed to be for the benefit of scheduled castes, backward classes, scheduled tribes or of women and children shall not be deemed to be for the benefit of a particular religious community within the meaning of this clause".

Now the question arises, what will be the meaning of the term 'women and children'. The probable meaning will be women and children generally belonging to any specific community.

Mr. Deputy-Speaker: That point has been explained by the hon. Finance Minister.

Shri T. S. A. Chettiar: This amendment of mine only makes clear that explanation, and so I hope it will be accepted.

Shri N. P. Nathwani (Sorath): May I move a further amendment to Amendment No. 578 moved by Mr. Bhagat? My amendment reads:

In the amendment proposed by Shri B. R. Bhagat, in line 3 of the Explanation, for the word 'and' occurring after the word 'women', substitute 'or'.

There might be institutions which may be confined only to women or only to children. But according to the Explanation as it stands in No. 578, the institutions must be for both women and children. My amendment seeks to cover institutions run only for women or only for children.

Mr. Deputy-Speaker: 'And' very often means 'or', and 'or' very often means 'and'.

Pandit Thakur Das Bhargava: In the Constitution also, the same wording is used.

Mr. Deputy-Speaker: If it is 'women or children', then it will mean that both cannot be combined.

Shri N. P. Nathwani: 'Or' would include both.

Shri R. K. Chaudhury rose—

Mr. Deputy-Speaker: Order, order. Will not hon. Members resume their seats, however big they may be, when I am on my legs? When an amendment is moved, I must place it before the House first. Why should any hon. Member, particularly Mr. Rohini Kumar Chaudhury be impatient?

Shri R. K. Chaudhury: I am sorry, Sir.

Mr. Deputy-Speaker: Amendment moved:

In the amendment proposed by Shri B. R. Bhagat, in the Explanation, after "women and children" insert "of any particular religious community".

As for Mr. Nathwani's amendment, the term 'women and children' will mean either women or children or both. So, I do not think this amendment is necessary.

Pandit Thakur Das Bhargava: The wording in our Constitution is 'women and children'. Article 15(3) of the Constitution reads:

"Nothing in this article shall prevent the State from making any special provision for women and children."

Shri R. K. Chaudhury: Sir, in the amendment which is proposed...

Mr. Deputy-Speaker: Can he not pass on the amendment to me?

Shri R. K. Chaudhury: If you prefer my written words to my spoken words, I shall give the slip.

Mr. Deputy-Speaker: Let me read it first.

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

In the amendment proposed by Shri T. S. A. Chettiar, after "community" add "and professing any particular religion."

[Shri R. K. Chaudhury]

I think the real object of my friend is perhaps to make that clear. Women and children may belong to any religion, not to any particular community.

Mr. Deputy-Speaker: 'Religious community' is already there. Does he mean 'any religious community belonging to any religion?' That is, they may belong to one religious community and profess another religion: I think this amendment is unnecessary.

Shri Dhulekar: I beg to move:

In the amendment proposed by Shri B. R. Bhagat, after "particular" insert "caste or section of a"

So that it will read like this:

"but does not include any purpose which is expressed to be for the benefit of any particular caste or section of a religious community".

Mr. Deputy-Speaker: 'Religious community' as a whole is a large group. He wants a further sub-division 'of any caste or section of a religious community'.

Shri Dhulekar: Yes.

Pandit Thakur Das Bhargava: Are we to understand that 'caste' is a religious community?

Shri Tulsidas (Mehsana West): It is not a religious community.

Pandit Thakur Das Bhargava: It is a section of a social community. Caste can never be regarded as a religious community.

Mr. Deputy-Speaker: These are the amendments which have been moved to the amendment. They will be taken up the next day.

BUSINESS OF THE HOUSE

Mr. Deputy-Speaker: The House will now take up Private Members' Legislative Business.

Shri C. R. Narasimhan (Krishnagiri): What about Bill No. 34, Sir?

Dr. N. B. Khare (Gwalior): Will we be allowed to introduce Bills, Sir, which were left over the other day?

Mr. Deputy-Speaker: The other day also Bills were introduced with respect to which there is no opposition in the House. If there is any opposition, they must come in the ordinary course. Those which are not objected to even in the introduction stage, I will allow to be moved now. I understand that with respect to Pandit Thakur Das Bhargava's Bills Nos. 36, 42 and 44 and Mr. Pataskar's Bill No. 45 there was no opposition and the others were opposed then. The same position continues. They are in the order paper.

Shri V. P. Nayar (Chiravinkil): The others cannot be moved?

Mr. Deputy-Speaker: They will come in due course after the other Bills are exhausted. (Interruptions). The hon. Member should have asked the Home Minister previously whether he was willing or not. I am not prepared to take up the time of the House and ask the Minister what he is going to do. The hon. Member should have asked the Minister.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL

(Amendment of sections 496 and 497)

Pandit Thakur Das Bhargava (Gurgaon): I beg to move for leave to introduce a Bill further to amend the Code of Criminal Procedure, 1898.

With your permission, Sir, may I introduce the other Bills also standing in my name?

Mr. Deputy-Speaker: Let it be one after the other. The hon. the Home Minister will kindly consider this. There is a proposal for introduction of Bills Nos. 36, 42 and 44 by Pandit Thakur Das Bhargava.

The Minister of Home Affairs and States (Dr. Katju): I thought it was a day for consideration of Resolutions, Sir.