

[**Shri Goray**]

jiā saying that the summons to appear before the House should be postponed by 14 days or something like that. The telegram also stated, you informed the House, that he was sending a letter to you. Have you received that letter?

**Mr. Speaker:** I have not yet received the letter. I have received information that he has filed a writ in the Supreme Court (*Interruption*). Let us wait and see what is going to happen.

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#### BUSINESS ADVISORY COMMITTEE

##### SIXTY-SIXTH REPORT

**Shri Satya Narayan Sinha:** Sir, I beg to move:

"That this House agrees with the Sixty-sixth Report of the Business Advisory Committee presented to the House on the 24th August, 1961."

**Mr. Speaker:** The question is:

"That this House agrees with the Sixty-sixth Report of the Business Advisory Committee presented to the House on the 24th August, 1961."

*The motion was adopted.*

—  
12 hrs.

#### INCOME-TAX BILL, 1961—Contd.

**Mr. Speaker:** The House will now take up further consideration of the following motion moved by **Shri Morarji Desai** on the 18th August, 1961, namely:—

"That the Bill to consolidate and amend the law relating to income-tax and super-tax, as reported by the Select Committee, be taken into consideration."

Time allotted is ten hours. Time allotted for General Discussion is seven hours out of which six hours have already been taken. There is a balance of one hour for General Discussion.

**Shri M. R. Masani** (Ranchi-East): May I know, Sir, when the hon. Minister will be called on to reply?

**Mr. Speaker:** How long does the Minister like to take for his reply?

**The Minister of Finance** (Shri Morarji Desai): Half-an-hour.

**Mr. Speaker:** He will be called at one o'clock.

**Shri Morarji Desai:** I might take a little more also. I may be called at quarter to one.

**Mr. Speaker:** He may start at 1:00; if necessary I will extend it by 15 minutes.

Now, Ch. Ranbir Singh was in possession of the House. He may continue his speech.

**चौ० रणबीर सिंह** (रोहतक) : प्रध्यक्ष महोदय, मैं कल सेलेक्ट कमेटी की ११, १२ और १३ नवम्बर की धागधों का स्वागत करते हुए यहां पर जो उनके बारे में कुछ लोगों ने ऐतराज किया था उन के बारे में चर्ज कर रहा था।

आपत्ति करने वालों की ओर से यहां इस बात को सावित करने की कोशिश की गई कि यह आराएं छोटी गिनती की जानियों के लियाफ जाती है और यह उनकी तरक्की के रास्ते में रोड़ा लड़ा करने के लिए लाई गई है। मेरी समझ में उनकी यह बात नहीं जाती है क्योंकि यह आराएं हर एक जाति

के स्कूलों और शिक्षण संस्थाओं पर यक्सां जाग हैं भने भी वह किमी धर्म की हों, चाहे वह हिन्दू धर्म की हों, अथवा अन्य किसी धर्म की, बड़ी से बड़ी जाति की हों, ब्राह्मणों की हों, अथवा छोटी जाति वालों की हों ।

आपत्ति करने वालों की ओर से दूसरी चीज यहां यह बताने की कोशिश की गई कि सरकार जब सब आदियों की पढ़ाई का इन्तजाम नहीं कर सकती है तो वह लोगों के रास्ते में खड़ी व्यापों होती है । इसके लिये मेरा यह कहना है कि सरकार को इनकम टैक्स के स्पष्ट में जो जनता में पेंसा मिलेगा उसमें वह देशवासियों को नालीम प्राप्त देने का इन्तजाम करेगी और मैं हाउस को बतलाना चाहता हूं कि उसके द्वारा यह काम बखूबी अन्तजाम दिया जा रहा है । अप्रेजी को ही ने लीजिये । यह हकीकत है कि पिछले डेट सो सालों में अप्रेजों की प्राइवेट शिक्षण संस्थाएं भागतवासियों को उननी अप्रेजी नहीं पढ़ा सकी जितनी अप्रेजी कि हमारी अपनी सरकार द्वारा पिछले १४ वर्षों में लोगों को पढ़ाई गई है । इसी तरह से मैं आपको बतलाऊं कि हिन्दी लोगों को सिखाने और पढ़ाने के लिए जो प्राइवेट संस्थाएं थीं उनके द्वारा १००-१५० साल में इनने लोगों को हिन्दी नहीं पढ़ाई जा सकी है जितनी हिन्दी कि इन पिछले १०-१२ मास में लोगों को पढ़ा दी गई है । इसी तरह से पंजाबी का मामला है । पंजाबी सिखाने के बास्ते जो कुछ संस्थाएं थीं और जो कि किसी के दान पर चलती थीं वे इन पिछले १५० साल में इननी पंजाबी लोगों को नहीं सिखा पायी हैं जितनी पंजाबी कि पिछले ५, ७ साल के अन्दर लोगों को सिखा दी गयी है । यह बात हर एक छोटी और बड़ी जाति की संस्थाओं द्वारा स्वापित शिक्षण संस्थाओं के लिए कही जा सकती है । अस्पतालों के बारे में भी यही बात नामू होती है और जाति विशेष द्वारा प्राइवेट संस्थाओं के मातहत चलने वाले अस्पतालों की विशेष जाति बर-दारी अस्पतालों द्वारा अधिक लोगों की

अधिक सुवारू रूप से दबावाक और देखभाल की जा रही है । इसलिए आज यदि कोई यह कहे कि इन मौजूदा धाराओं के द्वारा किसी भी जाति की तरफकी के रास्ते में बाधा लड़ी की जा रही है तो यह गलत बात है । मैं मानता हूं कि यह इनकम टैक्स का विधेयक, हमने इस देश के अन्दर जो एक समाजवादी समाज और धर्म तिरेप्त राज्य अर्थात् बगेर किसी जात-पांत का लिहाज किये जो एक मिलाजुला समाज बनाने का प्रयत्न किया है, उसकी तरफ यह एक कदम आगे बढ़ने के लिए है और इसलिए मैं मानता हूं कि हम सब लोगों को इगका स्वागत करना चाहिए । इस विधेयक में जो मुझे सबसे अच्छी धारणा नहीं वे यह धारणए हैं ।

इसके अलावा इस विधेयक के अन्दर कुछ डाइरेक्टस का जिक्र है जिसमें कहा गया है कि जो भी टैक्स बसूल नहीं हो पाया है और अगर सम्बन्धित संस्थाएं जिन पर कि सरकार का टैक्स बाकी रहता है वह संस्थाएं अगर लक्ष्य हो जाय तो फिर उस टैक्स की प्रदायगी की जिम्मेदारी डाइरेक्टर्स पर प्राप्ती और उनमें सरकार वह टैक्स बसूल करेगी । अब जहां तक इनकम टैक्स एंक्ट के लागू होने का सबाल है वह कोप्रापरेटिव सेक्टर पर भी लागू है । मैं भी एक कोप्रापरेटिव शुगर फैक्ट्री का डाइरेक्टर हूं और मुझे मालूम है कि स्टेट का १०-१२ मास लप्या आज तक बसूल नहीं हो पाया है अब लुटा न स्वास्ता उस संस्था में अगर कुछ लगावी हो जाय तो उस टैक्स की बकाया रकम को कौन डाइरेक्टर दे सकता है ? . . . . .

जो जोरावरी देताहै : यह तो प्राइवेट कम्पनियों पर लागू होता है ।

चौं एक्सीर शिल्ह : यही स्पष्टीकरण मैं विस मन्त्री द्वारा जवाब देते वक्त आहत, वा । यह वास्तव में लुही की बात है कि उम्होंने इस चीज को काक कर दिया है ।

[चौ० रणवीर सिंह]

इसके साथ ही मुझे एक चीज़ यह भी अजं करनी है कि यह दिल्ली तथा दूसरे जो सेट्टली एडमिनिस्टर्ड एरियाज़ हैं उनको टैक्सेशन पालिसी के लिए यह सदन जिम्मेदार है। दिल्ली के देहाती भेत्र में बसने वाले निवासियों का मुख्य उद्यम खेतीबाड़ी है जबकि शहरी भेत्र के लोग नीकरी प्रादि अन्य पेशों में लगे होते हैं। होता यह है कि वे लोग जो कि खेती से अपनी रोज़ी कमाते हैं उनके ऊपर तो थाटे पर भी टैक्स लगाया जाता है जबकि शहरी लोगों को ३०००, ३००० और ४०००, ४००० रुपये तक टैक्स की छूट मिलती है। मैं आहता था और मेरी यह स्वाहित थी कि कम से कम हम इस बारे में देश के अन्य राज्यों को पथ-प्रदर्शन करते और दिल्ली और सेट्टली ऐडमिनिस्टर्ड एरियाज़ के लिए इस इनकम टैक्स में कोई ऐसी व्यवस्था करते ताकि वे लोग जो कि खेती से अपनी प्रामदनी कमाते हैं और वे लोग जो कि खेती से रोज़ी न कमा कर अन्य साधनों से प्रामदनी कमाते हैं, उन दोनों के लिये यह तो कर नीति हो और यह छूट जो १८ खर्चानहर लागों को दी जाती है। वह छूट खेती करने वालों को भी दी जाय। कर में छूट देने की नीति यक्सा हो। एक नरक तो खेती करने वालों पर थाटे पर भी टैक्स लगे और दूसरी तरफ लोगों को ३०००-४००० रुपये तक टैक्स में छूट दी जाय यह कोई न्यायोंचन बात नहीं मानून होती है। लेकिन इन सारी बातों का कहने हाथ में इस विधेयक का स्वागत करना है और मैं मानता हूँ कि यह जो धर्म और जातिगत की बातें की जाती हैं, स्त्रोंटी गिननी वाली जाति धर्म व बड़ी गिनती वाली जाति की बात कही जाती है। इसमें देश की तरफकी होने वाली नहीं है।

जहाँ तक रियायतों को देने का सम्बन्ध है, मैं मानता हूँ कि उन को बुद्ध संरक्षण देना चाहिए, जितनी ज़रूरत हो, लेकिन बहुत ज़्यादा रियायत देने का तरीका सही नहीं है। और उसका असर अच्छा नहीं होता है।

एक धर्म से सम्बन्ध रखने वाले कुछ भाई ग्रन्त्यसंस्थक होने के नाते यह दावा करते हैं कि इस देश में उनके साथ न्याय नहीं हो रहा है, लेकिन यह बात सही है कि हिन्दुस्तान का पब्लिक सेक्टर का जो सबसे बड़ा काम—रेलवे मन्त्रालय, उस जाति के एक भाई रेलवे बोर्ड के चेयरमैन है और एक भाई एक जोन के जनरल मैनेजर है और मुझे लुकी है कि वह लायक हैं। इसी तरह लोहे के सैक्टर का काम चलाने वाले जो मन्त्री हैं, वह उसी जाति से प्राप्त हैं।

मैं यह कहना चाहता हूँ कि रास्ते से बाहर जा कर यह जो खुश करने का तरीका होता है, वह बहुत ज्यादा फ़ायदेमन्द नहीं रहता और देश को आगे नहीं मूँ जाता। हाँ, यह बात महीने है कि जिन छोटी जातियों को उन का हक नहीं मिलना है, उन को वह मिलना चाहिए। चाहे टैक्सेजन की नीति हो, या देश की दूसरी नीति हो, उम्र में उनका ध्यान रखना चाहिए।

श्री बजराज सिंह (फिरोजाराद) : माननीय मंदस्य का भाषण किम्य मंदस्य में था ?

**Shri C. K. Bhattacharya** (West Dinajpur): Mr. Speaker, speaking on this Bill I want to draw your attention to a great defect in the Bill which has remained unremedied in spite of agitation carried against it for a long time, and that is in the use of the expression "Hindu undivided family" without defining it anywhere in the Bill itself. The result of the vague use of this expression has been that it has been extended to families which do not and should not come under it and unjust assessment has been made upon such families.

I draw the attention of the House and the Government to this anomaly in the Act during my speech in the budget discussion last year and, encouraged by the sympathy that I

received from Dr. B. Gopala Reddi, who was at that time in the Ministry of Finance, I put in an amendment to the particular section. When the Income-tax Bill was being referred to the Select Committee, I made repeated attempts to have my amendment referred to the same Select Committee along with the Bill, but, unfortunately, that could not be done. Though it could not be done, I expected that, after I had drawn the attention of the House and the Government to my amendments, the Select Committee would take notice of that, though not officially and formally communicated to it by me. I do not know what has happened in the Select Committee, but the Bill as it has emerged from the Select Committee does not appear to take notice of this anomaly, and that has been allowed to remain unrectified. It was in the old Act, it was in the Bill when the hon. Finance Minister moved for its reference to the Select Committee, and I find it in the same condition in the Bill as it has emerged from the Select Committee.

My contention is very simple and the hon. Finance Minister may very easily accept it. The Bill, in sub-clause 31 of clause 2, which is the definition clause, uses the expression "a Hindu undivided family and includes it in the list of "Persons" assessable as a unit, though this expression is nowhere defined in the Act. I want it to be clarified that the expression "Hindu undivided family" should be referred only to families under the Mitakshara law, because under the general Hindu law this is only where this expression can be applied. As a consequential change, there will be addition of another sub-clause after sub-clause 23, to the effect that "Hindu undivided family" means a family governed by the Mitakshara law. Some hon. Members—I think it was Shri Heda—had asked for the exclusion of "Hindu undivided family" from the category of persons under the Act. I do not know whether the hon. Finance Minister will be wil-

ling to go to that extent. In any case, it is highly necessary that the expression should be limited and the unwarranted extension of the expression to families which do not and should not come under it should be prevented.

As an instance, I may mention the case of the joint families under the Dayabhaga law, which are unjustly assessed under the Act as Hindu undivided families. There may be several other cases, but I know of Dayabhaga law, because that is the law prevalent in the eastern region, particularly in Bengal where I come from. By nature the Dayabhaga family is entirely different from Hindu undivided families as understood in Hindu law.

The main question to be considered is what constitutes a Hindu undivided family and what kind of income and property belong to such a family, as distinguished from the individuals who compose it. Under the general Hindu law, the main feature of the Hindu undivided family is that it is a coparcenary or tenancy in common, and the tenancy in common or coparcenary arises by law among certain degrees of relationship under the Hindu law. Such a coparcenary exists only among the Mitakshara families and not among the families governed by the other schools. Therefore, only families governed by the Mitakshara law come under the expression used in the Act. I want nothing more than this, that this should be made clear in the Act itself. That is what my amendment aims at.

The concept of Hindu undivided family involves the idea that the family property is divisible but has not been divided. This can apply only to a Mitakshara family and not to the other schools of Hindu law to which I have made a reference before. This is clear from a study of the special characteristics of the coparcenary as are found in the Mitakshara law. There are two characteristics which

[Shri C. K. Bhattacharya]

distinguish a coparcenary; firstly, the right by birth and, secondly, the right by survivorship. A son takes his share in the property by birth. That is the foundation of the coparcenary, that is the start, and after the death of the owner, his right passes by survivorship, not to his issues but to the other members of the coparcenary, augmenting their share to that extent. That is the peculiar characteristic of the Hindu undivided family, as understood in the Hindu law, and that obtains only in the Mitakshara law, and not in the so-called joint families under the Dayabhaga law or in the other schools. Therefore, the provision in the Act which contains that particular expression "Hindu undivided family" should be so clarified that the other schools do not come under that particular expression used in the Act.

To establish my point that the concept of the Hindu undivided family does not apply to other schools of Hindu law, I am taking up the consideration of the peculiarities of the Dayabhaga schools which, as I have stated, forms one of the main branches of Hindu law. As distinct from the Mitakshara law, there is no coparcenary in the law Dayabhaga families, there is no right by birth, there is no passing of the right of survivorship, as is found in the Mitakshara families. In Dayabhaga a son by birth takes no interest; so long as the father is living, none can claim anything against him in the property.

The Dayabhaga father is a dictator. When he dies his right passes to his issues, each becoming the owner of a specific share in the property though described to be held jointly. My contention may be further proved if I analyse the character of the ownership of the property. In the Mitakshara law the ownership of the property vests in the entire body of coparceners. While a family under Mitakshara law remains undivided no coparcener can say that he is the owner of a definite share, one-third, one-fourth or anything. His share or

interest is a fluctuating interest. It is only on partition that he becomes entitled to a particular share. The position is completely different under the Dayabhaga law. There the ownership of the joint family property is not in the whole body of members. Every member takes a definite share in the property and is owner of that particular share only. The share of each member being ascertained it is not going to be augmented by the passing away of any other member. It passes only to his issues. Therefore it would be a great injustice if in the income-tax law which is being amended and consolidated now any loophole is left through which these families which are not actually Hindu undivided families may be drawn under that expression and assessed. This is actually what is going to happen unless the hon. Finance Minister kindly accepts my amendments.

What I have established by analysing the character of ownership may be further established and proved by elucidating the process when partition of the property is made. The basic difference between the two types of families comes out when we take into consideration the matter of partition. According to the Dayabhaga law partition consists in the splitting up of the joint possession only assigning a specific portion of the property to each member. According to the Mitakshara law partition consists in splitting up of joint ownership defining the share of coparceners which in the case of the Dayabhaga family is already there in the members belonging to the family.

It has been held in law that coparceners of a Mitakshara family after a preliminary decree for partition in which only shares are defined and actual partition is not made, are in the same position as a Dayabhaga family.

12.43 hrs.

[SHRI MULCHAND DUBE in the Chair]

In such cases income-tax can be assessed only on the individual members and not on the family as a unit. If that is so, in view of the position as held in law it is clear that a joint family under Dayabhaga cannot come under the expression 'Hindu undivided family'. Therefore I want the expression to be limited in such a way that it is recognised in law.

I am speaking on good authority. I shall refer to the Bengal Agricultural Income-tax Act in my favour. This Act has differed from the Central Act in the sense that it has accepted the true propositions of the Hindu law in defining that expression namely, "Hindu undivided family." Under the Bengal Act the term "Hindu undivided family" means only a family governed by the Mitakshara law. I request that this may be taken note of. There is no Hindu undivided family under the Dayabhaga school as provided under the Bengal Agricultural Income-tax Act. As such every member of the Dayabhaga family is treated as an individual and assessed as such. That is what I want to submit, namely, that the Dayabhaga family should not be treated as a person or as a unit and that an individual should be treated as an individual and assessed in this way even before actual partition of the family property. This is the correct position according to Hindu law and what I wish is that this position should be recognised in the new consolidated Act that the House is going to pass.

In fact, the expression "Hindu undivided family" is a misnomer as applied to a so-called joint family of the Dayabhaga school. I call it a so-called joint family because there is no common ownership. It is only common holding of the property. There is nothing more. It is high time that this anomaly should be removed and this is what I have brought in by my amendments. As I have stated, the amendments are on the same lines

as the provisions of the Bengal Agricultural Income-tax Act. The very fact that the Bengal Legislature realised this anomaly and limited the expression to families under the Mitakshara school only is a strong argument in my favour and the Central Act also should be amended on those very lines.

The only feature in the Dayabhaga family that leads to some confusion in making such an assessment on it as a unit is because of the fact that it is described as a joint family. The term 'joint' is taken advantage of though the incidence and the nature of this joint family are completely different from the incidence and nature of a Hindu undivided family as understood in the Hindu law. That is my submission.

I have pointed out that the incidence of a Hindu undivided family does not apply to a joint family as described under the Dayabhaga law because only after the death of a father the sons choose to live together by way of sentiment and as a matter of convenience. If they are assessed as a unit because as a matter of convenience and by way of sentiment they are living together, the consequence is that the sons are penalised because they have chosen not to fall apart and because the brothers have chosen to remain together. The law is going to penalise them by putting them in the class of Hindu undivided family though by law actually they do not come under such a family. That is the submission that I make. I request the hon. Finance Minister to accept the amendments that I have given notice of.

There may be a question raised that acceptance of these amendments may lead to some loss of revenue. It may, but I do not think that the loss of revenue will be very much. But apart from the question of revenue, equity, propriety and justice demand that this should be done. It is neither fair nor proper nor just that the Act should leave open loopholes

[Shri C. K. Bhattacharya]

and keep a vague and undefined expression which might be extended to cases that should not properly and justly come under it. I request again that my amendments may be accepted. Not only should they be accepted but retrospective effect should be given to my amendments for about ten years in order to give relief to the families who had been unjustly and improperly assessed during all these years. Some consideration may be extended to them on that count as well.

**श्री अनन्दनाथा (भागलपुर) :** मध्य-पाति महोदय, यह जो कर-विधेयक हमारे मानने आया है, इसको हर एक दृष्टि से बहुत ही भरन कर दिया गया है और जो पहले बहुत सी दिक्कतें थी और इस विषय पर अलग अलग विधेयक थे, उनको काफी हद तक कम कर दिया गया है और इन मध्ये विधेयकों को इसमें एकत्रित कर दिया गया है और अब कर ग्राहा करने वालों और कर वसूल करने वालों को को काफी सहानियत हो जाएगी। यह सहानियत नभी हो सकती है यदि वे दोनों मिल करके और ईमानदारी से काम करें।

बहुत सी बातें हो सकती हैं, जिनमें मतभेद हो। लेकिन आप कैमा भी विधेयक करों न लायें, मतभेद की गुणाइश हमेशा रहेगी और मतभेद हीना स्वाभाविक भी है। जहां पर हम मतभेद को अनिवार्य मान कर चलते हैं वहां हमें यह भी देखना चाहिये कि किसी को ओर बहुत ज्यादा नक्काश या इनकल या काठिनाई का सामना दो। नहीं करना पड़ेगा या बहुत कड़ाई तो नहीं वरनी जा भक्ती। यदि कोई ऐसी चीज़ है तो मैं माननीय मन्त्री जी से कहूँगा कि उसके ऊपर भी यदि अभी तक विचार नहीं किया गया है तो अब विचार कर लिया जाए और उस दिक्कत प्रथम काठिनाई को दूर करने की कोशिश कर ली जाए।

इस कर क्यों वसूल करते हैं? हम कर इस बास्ते वसूल करते हैं कि इस देश का

डिवेलोपमेंट कर सकें, देश को उन्नति के पथ पर अग्रभर कर सकें। इस काम के लिए जब हम कर वसूल करते हैं तो यह देखना भी हमारा काज़ है कि वे करों की राशि पूरी तरह मे अदा करें। इस के साथ साथ जो असेसी है उन को किसी तरह की दिक्कत न हो, इस का भी ध्यान रखना आवश्यक है। जब हम इस दृष्टि से इस विधेयक को देखते हैं, तो इस में कोई खास चीज़ नहीं बतलाई गई है जिस से कि असेसी को तकलीफ न हो और हमारा कर भी ठीक तरह से प्रा जाय। जिन असेसीज का काम खास कर यह है कि टैक्स अवायडेंस करें या टैक्स इवेजन करें, उन को किस तरह से पकड़ा जाय, इस के लिये भी बहुत सी चीज़ों दी गई है, और जो जो लूपहोल्स थे उन सब को इस में बन्द करने का प्रयत्न किया गया है। इन सब बातों का दूर करना इस बात पर निर्भर करता है कि जो एडमिनिस्ट्रेशन है और जो इन चीज़ों को जानने वाले हैं वे अपना व्यवहार कैसा रखते हैं। यदि वे लोग ठीक नहीं रहे, यदि उन की मनोवृत्ति दूसरे प्रकार की रही तो आप कैसा भी विधेयक क्यों न लायें, जो हमारा कर पूरी तौर से आना चाहिये। उस का आना बड़ा मुश्किल है। इस सम्बन्ध में मैं कुछ उदाहरण देना चाहता हूँ। बहुत से ऐसे असेसी हैं नीचे के स्तर के जो ईमानदारी में अपना कर देना चाहते हैं, जिन को इस की परवाह है कि अगर उन की इनकम २५ या ३० हजार ५० की है तो वे सरकार को ५ हजार ५० दे दें, परन्तु वहां पर दिक्कत यह हो जाती है कि इनकमटेक्स अफिस में इन छोटे छोटे व्यवित्रयों को धूने परेशान करते हैं। जो ठीक तरह से और ईमानदारी से कर देना चाहते हैं उनको भी परेशानी उठानी पड़ती है।

12.52 hrs.

[Shri JAGANATH RAO in the Chair]

यदि उस परेशानी को दूर कर दिया जाय तो

उन के पास से कर काफी अधिक आ सकता है। इस की सब से आसान तरकीब, जैसा कि हमारे भोरारका जी ने कहा, यह है कि असेसमेंट जन्दी से जल्दी कर दिया जाय। इस काम में छँ: महीनों से अधिक नहीं लगना चाहिये। इस में जितनी भी देर होती है उतना ही इनकम टैक्स आफिसर्स को छोटे असेसीज को परेशान करने का मोका रहता है और ऐसे काम करने का मोका मिलता है जिस में एक तरफ नों बे कर बचाने की चेष्टा करते हैं और दूसरी तरफ विशेष कर लेने की चेष्टा करते हैं। इस निये में इस बात पर पूरा जोर देना चाहूँगा कि एडमिनिस्ट्रेशन के ऊपर इस तरह की नाकीद होनी चाहिये कि वे जल्दी असेसमेंट कर दें। अगर उस में जल्दी की जाय तो हो सकता है कि असेसी यह सोचें कि वे कर दें दें, लेकिन अगर इस में देरी की जायगी तो इस का परिणाम यह होगा कि उस की वसूली में नीन चार माल बाद दिक्कत होगी। यह चीज में उन्हीं असेसीज के बारे में कह रहा हूँ जो कि ईमानदार लोग हैं। उन की जो दिक्कतें हैं उनको में आपके मामने रख रहा है। इस के निये आप एडमिनिस्ट्रेशन को जरा ठीक करें, इस के अनियन्त्रित मुझे और कोई उपाय उस का नहीं दिवाई देना है।

मैं यह देख रहा हूँ कि हमारे यहाँ जो छोटे स्तर के टैक्स देने वाले हैं वे ८० परसेंट हैं, जिन की आमदनी १२५० रु है। उस में ऊपर जो लोग हैं वे विशेष कर देने वाले हैं। जिनका भी टैक्स अबायडेम या टैक्स इवेजन होता है वह उन्हीं लोगों के डाग होता है जो कि विशेष कर देते हैं। मुझे इस के कहने में दुःख होता है, लेकिन बिना इस को कह मैं रह भी नहीं सकता कि इस का उपाय मिनिस्टर माहब को सोचना चाहिये और एडमिनिस्ट्रेशन को सोचना चाहिये। एक बात पर मुझे एक इनकम टैक्स आफिसर ने कहा कि उस के पास एक फाइल आई, उस फाइल में काफी टैक्स सागया जाना था, परन्तु कहीं से आईर आया कि वह उस फाइल को छील न करे। यह किसी बड़े भारी असेसी की फाइल थी। दूसरी तरफ

एक असेस्टेंट कमिश्नर था जो कि साउच का उदाहरण दे रहा था कि वह बहां गया और बहां पर उस ने टैक्स लगाया। इस पर वह बहां से ट्रांस्फर कर दिया गया। किसी ऐसे इफ्स्ट्रुमेन्ट आदमी पर टैक्स लगाया जो कहीं से इफ्स्ट्रुमेन्ट लाया और और कुछ नहीं किया गया तो उस का ट्रांस्फर कर दिया गया। उस ने मुझे बतलाया कि वह ठीक जानता था कि उस आदमी से कम से कम १० लाख ६० टैक्स का रिप्लाइज होता, परन्तु शायद उस को बहुत नामिनल टैक्स लगा कर छोड़ दिया गया। मैं मंत्री भगोदय से यह नहीं कहता कि इस तरह के बहुत से उदाहरण हैं।

श्री अमरनाथ सिंह भद्रौरियः (हटावा) : आप ने बिन मंत्री जी को क्यों नहीं लिखा?

श्री जनसुनदाला : मैं आप से सलाह लगा कि लिखना चाहिये या नहीं। आप नहीं ये इसलिये नहीं लिखा।

मैं यह नहीं कहता कि ऐसे बहुत से उदाहरण हैं, परन्तु यदि एक दो उदाहरण भी ऐसे होते हैं तो उन का नतीजा बुरा होता है। इस में दूसरे लोग भी किसी न किसी तरह के उपाय निकालेंगे जिस में कि उन को टैक्स न देना पड़े। इस के ऊपर विशेष ध्यान रखना चाहिये कि यह चीज इस विभाग में न हो। यदि ऐसा होगा तो जो हमारा टैक्स का रिप्लाइजेशन है वह ठीक नहीं होगा।

मैं किसी देख रहा था कि जो नीचे के स्तर के टैक्स देने वाले हैं उन में किनका टैक्स आता है और जो ऊपर के स्तर के टैक्स देने वाले हैं, हाई इनकम टैक्स पुष्प के, उन में किनका टैक्स आता है। जो ऊपर के स्तर के लोग हैं उन के पास लिमिटेड कम्पनीयां हैं, उन की बैनेन्स शीट्स प्रार्थि बब निकाली हैं, यदि उन को ठीक तरह से देखा जाय तो जहर पना चल जायेगा कि इतना टैक्स यहाँ से आना चाहिये और इतना टैक्स यहाँ से आना चाहिये। इस के ऊपर भी मंत्री भगोदय को और एडमिनिस्ट्रेशन को व्याप रखना

## [श्री शुनक्षुनवाला]

चाहिये कि इन चीजों को ठीक से देखा जाय। कुछ लोग कहते हैं कि बहुत ज्यादा टैक्स अवायडेस हो रहा है। फिरसे से कुछ पता ही नहीं चलता कि जो हमारी नशनल इनकम है उस में से इतना रुपया कहां चला गया, ऐसा लोग कहते हैं। इस तरह का स्थाल हमें लोगों के मन से दूर करनो चाहिये और चेष्टा करनी चाहिये कि हम इस चीज को दूर करें। मेरे कहने का तात्पर्य यह है कि यदि ऐसा काम हम करते हैं और इस चीज को परम्परा करते हैं तो जो दूसरे अमेसी हैं उन के अन्दर यह स्थाल पैदा होगा कि अब समय आ गया है जब कि वे लोग टैक्स की ओरी नहीं कर सकते, उन को टैक्स देना ही है। एक चीज तो यह है।

दूसरी चीज यह है कि हम लोगों के ऊपर यह धारणा बिठला दें कि हम जो पैमा टैक्स के रूप में लेते हैं उस का अच्छी तरह से व्यवहार होता है। यदि लोगों के मन में यह शक रहे और यह विचार रहे कि जो टैक्स का पैसा उन के पास से जाता है उस का ठीक से उपयोग नहीं होता, उस टैक्स का उपयोग हो कर जितना लाभ जनता को मिलना चाहिये वह नहीं मिलता, तो यह भी ठीक नहीं है। जब बिट्टा गवर्नमेंट थी तब हम लोगों की एक मनोवृत्ति हो गई थी कि इस गवर्नमेंट को टैक्स देना पाप है। ऐसी बात अभी हमारे यहां नहीं है। परन्तु जो लोग हवा फैलाने वाले हैं वे इसकी हवा फैलाते हैं कि हमारा दिया हुआ टैक्स बहुत ही बुरी तरह से व्यय होता है, और इस चीज को लोगों के मन से उतारना हमारा काम हो जाता है। यदि इस मनोवृत्ति को हम दूर कर सकें तो जो ईमानदारी से टैक्स देने वाले हैं उनको टैक्स देने में कोई प्राप्ति नहीं होगी, नहीं तो उसके मन में यह भावना पैदा होगी कि वहां जो हमारा टैक्स जाता है उसमें से कुछ बचा लें, क्योंकि जो लोग टैक्स ले रहे हैं वे उसका दुरुपयोग करें, हम ही क्यों न उसको बचाकर लाभ उठावें।

13.00 hrs.

तो मेरा कहना है कि जो इस तरह की चीजें हैं उनको दूर कर देना चाहिए। छोटी छोटी बातों पर मतभेद हो सकता है, लेकिन उन पर भी ध्यान देना चाहिए, और यदि उनके कारण लोगों को कष्ट होता हो और उनके कारण कुछ लोगों के साथ अन्याय होता हो तो वह नहीं होना चाहिए।

आज मेरे पास कई टेलीफोन आए हैं जिनमें कहा गया है कि क्लाज १७६ द्वारा जो डाइरेक्टर्स के उपर रिट्रायरेक्टिव जिम्मेदारी आती है वह उन पर न आए। यह तो इन्साफ नहीं लगता। जो चीज खत्म हो गयी और जिस वक्त वह डाइरेक्टर थे उस वक्त की चीज यदि आप बीम वर्ष बाद उन पर लगावें तो यह ठीक नहीं है। हमारे वित्त मंत्री जी ने कहा है कि ऐसी चीज नहीं है, उस क्लाज को पढ़ने से ऐसा नहीं मालूम देना कि रिट्रायरेक्टिव इफेक्ट होगा। यह उन्होंने आश्वासन दिया है। उनका यह आश्वासन तो ठीक है कि इसे कोई हजं नहीं है, परन्तु जब यह चीज कोट्टे में जाएगी उस समय कोट्टे तो यह नहीं देखीगी कि उन्होंने यह आश्वासन दिया था। तो मैं मंत्री महोदय से निवेदन करूँगा कि वह इस चीज को अवश्य देखे और इस काठनाई को दूर करें।

मसानी जी ने बहुत सी बातें कही, मैं उन सबसे तो सहमत नहीं हूँ, लेकिन उन्होंने जो लासेज को कैरी घोबर करने के बारे में बात कही उससे मैं सहमत हूँ कि इस कारण तो कम्पनी का नोशन ही दूर हो जाता है। यह ठीक है कि जो लोग बैरेमानी करते हैं उनको पकड़ने के लिए यह चीज रखी गयी है, लेकिन जो ईमानदारी से काम कर रहे हैं उनके ऊपर इसका बुरा प्रसर नहीं आना चाहिए।

एक चीज और मैं कहूँगा। जिस दिन से मुरारका जी ने भाषण दिया है उस

दिन से यह चीज मेरे मन में खटक रही है। उनहोंने अकाल मृत्यु के तीन कारण बताए। उनमें से एक कारण या टैक्स। मैं मुरारका जी और वित्तमंत्री जी से यह जानने की प्रारंभना करूंगा कि क्या हमारे देश में भी ऐसी स्थिति है कि किसी की टैक्स के कारण अकाल मृत्यु होई है, और प्रगर ऐसा है तो वे उसके दो चार उदाहरण दें। प्रगर कोई ऐसा आदमी है कि जिसको रुपया देखकर ही संतोष होता है और यदि उसका रुपया कोई उठा ले तो उसकी मृत्यु हो जाती है, ऐसे लोगों को बचाने का तो कोई उपाय नहीं है। लेकिन प्रगर कोई देश के लिए काम करना चाहता है और कर नीति के मारे हताश हो जाता है और दुखी होता है कि वह उस काम को नहीं कर पाया और इस कारण उसकी मृत्यु हो जाती है, प्रगर कोई ऐसा आदमी है तो उसको अवश्य बचाना चाहिए।

अब मैं इस समय कुछ विशेष नहीं कहूंगा। जब क्लाज वाई क्लाज डिस्केशन होगा तो एक दो क्लाजेज पर मझे जो कहना है वह मैं कहूंगा।

**Mr. Chairman:** Now, the hon. Minister.

**Shri Braj Raj Singh:** May I make one submission to you? Shri L. Achaw Singh of my party has been waiting for three days to get a chance to speak.

**Mr. Chairman:** Unfortunately, there is no time left now.

**Shri Braj Raj Singh:** That is not my point. All the Members who have been called upon to speak, today, ever since the discussion started, have been called only from the Congress Party. I think there must be some procedure for calling Members from different parties.

**Shrimati Parvathi Krishnan (Coimbatore):** Nobody from our group also has been called.

**Mr. Chairman:** The hon. Member can take his chance during the clause-by-clause consideration.

**Shri Braj Raj Singh:** But how is that possible? How can he take up discussion when we are on the clauses?

**Mr. Chairman:** What am I to do? There is no time left now.

**Shri Braj Raj Singh:** That is not the point. There must be some procedure to call Members from different parties, so that all the viewpoints are presented before the House. My hon. friend Shri L. Achaw Singh has been sitting here for three days, waiting for a chance to speak. He was also there on the Select Committee. He has got a definite point of view to put before the House. Why should he not be allowed some time?

**Shri L. Achaw Singh (Inner Manipur):** I want to submit that I have already written to the Speaker and the Deputy-Speaker since yesterday, that I should be allowed to speak. I have also given a minute of dissent. It is quite improper if I am not given a chance now.

**Mr. Chairman:** Could he finish in five minutes?

**Shri L. Achaw Singh:** Yes, I shall try to finish.

I have risen to make some observations on the Bill before the House. It is, of course, a great thing that the Select Committee has considered the various clauses and it has made a definite improvement especially with regard to the simplification of some of the clauses and some of the sections of the previous Act, and also the logical arrangement of the different sections of that Act. But I submit that no changes for the better have been made to affect the substance of the income-tax law.

Of course, it is a matter of satisfaction that efforts have been made to simplify the procedures so that the harassment to the assessees may be

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reduced or removed. We are in the midst of a planned economy, and ours is a mixed economy too. In such an economy, the principle of taxation must be a compromise or a balance. We have to see that we realise the maximum revenue, and at the same time we have also to see that we give proper incentives for savings and investments.

There is an impression among the business community that the rate of taxation is very high, but it is not exactly so, because the rate of taxation in this country is low as compared to other countries in the world. The proportion of direct taxes to the total taxes, according to the Taxation Enquiry Commission's report is only 24 per cent, whereas the proportion of indirect taxes amounts to about 63 per cent. This is very low as compared to the United Kingdom, Canada and other countries. So, there is still enough scope for taxation on personal incomes as well as corporate incomes. It is found that direct taxes amount to only 3 per cent of the national income, while indirect taxes account for only 10 per cent of national income. So, we have to explore all the resources, corporate as well as personal incomes for this purpose.

Here, I would like to refer to the criticism voiced in the Economic Weekly of Bombay. I have to defend our stand on this matter. The journal has said that the Select Committee has enlarged the number of exemptions and concessions. That was done because we wanted to enlarge the quantum of earnings which can be retained by companies for re-investment purposes. But there is a fear, and that fear is also legitimate, that all these exemptions and concessions given to companies as well as to firms might serve as a fillip to avoidance of taxation, without any proportionate increase in the re-investment of those earnings. We have to take enough precautions so that this may not happen.

I would now refer to the question of tax avoidance and evasion. This point has been raised by several speakers. I do not want to repeat what has been said, but I would only like to submit that the major problem is of tax evasion. Different estimates have been given by Mr. Kaldor and by the Central Board of Revenue. Mr. Kaldor said that the loss by way of evaded income-tax would amount to Rs. 200—Rs. 300 crores but the CBR says that it is only to the extent of Rs. 20—Rs. 30 crores. But it is admitted that there is evasion and the amount of evasion is undoubtedly high. The Tyagi Committee also has admitted this fact.

So in order to check evasion, we have to make the enforcement machinery strong and we have to make the administration of the tax law stricter. We have also to see that deterrent punishment is awarded when an evader is caught. Clauses 270—273 provide for maximum and minimum penalties for evasion of tax. The Tyagi Committee has observed that during the last ten years there was no case of conviction of tax evasion though the law provides that there should be prosecution and imprisonment in cases of concealment and false statements in declarations. The maximum penalty laid down in the present Act is 150 per cent of the tax sought to be evaded. But that has also not been implemented. In practice, not even 10 per cent penalty is ultimately levied. So this has got a demoralising effect. We have to provide for a penalty of at least 10—12 times the sum sought to be evaded.

An amendment has been proposed by the Finance regarding clause 10 where Scheduled Castes and Scheduled Tribes people are exempt from the scope of income taxation. It is a very good amendment, and it is quite proper. It has been done in order to avoid the misuse of that clause.

As regards privy purses, if necessary, the Constitution should be amended

so that they also may come within the scope of income tax and super tax.

Lastly, the income tax authorities should have some access to the accounts of banks so that any benami deposits in these banks may be scrutinised by them.

**Raja Mahendra Pratap** (Mathura): The Department of income tax is a source of corruption and a great trouble to the people. I suggest that it may be abolished. Only cities and towns may tax the very rich people and we shall tax the towns and cities. I hope my point is very clear.

**Shri Morarji Desai**: I thank all the hon. Members who spoke at this stage for welcoming this measure and expressing their appreciation generally of this measure. I can of course understand that there cannot be any measure which can be agreed to by everybody and about which there may not be some difference of opinion. But from what I have heard and what I have read, I have no hesitation in saying that this measure has received a support which is unique for such measures.

It is a matter of some satisfaction for the Members of the Select Committee and also for me that the Bill, as it has emerged from the Select Committee, has been considered to be better than what it was. I was also happy to note that there had been no criticism that there has been any worsening of the measure in the Select Committee.

**Shri M. B. Masani** (Ranchi—East): Except on one point.

**Shri Morarji Desai**: Even as regards that point, when it is properly understood, I am quite sure there will be agreement that there is no worsening.

All the same, it was argued by one hon. Member that the Bill has not been simplified enough and has not also been made as short as could possibly be done. I cannot claim that this Bill is so simple or is so clear that any-

body can understand it; nor can I say that it is a very short Bill. But I doubt if the hon. Member who said that could make it shorter by even one paragraph. I certainly challenge anyone to do so, if he wants to do it in a reasonable manner and not in erratic manner. After all, a measure like this has got to be framed in the proper manner. As was said by my hon. friend, Shri Morarka, this legislation deals with so many different conditions and different types of assessees that it is impossible to make the measure so simple as to be understood by anybody. But the attempt has been to make it as simple as possible, one which could be understood by anybody who has capacity to understand the law, not necessarily that he should be a lawyer but that if he reads the language, as such and is able to understand the language, he will be able to understand the measure with not great burden on his intelligence. That has been the attempt and I am sure that we have succeeded to a large extent in achieving that result.

There was also an attempt made in England when they wanted to simplify their tax law, but their Commission came to the same conclusion. If people who are masters of the English language could not make it simpler, I would be the last person or the Select Committee would be the last body which could make it simpler than what the masters of the language could do.

Then there are some questions which will again crop up when clause-by-clause discussion takes place. Therefore, I do not want to dilate on some of the criticisms made with respect to clauses. But I should like to explain three or four matters so that the discussion at the clause by clause stage becomes easier and simpler or perhaps may even be given up.

There was objection to delays. I do not want to claim that I am more particular than my hon. friends about delay but I am as particular as any one who is most particular in this behalf, to remove delays. Therefore, we tried to provide measures in this Bill, wherever it was possible to do so, to

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see that delays are cut out. But it is never possible to cut out delays by mere legislation or by putting time-limits only which may become useless or impossible to carry out. In a measure like this which covers cases of the most complicated nature, such as banking or insurance companies, it is not possible—it will not be possible even by my hon. friend, Shri Masani, if he is put in charge—to make an assessment, to make an assessment in less than a year.

**Shri M. R. Masani** (Ranchi—East): Do so.

**Shri Morarji Desai**: I am prepared to trust him with that task if he can satisfy me that he will do that; I am prepared to put a time-limit, I am sure he will take double the time that my officers take now.

**Shri Prabhat Kar** (Hooghly): He will agree with the banking companies and the insurance companies.

**Shri Morarji Desai**: He will not agree when he is responsible; he will be more hard than perhaps other people. It is only because he has to take money from me that he says so now; when he is to take money from me as a Government, he will not do it; he will take more money than even I take. That is always the case and, therefore, I am quite ready to trust him with that task.

**Shri M. R. Masani**: Thank you, Sir.

**Shri Morarji Desai**: But I had said in the Select Committee and I have said here quite often that I am constantly trying to see that delays are cut out. I have, therefore, given executive instructions to see that assessments are covered within a certain specified time. If they are not covered, I am going to call for reports for all cases which are delayed beyond a certain period. I do not want any case to be delayed beyond a year—appeals or assessments. After having that experience, it may be possible for me to lay down a rigid limit if I find it possible to do so, without any exception. I know that delays lead to

harassment, I also know that delays lead to corruption and many times delays are made for harassment with a view to corruption. Harassment also has no other motive except in perverse people. We want to see that all this harassment and corruption, whatever is found, is removed. But it is not as rampant as it is made out to be. It exists to a small extent and it is also lessening day by day. I invite the help of some of my hon. friends here to let me know whenever any case comes to their notice so that I can make use of it and see that in future such cases do not recur.

13.24 hrs.

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

Reference was made in this connection by my hon. friend Shri Jhunjhunwala about some officers having told him that one was transferred because he had put a heavy assessment on somebody in the south and another was transferred also similarly for doing his duty because influence was brought to bear upon the higher officers. May I be permitted to say that those officers who told him this are not worth the name of officers. If they said so, they are disloyal and they are indisciplined. I do not think that any officer has been transferred at any time for assessing anybody heavily, if he deserved that heavy assessment. But if he did so in order to extort money, then certainly he must not only be transferred but dismissed. I do not think that hon. Members would find fault with the Government for taking such action in those cases. There have been complaints of harassment in some cases, where the officers have been very correct as they want that the officers should be lax and benefit them. But nobody has been transferred because of such complaints. On the contrary, we have seen to it that such officers who have done this work in a bona fide manner are also encouraged and are promoted. That is what I would like to do. But officers who go wrong and then try to win the sympathies of hon. Members or other members of the Public in a wrong manner

in order to earn Kudos for doing wrong things will certainly be punished and punished heavily.

My hon. friend, Shri Masani, found fault with clause 179 on two grounds. He said that directors were made liable wrongly when there was a limited liability and the liability became unlimited by this clause. It is not unlimited; it is limited to the amount of the tax. How can it be called unlimited liability?

**Shri M. R. Masani:** In that sense, all liabilities are limited.

**Shri Morarji Desai:** It is a known liability—liability for tax. Then it was said that the burden of proof was put on him and he said that it was wrong in principle and in law. My hon. friend is an able lawyer though he seldom practises. That is where the difficulty arises. If he had been practising, he would have come across laws which had put this burden, as is the case here. I cited in my opening speech the company law in this country where this burden is there. But there are other cases in England and in Australia where also this is done and for his benefit I shall mention them. Section 55(2) of the Iron and Steel Act of 1949 of the United Kingdom states as follows:

"Where an offence under the last preceding section or any regulation made under this Act has been made by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate or was purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of such an offence as he ought to have exercised having regard to the nature of his function in that capacity all the circumstances."

**Shri M. R. Masani:** Two wrongs do not make a right....(Interruptions).

**Shri Morarji Desai:** My hon. friend does not agree with this definition. He may have full satisfaction but if he is a democrat he cannot claim such a definition for himself. There is section 12 of the National Security Act of Australia which also is similarly worded. All these go much beyond what we have said here. Even those who are purporting to act are made liable and they have got to prove several things which we do not ask them to prove. In our own country section 327 of the Industrial Disputes Act also says the same thing. These are all laws passed by this Parliament. Section 77(2) of the Electricity Act of 1948 of this country also provides a similar thing. Therefore, let it not be said that I have brought something in this Bill which is monstrous or perhaps in his language, pernicious, which he applied to some other sections. I am not used to using such hard words; let him be happy with the use of such words. I do not want to use them. But I do not think that a description like that is going to do credit for the use of good language. Therefore, this objection has no merit.

The other objection that he has an unlimited liability or that it has retrospective effect also has got to be seen now. To whom does this apply? It applies only to private companies which go into liquidation. It does not apply to others, and if they are private companies which are corporate partnerships, there are legal rules to get out of individual liabilities when they are partners and we have allowed them. Therefore, I cannot say that that is a wrong thing. It is the same thing, and if that is so, I do not know why a tax of the State should be defrauded by the incompetence or negligent behaviour or deliberate action of a director or all directors of a company and especially for a private company where the directors are almost partners—they are not outsiders—must be liable for tax which accrues

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to Government during their time of management. Where is retrospective action in this? A person who is managing a company at that time, when this happens, and when tax was due, should certainly be responsible for it and not a director who is today there and about which he does not know anything. That would be a wrong act. It is therefore that this is the director who is going to be responsible for this and not a director today who was not responsible for that act. So, this is the most proper section to my mind, and if we do not accept it it's only means that we have sympathy for wrong-doers and those who get into companies for illegal games. Otherwise, nobody else is going to be touched by it. Anybody who can prove that he was not negligent, that no action of his was responsible for this, will be exempted from this liability as has been specifically stated in this section.

Originally, shareholders holding a certain percentage were also made liable. That was also because shareholders are like partners, in private companies; there are a few shareholders, mostly they are family members. But I have removed shareholders from this, because they would be more than the directors in number and the directors have responsibilities enough. Therefore, I do not want to bring in shareholders, but even if shareholders are made responsible for private companies, I do not think that it would be improper.

Then, I would come to the criticism made by my hon. friend, Shri Frank Anthony. Unfortunately, I had not that advantage of hearing him myself. I am told he made a very strong speech.

**An Hon. Member:** Eloquent.

**Shri Morarji Desai:** He is always eloquent, and, therefore, it is no use my saying that this speech was eloquent. But I am told he made a very strong speech. His feelings are strong

in this matter. I had a discussion with him also. But I thought that after my discussion with him he was satisfied. But I was told in his speech that he was not. Take this case of trusts which we have removed from income-tax exemption. What are they? They are trusts which cater only for a particular section and not for all people; "religious community or caste or race"; that is what my hon. friend referred to. I do not want to argue about this, because I have already agreed to remove the word "race", and that would satisfy my hon. friend, because the other two do not include his community. But I do not know how anybody is entitled to exemption from income-tax. Which is the fundamental right under the Constitution which enables a man to earn exemption under the Income-tax Act? I do not understand that. I was simply surprised. He is a very able lawyer, and I cannot afford to claim that I can argue against him as a lawyer. But even a layman sometimes sees more clearly the meaning of a section than lawyers who many a time find different out meanings for laws in order that they can win the case. I am not out to win a case. I am only trying to see the section as it is. There is nothing in the Constitution which makes this position in any way wrong in law or in Constitution. There is no section or no community which is entitled to any exemption from income-tax, and what are we doing in this? I am not preventing anybody from opening schools. I am not preventing anybody from giving charities. I am only preventing the use of public money.

**Shri Naushir Bharucha:** Not public.

**Shri Morarji Desai:** It is public money; it is the tax-payers' money. Income-tax is tax-payers' money, and it belongs to the whole community. It does not belong only to the persons who pay. That is the justification for income-tax or for any tax. Otherwise, what is the justification for any tax? This exemption means that when

the tax is given it goes for the advantage of some people! If it does not go for the advantage of all people, what justification has the State to give that exemption? I do not know. I do not think that that can be done, and yet, I have maintained the present position as it is by not applying this new clause to the existing trusts. It is only a new departure that is made because we are also particular about it when we talk so well about integration and when we say that we should think of everybody and all of us and not think of sections. Therefore, I would ask why we should not now try to have all the institutions open for everybody. That is what we want and in future that is what ought to be done and money should be properly utilised only for this purpose. I do not prevent people from giving any amount of charity that they want to give; only, it will be liable to tax. Why should they regret it and why should any exemption be claimed under the Constitution? I do not know. I have no doubt that whatever may be the case these clauses cannot be ultra vires. I have no doubt about it in my mind. But, as I said, I do not want to harm anybody or any good cause. My hon. friend was also satisfied, and, therefore, I do not want to say anything more. I only wanted to just reply to the general argument which he made about the invalidity of a provision like this. I have agreed with him that I will agree to the deletion of the word "race". I will certainly accept that amendment.

He also had a doubt about the question of accumulation of trust funds. We have now provided in the Bill in the Select Committee that for ten years, a trust can accumulate funds without spending and not be liable for taxation on the 25 per cent. limit if that trust specifies in the beginning that for a particular purpose which is specified it is covered by the charitable purpose; and for that purpose, if they want to accumulate income for ten years so that it is spent at the end of it, they may do so. The doubt was that once in this ten-year period, if

advantage is taken for one scheme, it will never be allowed for any other scheme. That is not so. If, for ten years, the income is accumulated, or if they say that it is accumulated for six, seven or eight years—whatever it may be—and if it is spent immediately, in the very beginning, and if they have another scheme after that, they can go on accumulating it and they can go on doing so. There is absolutely no bar to that. The law is very clear to my mind in this respect. Therefore, he need have no apprehension about this—that it is not going to allow other schemes to be considered after the first scheme is passed. I hope that this will satisfy my hon. friend and it will make him a bit softer in his opposition to this clause.

There was another section about which my hon. friend said that it is a pernicious thing. That was clause 179. That I hope has now shed its pernicious character.

**NShri M. R. Masani:** Not very much.

**Shri Morarji Desai:** Even if it is to a little extent, it is good. But he has charged me with backtracking on another section, which to my mind was very unfair on his part. That was about the amendment proposed by the Government to clause 243 about the limit put for refunds to be made in certain cases, where a change has been made. I had mentioned this amendment before the report had been signed and only at his request I postponed that. I had discussed it even after the Select Committee had ended its task with him and with other friends in the Select Committee. He was the only person who did not agree; all others agreed. So, he cannot say that I am backtracking.

He must know that there have been cases where a person gives his return, and at the same time, he claims a refund. If I say that from the date he claims the refund, within six months, it should be done, it means that the assessment must be completed within those six months. Even then, as soon

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as it is completed, the refund must be paid. I do not think any institution can carry out such a condition. It was only because this loophole would have put the Ministry in the greatest difficulty and the officers who have to carry out an unpleasant task into very serious disadvantage, that this amendment had to be brought in. There is nothing wrong in this.

As I have said, I shall see to it departmentally that all delays are cut out and assessments are made as quickly as possible. I want to see to it that all assessments are completed within a year and all refunds are paid as soon as they are liable to be paid. I do not want even three or six months. I have provided for the first time in law that refunds should be paid where they are due, even without their asking for it. That ought to prove the *bona fides* of the Government in this matter. At present, the law provides that assessments may be finished in four years. That has been kept for extraordinary cases. But the intention is not to allow any case to go beyond a year, if I can help it. That is what I am seriously attempting to do. If my hon. friends find any cases which are delayed, I shall be very grateful to them if they point out those cases to me, so that I can take care to see that these things are not repeated.

I least expected my hon. friend would use such a harsh word as back-tracking, because I do not use such words against him. It is a very bad word. I do not know how he would feel if I had applied it to him.

**Shri M. R. Masani:** You have said it about me in a different context.

**Shri Morarji Desai:** I only said he has changed his views often and that is a fact.

**Shri M. R. Masani:** That is what I have also said. I accused you of going backwards on the decisions of the Select Committee. I want to assure

you that there is no moral turpitude involved in it.

**Shri Morarji Desai:** On the contrary, I have reduced six months to three months in that case also.

Then a point was raised whether exemption to tax on gratuities is really covering employees of private companies. There was some misunderstanding on the part of my hon. friend, Shri Muniswamy. As a matter of fact, the amendment has been introduced only for that purpose. The argument raised is, why should it be confined to Rs. 24,000 or 15 months' salary? When the demand was made in this House and elsewhere, it was said that private employees should be put on the same level as Government servants. For all Government servants, the limit is Rs. 24,000 or 15 months' salary. I do not know by what consideration or justification a larger limit is asked for. If the limit is raised, then it should be raised in the case of Government servants also. Therefore, even this argument is not justified to my mind.

One argument was made, I am told, about contributions to political funds, which are exempted from tax, whereas donations to charitable institutions are not exempted, i.e., donations to charitable institutions which are of a sectarian character, if I may call them so. Under this law, no political funds are exempted. It is a matter of interpretation of law and that is going on. I am not averse to taking income-tax on that. Why should I be? But it is a matter of law and that is going on at present.

**Shri Naushir Bharucha (East Khandesh):** Why not specifically subject them to tax?

**Shri Morarji Desai:** It is not such a simple affair as my hon. friend thinks. The difficulty with him is that he wants to make very simple, things of a most complex character.

**Shri Naushir Bharucha:** I can supply him the draft.

**Shri Morarji Desai:** Even then, it will not be acceptable to him after a few days, because the moment I accept it, he will have some fault to find in it. That is how he is constituted.

**Shri Morarka:** He can publish a commentary also.

**Shri Morarji Desai:** Sir, I think I have covered the main arguments against some of the provisions. I do not think it is necessary for me to consider all the points raised, because they will be raised in the clause by clause discussion.

I hope that the Bill which has been so very welcomed will certainly be able to do good to the State by way of more revenues and also in improving the execution of the law to the satisfaction of all, to the satisfaction of Government so far as revenues are concerned and to the satisfaction of assesseees so far as harassment, delay and justice are concerned. That is the hope with which we have brought in this Bill.

**Mr. Deputy-Speaker:** The question is:

"That the Bill to consolidate and amend the law relating to income-tax and super-tax, as reported by the Select Committee, be taken into consideration."

*The motion was adopted.*

**Mr. Deputy-Speaker:** The House will now take up clause-by-clause consideration.

#### Clause 2—(Definitions)

**Shri C. K. Bhattacharya:** I want to move amendments Nos. 1 and 10.

**Mr. Deputy-Speaker:** No. 1 is out of order; it requires the recommendation of the President.

**Shri C. K. Bhattacharya:** It has been obtained.

**Mr. Deputy-Speaker:** I am sorry; it has been received. Amendments Nos. 1 and 10 are taken as moved.

**Shri C. K. Bhattacharya:** I beg to move:

Page 7, for line 32, substitute—

"(ii) a Hindu undivided family governed by the mitakshara law."

(1)

Page 6, after line 29, insert—

"(23A) 'Hindu undivided family' means a Hindu undivided family governed by the mitakshara law;" (10)

**Mr. Deputy-Speaker:** Does he want to say anything? He has already spoken and mentioned these points.

**Shri C. K. Bhattacharya:** The hon. Finance Minister in his reply to the debate on the consideration motion has dealt with all the different arguments that were raised about different clauses in the Bill, but regarding the point I raised, he has not been kind enough to take it into consideration.

**Mr. Deputy-Speaker:** The hon. Minister stated that when the clauses are taken up he will have to deal with them. Now that the hon. Member has drawn his attention, he will deal with it.

**Shri Morarji Desai:** I am sorry, Sir, that I did not deal with this particular point. I thought it was only one hon. Member who was interested in it and therefore I did not deal with it in the general reply. But I was quite sure that the amendment was going to come.

**Shri Morarji Desai:** I am sorry, Sir, matter. It is not that we have not considered this. If I accept his amendment the persons whom he wants to benefit will be put to greater difficulty which do not see why he does not ~~not~~ Supposing this is accepted, what will happen then in the

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case of a *dayabhaga* family is, assessment will be made on the *karta* as an individual in his life time and on his death on an association. In either case the family will be very much hit because he thinks that each member will be assessed on his share even if the family continues jointly. It is very wrong. It will be then treated as an association and the higher limit which is available for a joint family will not be available to them. Therefore, I do not know how he profits on it. But if he persists, I am prepared to accept it.

**Mr. Deputy-Speaker:** What is the reaction of the hon. Member?

**Shri C. K. Bhattacharya:** My submission, Sir, is that the hon. Finance Minister will kindly oblige the families belonging to the *dayabhaga* school by accepting it.

**Shri Naushir Bharucha:** Sir, it is not a question to be decided between the hon. Minister and the hon. Member.

**Mr. Deputy-Speaker:** If hon. Members want to speak, I have not debarred them.

**Shri Naushir Bharucha:** Apart from that, Sir, simply because it is an amendment moved by the hon. Member it is not that he is the only hon. Member interested in it. This whole House and the country is interested in it. Let the hon. Finance Minister say that he will examine the implications properly and then decide.

**Mr. Deputy-Speaker:** Other hon. Member can express their opinion. First the hon. Members heard what the repercussions of the amendment would be. Then I was asking his opinion how he reacted to them.

**Shri C. K. Bhattacharya:** I do not know how Shri Bharucha comes to be interested in it, because situated as Shri Bharucha is....

**Shri Naushir Bharucha:** I am neither for nor against.

**Mr. Deputy-Speaker:** He says that he is neither for nor against, and therefore he is interested.

**Shri C. K. Bhattacharya:** He is removed from the *Dayabhaga* area as far as North Pole is removed from South Pole. Therefore, he should remain neutral; neither accept nor reject.

**Mr. Deputy-Speaker:** That is a different question.

**Shri C. K. Bhattacharya:** I only request the Finance Minister to accept the amendment and remove the grievance of the *dayabhaga* families under which they have been suffering for a long time. If that is done, I say the entire eastern region which is governed by the *dayabhaga* law will be much obliged and relieved.

**Shri Morarji Desai:** They won't remain a joint family.

**Mr. Deputy-Speaker:** Is any other hon. Member interested in it and wants to say something? I shall allow him an opportunity. It seems none is interested. Therefore, I can put the amendments straightforwardly.

**Shri Naushir Bharucha:** People may be interested, but they may not want to speak.

**Mr. Deputy-Speaker:** That is enough for me, that they do not want to speak. Now I shall put the amendments to the vote of the House.

**Shri Morarji Desai:** It will not benefit the people whom he wants to benefit.

**Mr. Deputy-Speaker:** Now, the hon. Member might consider it again, because it is again being pointed out that it would be detrimental to those whom he wants to benefit.

**Shri Morarji Desai:** Let him convince me even afterwards.

**Shri Naushir Bharucha:** This may be held over and taken up later on.

**Mr. Deputy-Speaker:** The Finance Minister is very clear. I do not think there is any use holding it up. I shall put the amendments to vote.

*Amendments Nos. 1 and 10 were put and negatived.*

**Mr. Deputy-Speaker:** The question is:

"That clause 2 stand part of the Bill."

*The motion was adopted.*

*Clause 2 was added to the Bill.*

*Clauses 3 to 8 were added to the Bill.*

**Clause 9**—(Income deemed to accrue or arise in India)

**Mr. Deputy-Speaker:** Are there any amendments to clause 9?

**Shri M. R. Masani:** Sir, I beg to move\*:

Page 14, line 13,—

after "operations" insert—

"which constitute merely trading with India or" (11)

Now, Sir, this is a small point. I do not want to labour it, nor is there any room for emotion. It is simply this, that the use of the words 'business connection' at the beginning of clause 9 at the foot on page 18, is held by legal experts to be an ambiguous expression. 'Business connection' is a very loose expression. It may involve all kinds of relationships. The Bill itself having used that phrase then tries to limit it by the explanation on page 14, by pointing out what would not be considered a business connection.

The trouble here is that while in trying to limit the mischief of that phrase 'business connection', a specific reference is made that operations which are confined to the purchase of goods in India for the purpose of export will not involve a business connection. So far, so good. But, Sir, I suggest that export is not, in spite of our present obsession or preoccupation with it, the only form of healthy relationship between India and the rest of the world. There are many complex relationships. Even imports, Sir, where they are necessary for the health or the needs of our people are just as moral and just as virtuous as exports, which in many cases may deny our people their legitimate wants. Therefore, this bias, which is a very temporary one, am sure we will grow out of it when years pass—in concentrating on exports, forgetting that there cannot be any exports unless there are imports, is not one to be introduced in the income-tax law of this country. This is not a law for the needs of this year or the next year. It is a permanent law, and to us, Sir, imports should be just as valid as exports when we are making a tax law.

Therefore, my amendment suggests that the words "which constitute merely trading with India" be added. Any activity which is trading with India on the part of a non-resident abroad should not be construed to be a business connection. Whether he is selling to India from abroad or buying from India from abroad, both are legitimate activities which should not be penalised, either the one or the other.

This is a distinction that is known to British law. The terms there are, you will be subject to tax laws if you trade in Britain but not if you trade with Britain, and that is the principle from British law that I suggest we accept, that trading with a country from outside does not make you liable to tax but trading in a country does.

\*Moved with the recommendation of the President.

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So, in fact, that is a much sounder principle to go on and, as I understand it, the only country which has this formulation of "business connection" which is, as I said, ambiguous and therefore dangerous, is Australia. All other countries draw a distinction between functioning within a country and trading with it from outside, and I do suggest that would be a safer and sounder distinction than the one excluding only exports and leaving the other mischief of business connection intact.

**Shri Morarka:** Sir, I am a little surprised at the amendment moved by Shri Masani, because even in the Select Committee when this point was considered the experts pointed out that business connection in India or, as he says, trading in India or trading with India were all confusing terms and there could not be any clarity on that point.

**Shri M. R. Masani:** That was the official view.

**Shri Morarka:** So, the amendment Shri Masani wanted to make with regard to this point, it was found that it would not serve the purpose in view. His main point at that time was about exports. Therefore, notwithstanding the provision contained in the clause, a specific provision was made about exports, and it was said that in view of the needs of the country if anybody bought goods here for the purpose of export merely because he bought those goods here that would not be considered for the purpose of the income-tax law as "business connection" in India or with India. So, I think that the clause, as now amended by the Select Committee, serves the purpose which Shri Masani had in mind, particularly the terms of the Explanation, and, therefore, this amendment is not at the moment warranted by the situation.

**Shri Morarji Desai:** How can convince a friend who does not want to

be convinced? I have tried to convince him. He has also forgotten the Explanation which has been put here.

14 hrs.

**Shri M. R. Masani:** I have drawn attention to it.

**Shri Morarji Desai:** What is the use of drawing attention? On "business connection" we have fully explained everything, and every conceivable case is covered by this. It has been thoroughly understood by everybody and there has been no objection to it. Nobody has found any difficulty in understanding it. So, I do not see why we should put in any new terms which will again call for many interpretations? I cannot accept the amendment.

**Mr. Deputy-Speaker:** The question is:

Page 14, line 13,—

after "operations" insert—

"which constitute merely trading with India or". (10)

*The motion was negatived.*

**Mr. Deputy-Speaker:** The question is:

"That clause 9 stand part of the Bill".

*The motion was adopted.*

*Clause 9 was added to the Bill.*

**Clause 10**—(Incomes not included in total income)

Amendment made :

Page 21,—

for lines 15 to 20, substitute—

"(26) in the case of a member of a Scheduled Tribe as defined in clause (25) of article 366 of the Constitution, residing in any area specified in Part A or Part B of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the Union

Territories of Manipur and Tripura, who is not in the service of Government,

any income which accrues or arises to him,

(a) from any source in the area or Union Territories aforesaid, or

(b) by way of dividend or interest on securities". (2)

(*Shri Morarji Desai*)

**Mr. Deputy-Speaker:** The question is:

"That clause 10, as amended, stand part of the Bill".

*The motion was adopted.*

*Clause 10, as amended, was added to the the Bill.*

**Clause 11.— (Income from property held for charitable religious purposes)**

**Shri M. R. Masani:** I beg to move\*:

Page 22, line 27,—

after "security" insert "stock or share". (20)

**Shri Naushir Bharucha:** I beg to move:

Page 21, line 29,—

for "twenty-five" substitute "fifty". (13)

Page 21, line 30,—

for "ten thousand" substitute "twenty thousand" (14)

Page 22, line 10,—

for "twenty-five" substitute "fifty". (18)

Page 22, line 24,—

for "ten years" substitute "twelve years". (19)

**Shri Nathwani (Sorath):** Amendment No. 43, which relates to this clause, stands jointly in the name of Shri Morarka and myself. In view of the explanation given by the Finance Minister, I am not moving that amendment.

**Mr. Deputy-Speaker:** So he is not moving it. What about Government amendment No. 91 received today? I think it has been circulated.

**Shri M. R. Masani:** We have not received it.

**Shri Morarji Desai:** Then may I read it out?

**Mr. Deputy-Speaker:** I think it would be better.

**Shri Morarji Desai:** I beg to move:

Page 22, lines 32 to 34—

"for shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart",

substitute—

"or is not utilised for the purpose for which it is so accumulated in the year immediately following the expiry of the period allowed in this behalf shall be deemed to be the income of such person of the previous year in which it is so applied, or ceases to be so accumulated or set apart or, as the case may be, of the previous year immediately following the expiry of the period aforesaid." (91)

Page 22,—

for lines 35 and 36, substitute—

"(4) For the purposes of this section 'property held under trust' includes a business undertaking so held, and

\*Moved with the recommendation of the President.

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where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the income-tax Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes and accordingly chargeable to tax within the meaning of sub-section (3)." (3)

**Shri M. R. Masani:** If I may say a word in support of my amendment, which I am hoping the hon. Finance Minister will accept, it is this. The amendment is that the words "stock or share" be inserted after the word "security" on page 22, line 27 of the Bill. This was a matter that was discussed in the Select Committee and, quite frankly, I thought that the understanding was that this would be the position. Because we had argued that wherever a charity has funds for investment, which are of an approved nature, even if they are in the nature of equity or shares, subject to the approval of the Government, they would be eligible for the accumulated capital of the trust. So, as I understand it, we have moved over from the idea of Government securities being the only form of investment, but we had agreed that the investment should be approved by the Central Government. For instance, if a trust wanted to continue to invest its funds in the shares or stocks which were of a good nature, it could not do so unless the Central Government approved that particular form of investment, and that is how this clause should read.

In fact, this clause itself shows that if the idea was only to stick to Government securities, the second part of it, namely, "or in any security which may be approved by the Central Government" would not be necessary, because "securities" are already defined in the first part of the clause and "Government securities" in clause 2 of section 2 of the Public Debt Act of 1944. It was because it was not considered broad enough and a suggestion was made that it should be broadened to allow any form of investment approved by the Central Government that this re-draft was made. I admit that when the minutes were presented this should have been pointed out but, as the hon. Minister knows, some of us got the minutes only once the week end and it was not possible to digest every sentence of the minute in such a short time—otherwise I would have done it then itself—and that is why I move this amendment. I hope that in the spirit in which this was discussed, that is, trusts which are allowed to accumulate will not be unduly hampered and forced to invest in Government securities but will be allowed to invest in any form that Government may previously approve, that position will be accepted.

**Shri Naushir Bharucha:** My amendments seek to substitute the words "fifty per cent" and "twenty thousand" for the words "twenty-five per cent" and "ten thousand" respectively. As the House will recall, clause 11 seeks to impose income-tax on unspent income beyond 25 per cent. My amendment seeks some relief by making this 25 per cent into 50 per cent and the maximum from Rs. 10,000 to Rs. 20,000. The idea is that some more relief may be given to the trusts. It is not that I approve of the principle of trust income being taxed, but in order to minimise the mischief of clause 11, I have proposed this minor amendment, because a more sweeping

amendment would not at all be acceptable to the Finance Minister.

While moving my amendment, I would like to answer one question or argument which the hon. Finance Minister has brought forward. He says that income-tax is public money and why should any trust which caters only to one community get the benefit of public money. The answer to that is also obvious. It is not that particular community alone that gets benefit from the trust; it is the whole nation that gets benefit from the trust. Let us say that there is a trust for educating children belonging to community X. Is it not the duty of the Government to educate all children? So, to that extent, the load is lifted from the shoulders of the Government. It is a national gain because, to that extent Government will spend less on the children of 'X' community.

So, the Government cannot say that it is public money that is being utilised for the benefit of a particular community only. Take another instance. Suppose, housing for the poor of a particular community is provided.

**Shri M. R. Masani:** Is the hon. Member arguing on clause 13?

**Shri Naushir Bharucha:** I am arguing on clause 11 because it refers to income-tax on unspent income above 25 per cent. It is very clear. Clause 11 reads:

"Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

income derived from property held under trust wholly for charitable or religious purposes. . . .".

**Shri Morarji Desai:** That goes to clause 13.

**Shri Naushir Bharucha:** No. Your charging section is clause 11, where you say that exemptions will be only to the extent of the unspent 25 per cent. Therefore the argument that I am making is that 75 per cent of the unspent income must not be taxed and it should be allowed to be accumulated at least for 12 years. It is not that thereby I accept the principle involved in it because, as I say, even so-called sectarian trusts benefit the nation by relieving to that extent the burden from the Government's shoulders by either educating the children of the nation or by providing accommodation or by doing anything else. How can the hon. Finance Minister say that there is no benefit to the nation thereby? What does it matter if children of one community are educated? To that extent the burden on the Government is less. Therefore I am moving that in place of 25 per cent it should be 50 per cent. At least 50 per cent should be allowed to be accumulated or Rs. 20,000 whichever is higher, without taxation. In place of accumulations up to ten years, I say that it should at least be made available for 12 years so that a smaller trust may be granted relief. I repeat that this amendment is without abandoning my opposition to the principle and only with the object of minimising the mischief of this clause. I hope at least that much concession the Government will give.

**Shri Morarji Desai:** I heard the hon. Member and thought that he would give some reason as to why he wants this 25 per cent to be raised to 50 per cent and why he wants the period of 10 years to be increased to 12 years. Instead of giving any argument in favour of his amendments 18 and 19, he has argued quite a different point. The main purpose why you exempt any income of a charitable trust is that the trustees promise to spend it for a public purpose. If that amount is not spent and is being accumulated without any justification, what is the moral sanction behind

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exempting that amount from income-tax? As long as it is spent for a public or charitable purpose, it would not attract any tax. Here it is provided that at least 75 per cent should be spent. May not spend the remaining 25 per cent. You can go on accumulating every year 25 per cent of the income. Not only this, a further concession is given that if you specify a particular purpose for which you want to accumulate, say for building a hospital or a school, or for any such thing, you can accumulate the entire income for ten years at a time. I think the main purpose of charitable trusts is to spend the income for public charitable purposes. If that is not going to be spent and if they ask for accumulating 25, 50 or 75 per cent of it, why should they get any exemption at all? The only justification for exemption is that you are going to spend that amount for a public charitable purpose. If you do not spend and if you are going to accumulate it, you are not entitled to any exemption from income-tax. That is the point.

**Shri Prabhat Kar:** Shri Bharucha, when he moved his amendment, put forward the argument that although he is not agreeing with the stand, namely, that the trusts should at all be charged, with a view just to minimise the mischief, according to him, he is raising it to 50 per cent. It is rather a clever argument. Perhaps having found that the argument which was strongly put forward by Shri Masani or by Shri Anthony did not find favour with the House, he wanted to put it in a different way by saying that instead of 25 per cent exemption let it be half. His idea was to have 100 per cent exemption. But having found that it will not find favour with the House, he is now seeking to raise the exemption to 50 per cent. He has not put forward any cogent argument to show why it should be 50 per cent.

**Shri Naushir Bharucha:** Minimise the mischief. What else can be done?

**Shri Prabhat Kar:** On that score the question is not of mischief. The point is that they are being given the right to accumulate up to 25 per cent for ten years for a particular purpose. Only the unspent amount in excess of that will be charged. There is nothing either on the question of merit or of principle on which this can be changed from 25 per cent to 50 per cent. Therefore I oppose Shri Bharucha's amendment.

**Shri Naushir Bharucha:** Why then is there an exemption limit of even 25 per cent?

**Dr. M. S. Aney (Nagpur):** I neither approve of the amendment of my hon. friend, Shri Bharucha, nor the original clause itself. The question is this. What is the principle on which it is exempted from income-tax? The idea is that the amount is to be spent for a charitable purpose. Once the thing is accepted by the Government that the amount is intended for a charitable purpose, the Government has no right to think that the amount ceases to be an amount to be spent for a charitable purpose. If they do not spend, the proper remedy for the Government is to see that they do spend it. Having once accepted that a particular trust has been created and is intended for charitable purposes, it is entitled to exemption. Having taken this position Government cannot change the position because those people have not spent the money. The failure on the part of the trustees in not carrying out the purposes of the trust in a proper manner does not create a new right for the Government to impose a tax. That right is dependent on that. They have got the right to force the trustees to spend the money for a proper purpose. If they do not, the doctrine of cypres applies in certain cases under the Trust law. The Government can take the trust in its own hands and apply those funds for a similar charitable purpose. That is

the view taken by all those who have studied the Trusts Law and the principles of jurisprudence. From that point of view I find that for the first time the Government of India is making a departure from the accepted lines on which they have been treating trust property. The explanation that has been given, namely, if you do not spend it, why should you enjoy exemption, is no doubt plausible. But it is a trust property that is being taxed. It is not a trustee's property that is being taxed. For the fault of the trustees why should the trust's property be deprived of the exemption and of the concessions which it is expected to enjoy? This principle has been followed up to this time. For the first time the hon. Finance Minister has introduced a departure. No doubt it has got all the possibility of being used for public purpose and in that way it shall be distributed for use among all the people. That is a plausible explanation, no doubt. But for a jurist and for a man who looks at the question purely from a legal point of view, it is not likely to satisfy the legal conscience of the people. I am neither in support of nor against the proposed clause. I only put in what the views of a jurist may be on a point of this kind.

**Shri Nathwani:** I had no mind to participate in this debate but after listening carefully to the speech just now delivered I felt that I should say something on this aspect. When income-tax exemption is claimed on the ground that the income is going to be spent for a particular purpose, namely, for a charitable purpose and if for ten years at least 25 per cent of that income is not spent, why can the income-tax law not intervene and say that no further exemption would be granted in respect of further accumulation? So far as I can see it does not prick my legal conscience. No doubt, when trust moneys are accumulated in this manner and are not utilised, it may be argued that the proper occasion . . .

**Mr. Deputy-Speaker:** Then legal

conscience is also different with different persons.

**Shri Morarji Desai:** Otherwise there will not be lawyers in different camps.

**Shri Nathwani:** I am trying to show that there is nothing wrong in the income-tax law itself dealing with this aspect of exempting income from trust property. No doubt, a proper place would be when you frame a proper Trust law. Because, in several cases, we find that the trustees, instead of utilising the trust moneys for specific public charitable purposes, go on accumulating trust incomes. What is worse, they invest it in firms or in places in which they are interested. They lend these moneys to their friends; they lend the money to companies in which they are interested. May be, in order to avert such frustration of the objects of the trust, trust laws may provide for it. Here also, the Income-tax Officer can operate effectively by providing that if the income is not spent even to the extent of 25 per cent, exemption should not be granted any longer. There is nothing wrong about it. There is no principle or legal principle involved which could come in the way of Income-tax law providing for this contingency. That is all I have to say.

**Shri Morarji Desai:** Sir, I was surprised at the argument of my hon. friend Dr. M. S. Aney. I do not see how legal conscience comes into this matter or how a jurist's knowledge also should govern the argument about this. Let us consider all these trusts which are supposed to accumulate, and which my hon friend wants that they should be allowed to accumulate. Nobody comes in the way of anybody who creates a trust and pays income-tax on it. The Government does not interfere with it at all. When a trust is made and exemption is sought, that exemption means that the Government also has a share in the trust. That much part is contributed by the Government. It is ob-

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vious and it does not require any argument. Therefore, it does not mean that the Government has no right to come in. The Government has every right to come in, if they want the Government also to contribute to such a trust. Otherwise, they are free to have trusts; let them pay tax and let them do whatever they like. The Government will not at all interfere. In this, the Government have a moral obligation to interfere to see that the moneys are utilised properly.

Whatever consideration had to be given was given in the Select Committee and the limits were also fixed after careful consideration of all factors. I do not think these limits should be raised now. I cannot accept the enhancing of these limits.

My hon. friend Shri M. R. Masani said something about securities. His understanding was that I was of his view that stocks and shares approved by the Government were intended to be included. That was not so. I have verified it from my officers. I have never accepted it. I have told my officers that I am not going to accept it.

**Shri M. R. Masani:** They were inclined to accept it.

**Shri Morarji Desai:** They were inclined to accept it; that is possible. I do not accept it. This applies only to the accumulated part. It does not apply to the other part of the trust. If we allow these people to accumulate, to see that they are properly utilised and properly maintained, I think they ought to be invested in Government securities. If they are invested in government securities, that also helps public causes, public causes which are useful for all people. Therefore, I do not accept any of these amendments.

**Shri M. R. Masani:** Will the hon. Minister explain amendment No. 91?

**Shri Morarji Desai:** I will speak about it.

Amendment No. 3 is this:

Page 22, for lines 35 and 36, substitute—

"(4) For the purposes of this section, 'property held under trust' includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Income-tax Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes and accordingly chargeable to tax within the meaning of sub-section (3)."

Amendment No. 91, I had already read out.

In the first amendment, serial No. 3, we have added this. When we have allowed any business to be undertaken by a charitable trust and its profits to be utilised, we should also see that the business is not so utilised as to give money to whomsoever they like. The full income is not utilised for charitable purpose because these things will not be examined by the Income-tax Officers. There will be no return because they are exempt from income-tax. It is, therefore, necessary to see that Income-tax officers have power to go through the accounts wherever they find it necessary to do so. If they find that moneys have been applied besides business requirements to purposes other than charitable purposes, by making payments to relatives or offi-

cers or other people as they like, the excess amount so used is going to be liable for income-tax. That is the purpose of this: to see that the business which is run is run solely for charitable purposes. That is why, when this large concession was made for charitable trusts, I thought this safeguard was necessary. Therefore, this amendment has been brought in.

The other one only clarifies it further. Otherwise, it does not change it in any way. The meaning is not changed. But, it does not leave any loophole for any other argument that it is taxable in the previous year and if it is not so taxed, it will go to build the accumulation.

**Mr. Deputy-Speaker:** Am I to put any amendment separately: Nos. 13, 14, 18, 19?

**Shri Naushir Bharucha:** They may be put together.

**Mr. Deputy-Speaker:** I may link Amendment No. 20 with Shri Naushir Bharucha's amendments.

**Shri M. R. Masani:** As you like.

*Amendments Nos. 13, 14, 18, 19 and 20 were put and negatived.*

**Mr. Deputy-Speaker:** The question is:

"Page 22, lines 32 to 34, for shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart", substitute— /

'or is not utilised for the purpose for which it is so accumulated in the year immediately following the expiry of the period allowed in this behalf, shall be deemed to be the income of such person of the previous year in which it is so applied, or ceases to be so accumulated or set apart or, as the case may be, of the

previous year immediately following the expiry of the period aforesaid.' " (91).

*The motion was adopted.*

**Mr. Deputy-Speaker:** The question is:

*Page 22, for lines 35 and 36, substitute—*

"(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Income-tax Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes and accordingly chargeable to tax within the meaning of sub-section (3)." (3)

*The motion was adopted.*

**Mr. Deputy-Speaker:** The question is:

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

*The motion was adopted.*

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

**Clause 12—Income of trusts or institutions from voluntary contributions.)**

**Shri Naushir Bharucha:** I beg to move:

*Page 23, omit lines 1 to 8. (21)*

**Mr. Deputy-Speaker:** Anything to be said by the hon. Minister?

**Shri Morarji Desai:** I do not accept his amendment.

**Shri Naushir Bharucha:** I would like to explain briefly.

**Shhi Morarji Desai:** This is about 75 per cent given to another trust, one trust making contribution to another trust?

**Shri Naushir Bharucha:** This relates to a different thing.

**Shri Morarji Desai:** I do not accept it. I will say why I do not accept it.

**Shri Naushir Bharucha:** May I point out, Sir, what happens in practice is, several trusts combine for a purpose, if the object is a bigger one, beyond the capacity of one trust. As I mentioned yesterday, when the hon. Finance Minister was absent from the House, actually, one trust may give a piece of land. Another trust may donate for the construction of the building and a third trust may provide for maintenance. It is possible that one trust may be asked to do the thing, and the other trusts may donate. But under clause 12, any donation given by one trust to another would be regarded as income of the receiving trust. If I give individually any donation or contribution to a trust for a charitable purpose, that is not regarded as income of the receiving trust, but if a trust, which is nothing but an association of individuals, gives, then, that is regarded as income of the receiving trust.

My objection to it is, first, that action on co-operative principle by trusts would not be practicable as a result of this; secondly, often, bigger trusts helping smaller trusts will be hard-hit by this because that will be regarded as part of the income. What is the charm in my trust paying another trust a lakh of rupees, if that lakh is to be regarded as income and heavy tax is to be taken on that? It does not stand to reason at all. There

is no logic at all, and on moral grounds also it is not desirable that this should be done.

**Shri Morarka:** May I say a word about this, because this amendment was introduced by the Select Committee? If this amendment were not there, then the entire purpose of the entire clause 11 would be defeated very easily, because then, the only thing that one trust will have to do is to form another trust and between themselves, they can go on giving donations, and, thus, 75 per cent would be deemed to have been spent by one trust for a public charitable purpose. In order that that loophole may not be there, and it may be plugged effectively, this amendment has been brought in.

The analogy which my hon. friend gives about an individual giving donations is not applicable here, because if a trust gives money to an individual, then, in the hands of the individual, it may be taxable.

**Shri Naushir Bharucha:** I was talking about an individual giving to a trust, not the other way about.

**Shri Morarka:** Even if an individual gives money to a trust, then it becomes income of the trust, and out of that income, the trust has to spend 75 per cent, but if one trust gives to another trust, then the income in the hands of the receiving trust is not taxable; therefore, the provision of 75 per cent would be evaded and no tax would be attracted, and, therefore, the entire purpose of clause 11 would be defeated.

That was the reason why sub-clause (2) of this clause was introduced by the Select Committee, and very advisedly too. There is nothing illogical about it. It is very necessary.

**Shri Morarji Desai:** My hon. friend forgets that donations are excluded from accumulations. This is how these things will all be covered up, which he does not want to realise.

**Mr. Deputy-Speaker:** I shall now put amendment No. 21 to the vote of the House. The question is:

Page 23, omit lines 1 to 8. (21)

*The motion was negatived.*

**Mr. Deputy-Speaker:** The question is:

"That clause 12 stand part of the Bill".

*The motion was adopted.*

*Clause 12 was added to the Bill.*

**Mr. Deputy-Speaker:** We shall take up the rest of the clauses on the next day.

—

14.33 hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

EIGHTY-SEVENTH REPORT

**Shri Yadav Narayan Jadhav (Malegaon):** I beg to move:

"That this House agrees with the Eighty-Seventh Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 23rd August, 1961."

**Mr. Deputy-Speaker:** The question is:

"That this House agrees with the Eighty-seventh Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 23rd August, 1961."

*The motion was adopted.*

—

14.33 hrs.

RESOLUTION RE: BAN ON EMPLOYMENT OF RETIRED GOVERNMENT SERVANTS—contd.

**Mr. Deputy-Speaker:** The House will now resume further discussion of the following Resolution moved by Shri Bhaduria on the 11th August, 1961, namely—

"This House is of opinion that Government should bring forward suitable legislation to debar retired Government employees from being re-employed in any Government or private service".

Out of 1 hour and 15 minutes allotted for the discussion, 1 hour and 11 minutes have already been taken up. There are only four minutes left. Shall I give it to the hon. Mover? I have to call the Minister yet.

**The Minister of State in the Ministry of Home Affairs (Shri Datar):** I have also to intervene.

**Mr. Deputy-Speaker:** Yes, certainly.

**Shri Surendranath Dwivedy (Kendrapara):** Let us extend the time by half an hour more.

**Mr. Deputy-Speaker:** That will be difficult, because then there will be other Members who would suffer because their resolutions may not come up.

**Shri Surendranath Dwivedy:** Let us extend it by half an hour.

**Mr. Deputy-Speaker:** All right; let us spend half an hour more on this. Shri Tangamani may have a few minutes. Then, I shall call the hon. Minister.

**Shri Tangamani (Madurai):** I rise to support the resolution moved by my hon. friend Shri Bhaduria on the 11th August, 1961.