THE INCOME-TAX BILL, 1961

SHRI BHUPESH GUPTA (West Bengal): Sir, before we take up the next item—I think you will take up the Income-tax Bill, 1961—1 wish to say a few words. Here again I have a submission to make. Please do not misunderstand me. The hon. Deputy Minister, Shrimati Tarkeshwari Sinha, I believe, will be moving this Motion. Well, Sir, we all like her and it is a pleasing sight also but the point here is that here we skall be discussing major questions over the taxation measures and the Finance Minister is not present and he will not be here and he will not move and I doubt if he will at all come.

MR. DEPUTY CHAIRMAN: He will reply to the debate.

SHRI BHUPESH GUPTA: You can say that he will come and reply. But it is better that we have the policy, stated and the explanation stated by the highest in that Ministry over such matters.

MR. DEPUTY CHAIRMAN: I may tell you that he rang me up yesterday and said that he had fixed up an engagement in Bombay and he took my permission and he will reply on Monday. He has expressed regret that he is not able to be present to move.

SHRI BHUPESH GUPTA; I am slightly reassured because he rang you up, and I like such telephone to come to you.

MR. DEPUTY CHAIRMAN; Order, order.

SHRI BHUPESH GUPTA; I am very glad but even so, is it right for him?

MH. DEPUTY CHAIRMAN: Today was a holiday.

SHRI BHUPESH GUPTA; We could have taken it up next week. I would beg of you this: "Do not kindly yield to such things."

! THE MINISTER OF LAW (SHRI A. K. SEN) : I am here, all of us are here.

MR. DEPUTY CHAIRMAN: We will go on to the business.

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SHRI BHUPESH GUPTA: We are also here. Any way, I think I have every right to mention it and as I have said, this is no reflection on the
hon. lady Minister.

MR. DEPUTY CHAIRMAN: Nor on the Finance Minister.

SHRI BHUPESH GUPTA; I strongly object to the Finance Minister himself being absent when such a matter is brought before this House. It shows scant regard for this House.

THE DEPUTY-MINISTER OF FINANCE (SHRIMATI TARKESHWARI SINHA) : Mr. Deputy Chairman, before I say anything on the Bill, I would like to submit to you and through you to the hon. Member that, if the hon. Member has got enough intelligence to explain his points of view to me, I certainly can exercise my own intelligence to answer them and it should not matter whether the hon. Finance Minister is here or myself. I shall reply to his points if the discussion closes today and, if not today, the hon. Finance Minister will reply to the debate. But I can explain to the hon. Finance Minister the points discussed here.

SHRI BHUPESH GUPTA: But I may say a few harsh words with regard to the Finance Minister. How can I use the same sort of words to the hon. Lady Minister as I would to somebody else?

SHRIMATI TARKESHWARI SINHA: Sir, I beg to move:

> "That the Bill to consolidate and amend the law relating to income-tax and super-tax, as passed by the Lok Sabha, be taken into consideration."

[Shrimati Tarkeshwari Sinha.] Sir, as the hon. Members of the House are already aware, this Bill has been widely welcomed by the public, the press and almost unanimously by the hon. Members of the other House. For a fiscal statute to have such a wide support, is rather unique. This, to my mind, is due to the simplicity and balance achieved, simplicity in expression and arrangement of the sections and balance between the interests of revenue and of the taxpayer. I do not claim that there are no controversial provisions in this Bill and that this Bill has pleased everybody. But the area of controversy is very limited and does not detract from the merits of the Bill.

Sir, as the hon. the Finance Minister has said in the other House, this Bill is a landmark in the history of income-tax legislation in India. It was nearly a century ago—in 1860— that we had the first legislation on income-tax and between 1860 and now, as many as 82 Acts have been passed, amending the law to keep step with the evolution of taxation policy J'om time to time. But broadly, the milestones were the Acts of 1886, 1918 and the Act of 1922 which is the Act now being repealed by this Bill. The Act of 1922 was extensively revised in 1939 as a result of the recommendations of a Special Enquiry Committee known as the Ayers Committee. The eventful years that immediately followed, the years of the war and of the postwar reconstruction, brought along further numerous changes in the law. But as these changes, had to be incorporated in the framework of an existing statute, which itself was old, some amount of cumbersome language in the format of the Act was inevitable. The need for remedying this position was recognised by Government who entrusted the Law Commission with the task of revising the Income-tax Act so as to make the provisions of the Act more intelligible without affecting its basic structure. The Law Commission sent in their report in 1958. Copies of the Law Commission's Report were laid on the Table of this House on 5-9-1960. In the meanwhile, administrative and organisational problems that arose as a consequence of the introduction of the other direct tax Acts, *viz.,* the Estate Duty Act, the Expenditure Tax Act, the Gift Tax and the Wealth Tax Act, led to the appointment of another committee known as the Direct Taxes Administration Enquiry Committee of which an hon. Member of this House, Shri Rajendra Pratap Sinha, was a member—set up under the chairmanship of Shri Mahavir Tyagi, to advise Government on the administrative organisation and procedures necessary for implementing the integrated scheme of taxation with due regard to eliminating tax evasion and avoiding inconvenience to assessees. This Committee submitted its report in November, 1959. The Government has already announced its decisions on the recommendations made by the Committee. Besides the recommendations of the Law Commission and the Tyagi Committee, suggestions for the amendment of the Income-tax Law have been received from time to time, from Chambers of Commerce and other persons interested in the administration of the Income-Tax Act. In framing this Bill, the proposals emanating from these three sources, *viz.,* the report of the Law Commission, the report of the Tyagi Committee and suggestions from other persons interested have been taken into consideration.

It will be seen from a perusal of the Bill that the basic structure of the existing Act has been maintained and care has been taken to retain as far as possible, the expressions occurring in the existing Act. This avoids the difficulties of fresh interpretation. Every possible attempt has been made to attain the objectives of orderliness and simplicity in framing this law. Simplicity, in this context, does not, however, imply that the subject matter of the law has been expressed in such a simple language that even a layman may "read it as

he runs". An Act which has to deal with different financial situations and different types of ownership cannot but call for some intellectual eff trt on the part of a person who wants to understand it. The simplicity that has been aimed at is that which results from a logical and coherent re-arrangement of the sections, the substitution of clear expressions for obscure or ambiguous ones, and the splitting up of lengthy sections with their numerous provisos into self-contained shorter sections. Any act of simplification which would involve a drastic curtailment of the number of provisions would only result in either a sacrifice of revenue or the imposition of a uniform, liability on all types of assessees resulting in an inequitable distribution of the tax burden. Besides, it will be necessary to vest in the hands of the assessing authorities enormous discretionary powers. As the Codification Committee of England stated,

> "a statute which professes to cover this field, including at the one end the simple finances of the salaried clerk and at the other the complicated intricacies and ramifications of our great banks, insurance companies, international business houses and commercial and industrial combines, cannot avoid being as comprehensive and as complicated as the subject matter with which it deall."

At the same time, however, the taxpayer is entitled to have a clear picture of his rights and liabilities under the Tncome-tax Act and in preparing this Bill, this object has been kept ill view. The real test is that each one should be able to understand and act on the portion with which he is concerned primarily. That we have achieved this to a great extent has been conceded on all sides. We also found that most oif the Members of the r House were very complimentary so far as the drafting of the Bill was concerned.

It will be impossible for me, Sir, to deal within the time at my disposal with all the changes effected in this Bill; I shall, therefore, endeavour tc touch upon some of the important ones. For this purpose, it will be convenient to divide these broadly into two categories, (a) changes in substantive law designed on the one hand to eliminate hardships felt by the assessee and on the other hand to tighten up the procedure with a view to preventing avoidance as well as evasion, and (b) changes made with a view to rationalising the procedure.

Taking up the items in the first category, I would begin with a reference to the provisions relating tc taxation of monies remitted to India from abroad. Under the law, as it stands today, a resident is taxable subject to certain concessional provisions on the income remitted by him to India out of past foreign profits. The effect of the concessional provision is that remittances out of past foreign profits will not be taxed as such, if the liabilities, if any outstanding on the date of remittance are paid within three months of the remittance. In spite of these concessions, the mere existence of the provisions enabling the taxation of remittances in certain extraordinary circumstances has been alleged to create fears in the minds of those persons who wish to bring their past foreign profits into India. In order to remove this apprehension, probably a genuine one sometimes, the provisions relating to tax on remittances of past foreign profits have been deleted altogether from the Bill.

Two other changes in which Indians residing abroad will be very much interested relate to the criteria for determining the residential status of a person for the purpose of the Income-tax Act. As hon. Members are aware, under the existing law a person is regarded as resident if he has maintained or has caused to be maintained for him, a dwelling place for more than six months in the relevant year and has been physically present in India for any time during that year. He would also be regarded as

[Shrimati Tarkeshwari Sinha.]

resident if during the four years preceding the relevant year he was in India for an aggregate period of 365 days and during the relevant year India on a visit other than a casual however, short the duration of the visit might be. These criteria for residence which would make a person resident even if he had stayed in India for a brief period have now been liberalised. In the case of a person maintaining a house in India for more than six months in a year, it is proposed that he should be regarded as resident only if he has been in India for a period of not less than 30 days during the relevant year. That is the concession that has been made in this Bill. In the case of a person who has been in India for 365 days during the four years preceding the relevant year, he would be regarded as resident according to the provisions of this Bill only if he has been in India for 60 days during that year. These provisions, I am sure, will be welcomed by all, particularly our nationals settled abroad From the evidence that we came across in the Select Committee we could feel that we have been able to incorporate all the genuine suggestions that came to us from them and we have also tried to remove the difficulties as far as possible.

Another provision which is designed to remove a hardship or rather confer a benefit, is that which proposes to exempt, subject to certain limits, the gratuities received by persons employed in the private sector. As hon Members know, under the existing law, this exemption is limited to only gratuities received by persons in Government employment and there has been a persistent demand from the public that this concession should be extended to persons in private employment also. We heard evidence from certain correspondents, working jour nalists, representatives of private employees and employers. We felt the genuineness of the difficulties and hence we have tried to give this concession also to the persons employed in the private sector. The Bill which is now before the House provides for this exemption on the same scale as available to Government servants.

Persons interested in the promotion of art and the encouragement of artistes will be happy to know that the Bill now provides for artistes, musicians, authors, play-wrights and actors a rebate on a higher fraction of their incomes for the life insurance premia paid by them. It is reasonable to say that these people have a very short life. A writer may write a book which may be a best seller at one time but it is not necessary that year after year he should write best sellers or books which will have the saint saleable value in the market. That *Is* why we have provided for this concession to those people who have a very short life at their disposal and whose income is not very certain from year to year. Again, the provisions relating to the taxation of royalty or copy-right fees for literary or artistic work have been liberalised by providing that where the time taken for completing a literary or artistic work by an author is more than 12 months any lumpsum received for that work can be spread over such period as may be prescribed by rules. The present law is that the amount is spread over two years if the work is completed before 24 months and over three years if a longer time is taken for completing the work but this will be provided for in the rules. We will provide for this in the rules where in genuine cases there is delay in writing a book.

I have so far been dealing with the reliefs provided to persons other than companies and I shall now refer to two provisions which apply specifically to companies. Under the existing law, a company in which the public is not substantially interested—the so-called section 23-A company—is required to distribute as dividends a certain percentage of its profits, a failure to do so rendering it liable to the levy of an additional supertax at 37 per cent, (or

50 per cent, in the case of investment •companies) on the available profits as reduced by the dividends actually distributed. For calculating the available profits, the present law provides for the deduction of the taxes payable by the company on its total income. In the case of a banking company, any amount transferred to a reserve fund under certain provisions of the Banking Companies Act, would also be available for deduction. No other deduction is allowed. The Bill now provides for some further deductions in computing the available profits Thus amounts exempted as donations to charities, loss under the head 'Capital gains' which will not be available for being set off against other income for the purposes of assessment; income which under the laws of the foreign country is not allowed to be permitted; expenditure a part or whole of which has been held as disallowable, *e.g.,* excess bonus payments, expenditure claimed as revenue but treated as not being such—all these are to be excluded in computing the available profits liable to additional supertax.

Another benefit provided for companies is the substantial addition to the list of industries to which the provisions of section 56A of the existing Act apply. Further, it has been proposed that if on a future date any item is omitted from the list the benefit of the exemption that was already being enjoyed will be safeguarded for a total period of ten years.

I would now invite the attention of lion. Members to a set of provisions which provide for the payment of interest on refunds delayed beyond a reasonable period. It has been provided that if the refunds are not issued to assessees whose income consists wholly •of income from securities or dividends within six months from the date of the rlaim and in other cases within three months from the date of the comp'e-tion of the assessment giving rise to the r^und, interest shall be paid at 4 per cent., per annum on the amount refunded.

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I shall end up my description of the group of the provisions of a liberalising type, with a reference to the clause dealing with the re-assessment of old cases. Clause 149 lays down the time within which past assesb-ments can be reopened. This clause corresponds to section 34 of the existing Act. It may be recalled that in 1956, we amended this section to provide that an assessment can be reopened for reassessing incomes which have deliberately been concealed within a period of eight years in any case and without any time limit, where the aggregate concealment in one or more years falling beyond the eight year limit amounted to one lakh of rupees or more. The time-limit for completing the assessment was also removed by that amendment, These amendments were made mainly with a view to dealing with those cases referred to the Investigation Commission, the proceedings before which were declared void by a series of judgments of the Supreme Court. Now, that these * cases have been disposed of, it is no longer necessary to have the power to reopen or complete assessments without limit of time. It has, therefore, been decided to put a time-limit fcr reopening past assessments and this time-limit has now been fixed at 16 years. It has also been provided that no assessment can be reopened for any year falling beyond eight years unless the escaped income for that year is Rs. 50,000 or more.

I shall now turn to some of the changes proposed with a view to "tightening up" the law. The fir.'it item I would mention here relates to the exemption now available in regard to income from charitable trusts. Under the present law. a charitable trust can secure exemption on its income even if it does not actually ap ply its income for charitable purposes, but accumulates it for application at an uncertain future date to the objects of the trust and in the meantime usinf› tjvn accumulated amount for personal | advantage. *(Interruption.')*

[Shrimati Tarkeshwari Sinha.]

The charities accumulate and sometimes that accumulation is used for personal advantage either for earning .merest or for doing some business from which profits are earned for individual benefit.

SHRI AKBAR ALI KHAN (Andhra Pradesh): But ultimately it will he u;ed for charitable purposes.

SHRIMATI TARKESHWAR! SINHA: Yes. In order to avoid taxation and, at the same time, enjoy. The advantages, they sometimes make use of charitable trusts. No time-limit could be fixed and they used these trusts for private or family ends. This loophole has been plugged by this provision and we have said thot such trusts should be used for the purposes specifically for which such trusts were created.

The Direct Taxes Administration Enquiry Committee pointed out th;it this provision has been misused by donors and trustees who under the guise of accumulation utilise trust funds for furthering their own business interests. The use of the funds by the donor in his own business defeats the very object underlying the exemption, namely, that the income of the trust should be spent on charitable purposes. In order to prevent such attempts at misuse of the provisions relating to the taxation of charUies, the Direct Taxes .3 teinis-tration Enquiry Committer; recommended that it should be provided that a charitable trust can earn exemption only if it spends 75 per cent., of its income of the year for charitable objects. This has been incorporated in the Bill, but with a view to seeing that an unqualified provision like this may not hit small trusts or trusts with a definite long-term objectives, special provisions have been made according to which the restriction regarding ac-cumu'ation shall not apply to trusts wi'.h an annual income of less than Rs. 10,000 and to other trusts which notify beforehand the purposes for which the funds are to be accumulated and the period for which such ac cumulation is needed. This period has been fixed at ten years. If they apply and explain beforehand that they need a particular accumulation for furthering a definite objective of the trust, *e.g.,* construction of a building,, then that concession could be given to them. This period has been fixed at ten years because that was the. most practical proposition that we made, and beyond ten years, I think, no funds-should be allowed to be accumulated. They can certainly accumulate a parti cular amount and try to spend it with in ten years. If their objective is not fullftlled for genuine reasons, then they can start a fresh. Otherwise, Government could not be a pprty to their accumulating money in Ihja way. If there is some genuine reason, if they have not been oble to construct a particular project within ten years, then certainly they cannot take advantage of this provision but they can, after ten years, start accumulating funds for another ten years like this, and this accumulation can enjoy tax exemption for ten years only.

SHRI K. SANTHANAM (Madras) : May I request, the hon. Minister to explain the 'implication of clause 11(4)' of the Bill which has been inserted by the House of People? It is on page? 32.

SHRIMATI TARKESHWARI SINHA: What is it that the hon. Member would like me to clarify?

SHRI K. SANTHANAM: I am unable to understand what it means.

PANDIT HRIDAY NATH KUNZRU (Uttar Pradesh): I think th$_e$ explanation may be postponed till hon. Members have had time to express their views on sub-clause (4i of clause 11,

SHRIMATI TARKESHWARI SINHA: I shall finish my speech arid then,. if hon. Members have any questijns,. I will clarify them.

If the trust does not spend the <fc-* cumulated funds within the period ed to it, then, the whole of thft

amount will be taxable ig the year following the expiry of that period. Further, the amounts which are allowed to be accumulated should be invested in Government securities or other securities approved by Government. Incidentally, the definition of "charitable purpose" has also been altered to exclude from its scope commercial concerns which while apparently serving a public purpose receive full payment for the services provided by them. Thus, these provisions have plugged loopholes in the existing Act without at the same time affecting genuine charitable trusts. It has also been provided that no charitable trust formed after 1st April, 1962, can claim exemption if it is established for the benefit of any religious community or caste or if by the terms of the trust, the author of the trust or his relative gets any direct or indirect benefit from such trust. There has been some criticism of this provision that this provision would tend to dry up the springs of charity. The bon. Finance Minister has shown the fallacy in these arguments when he replied to the debate On this Bill in the other House. The Income-tax Bill does not ban the creation or establishment of charitable institutions for the benefit of any particular section of people based on community or caste. But if State assistance to such institutions is sought in the form of tax exemption, then the State has a right to consider whether it is proper to put a burden on the general body of tax-payers for the benefit of a particular section Or a particular religious community. It is this consideration which has led to the denial of exemption for these sectarian trusts. This is all the more necessary if we are to pursue sincerely our aim of transcending sectional loyalties and creating a national consciousness. I may point out that this withdrawal of exemption of the income of such trusts is to apply only to future trusts. The existing trusts are not affected.

I would next refer to a clause which is deseed to deal with the problem of non-submission of returns in time. An obligation is imposed on every person having taxable income to furnish his return within a specified date—six months after the closing of the accounts or 30th June of the financial year whichever is later in cases of assessees with business income; and 30th June in respect of any other assessee. If assessees fail to furnish their return by the due date, they will be liable to pay interest for the period of delay at 6 per cent, per annum on the amount of tax ultimately found payable. This is based on a recommendation of the Direct Taxes Administration Enquiry Committee; however, in order to soften the rigour of the clause, it has been provided that this interest will start to run only from 1st of October generally, and in cases where the accounting year of the business ends after 31st of December, from the 1st of January. Talking of interest, it has also been provided that if a tax-payer does not pay his tax on the due date, he should pay interest at 4 per cent, per annum on the amount due by him from the day following the date notified in the notice of demand. This is in addition to any penalty that may be levied for deliberate default.

The next proposcal deserving of mention relates to private limited companies. On the basis of the recommendations of the Direct Taxes Administration Enquiry Committee, it has been provided that where a private company goes into liquidation, any tax remaining unpaid by it at the time of liquidation, or any other tax levied on it during or after the liquidation, shall be recovered from the Directors of that company if that tax is not recoverable from the company's assets. But if a Director can show that the non-payment of the tax did not arise out of negligence or breach of duty on his part, he would not be litble for the payment of the unrecove.red tax. This provision has again been criticised as doing violence to the concept of limited liability and also imposing a wrong burden of proof on the Director to prove the negative. This criticism, to my mind, is unjustified. I may inform the hon. Members that in the

[Shrimati Tarkeshwari Sinha.] Bill as originally introduced, clause 179 provided that if at the time of the liquidation of a company, the tax levied on it remained uncollected, the responsibility for the payment of the tax womd fall on the Directors and if not collected frm them the amount should be recovered from shareholders holding shares carrying not less than 10 per cent, of the voting power. When the Select Commitee of the Lok Sabha examined this provibion, it was decided not to extend the liability to the shareholders because the persons responsible for the non-payment of tax would be the persons concerned with the management of the affairs of the company, *viz.,* the Directors. Therefore, the provision relating to shareholders was dropped. It was also provided, as stated by m_e just now, that such of those Directors who could prove that the non-payment was not due to any dereliction of duty on their part would not be affected by ttrs clause. As regards the criticism that it offends the limited liability concept, I may say that the idea of making the liability of the Directors unlimited in certain circumstances is not foreign to the Companies Act itself. I would like to *rstev* in this connection to section 542 of the Companies Act. Under this section, the limited liability is removed in respect of any person responsib'e for th? carrying on of the business of the company with a view to defrauding creditors or for any fraudulent purposes. If a private company earned profits and the Directors do not provide for the payment of the tax and the company goes into liquidation, I ask the House should not the Directors be held accountable for the tax? As regards the onus being laid on the Director, it is the only way he cin rebut th= presumption that non-payment of tax by the company was du« to his negligence. Provisions in other Acts, both in Ind'a and elsewhere, do impose similar burden of proof o_n company directors. I hope hon Members would agree with me that the benefit of incorporation should not be allowed **> be abused by serving as a means for the avoidance of payment of the legitimate dues to the State. I_n this connection, I may state that the provision of this clause is intended to be applied only to thosa persons who are directors of the company on the date this law comes into force, *i.e.,* 1st April, 1962. It means that this provision will not have any retrospective effect. No Didector will be involved retrospectively and us will not be charge-sheeted. It is not intended to apply them to persons who might have retired before that date. So the slight apprehension that was there in the minds of some hon. Members of the House was also removed; not only in the minds of Members of Parliament but of persons outside Parliament there was this suspicion which has been remov >d by not making this provision retrospective.

Another provision which is in the nature of an anti-tax-avoidance measure is that in clause 79. The Direct Taxes Administration Enquiry Committee has pointed out that there have been instances where persons who acquired companies which had substantial losses in earlier years carried on profitable business through them and were able to reduce their liability by setting off against the profit the earl'tr losses of the company, which arose when the shares were held by different persons. It has therefore recommended that in the case of companies in which the nublic are not substantially interested, such set off of losses asa subsequent profits should be allowed only if the shareholders in th^ year in which the income is earned are substantially the sim» ns those for the years in which the losses were incurred. But in order to safeguard that this provision does not hit cases where the chanee in shareholding has been brought about not with a view ti avoidance of tax but by a genuine changeover of business control or through inheritance or succession it has be»n provided that the clause will nnnlv onl" where the change in share* holding has been motivated bv tne intention of reducing tax 1'abnty.

Th<» r)rovisions relating to the lew of penalty and the launching of prosecu-

tions for tax offences have now been tightened up so as to make them more deterrent. At present, there are "0 minima laid down for penalties award. ed under the Act. This has enabled many a person to escape on appeel with a very light or even with no penalty. In the Bill now before the House, minimum penalties leviable are prescribed. Further, the existing provision which prevent the deportment from launching prosecution for an offence in respect of which a penalty has been levied has been de-le'ed. This will enable Government to prosecute in appropriate cases asse-sees who are guilty of tax offences even after subjecting them to penalties under the Act. Again, any false statement made by an assessee before 211 Income-tax authority or in the return given by him is made punishable under the appropriate provisions of the Indian Penal Code. It has further been provided that abetment of tax evasion would also be an offence punishable under the Act.

Sir, I shall now turn to the second catego y of proposals, i.e., those which are connected with the procedure. There are several of them, but I shall refer to only three.

Hon. Members would have seen from the Report of the Law Commission that that Commission has recommended the abolition of the Appellate Tribunal. The Direct Taxes Admin istration Enquiry Committee however felt that the Appellate Tribunal could not be dispensed with and should continue. Government has accepted the recommendation of the Tyagi Committee and has provided in the Bill for the continuance of the Appellate Tribunal. Further, it has also been proposed that where there is a conflict in the decisions of the High Courts in respect of any particular question of law, the Appelate Tribunal may make a direct reference to the Supreme Court through the President of the Tribunal. The provision now made would to some extent eliminate procedural delays and be of help to assessees as well as to thy Government.

The second proposal relates to the procedure fo* the renewal of registration. A firm under the existing law has to make a formal application every year for renewing its registration. It is now proposed to renew registration automatically without any specific application in this regard, if along with the return of income a statement s'gned by all the partners is furnished to the effect that the firm continues to exist in the relevant period without any change in its constitution as originally registered.

The third important set of provisions under this category is that which relates to the procedure for the recovery of tax in cases where a certificate of recovery is issued by the Income-tax Officer. Under the existing law, where an assessee is in default, recovery proceedings may. be initiated by the Income-tax Officer by sending a certificate to the local District Collector. The local Collector thereupon proceeds to recover tha amount certified in accordance with the provisions of the Revenue Recovery Code in force in the State concerned. The procedure relating to the recovery under the Revenue Recovery Acts differs from State to State and even in respect of each State sometimes there are more than one Revenue Code to be administered. This has given rise to difficulties and the Supreme Court has observed in a case which came up before it that for *he enforcement and the levy of a Central tax like the income-tax, there should be a uniformity of procedure and identiy of consequences for nonpayment. Further, the Direct Taxes Administration Enquiry Committee has recommended that the revenue collection should be taken over by the Central Government itself under a self-contained code. The Law Commission was also of the view that recovery should be administered under a self-contained code and has drawn uo suth a codo which apT*e?.r= a^ the Second Schedule to the Bill. This schedule

[Shrimati Tarkeshwari Sinha.]

codifies the provisions relating to the revenue recovery prevailing in tht various States as well as those in the Civil Procedure Code. It is so drawn up as to enable the Central Government to take over the recovery work from the State Government officers at a future date. Sir, I have been abie to give only a bFoad review of the more important of the provisions contained in the Bill. If in the course of detailed discussion any point for clarification arises, I shall be happy to explain.

With these observations I commend the Bill for the consideration of the House. Sir, I move.

The question was proposed.

SHRI BHUPESH GUPTA: Sir at the very outset I wish to make one point clear and it is this. I have no doubt in the hon. Deputy Minister's intelligence or in her capacity to explain things. But what I wanted to convey when I rose on this subject before it was moved is this. In such matters the Finance Minister himself should also be present in the House and he should initiate the discussion. It is fair and proper. Only from the point of view of propriety I took it up. After all the speech thai I heard is wore or less the speech that was delivered in the other House. I read that speech in the morning. Some portions are taken almost verbatim from there, if not the entire thing. Therefore, that way, I think, we do not lose very much because we i now how the speeches in such matters are prepared. Even so there are certain Parliamentary proprieties and they should be adhered to.

Now, Sir, this measure is a very comprehensive measure and, as you know, we are not very competent to speak on the subject in detail, because I do not know whether there are any communists in our country who pay very heavy income-tax, *f*" cept what we pay here as Members of Parliament. I am not, therefore, familiar with the subject in its detailed working, but I do come across memoranda from people who have many thing:: *^ say not only about the aammistran^.i of the law but also about its approach and principles. Now, this Bill is the result of, I believe to some extent, pressure on the Government and more particularly the recommendations of the Direct Taxes Administration Enquiry Committee, which was presided over bv Mr. Tyaai of the other House and to which a Member of this House also belonged— Mr. Rajendra Pratap Sinha. I wish ho was here. This is how the Bill has come to us. The Report was given m 1959 and today almost after two years we are discussing this matter. As you know, in every session after 1959, or ev»n before that, we pressed the Government about their decisions. I wish that in this House we had a comprehensive statement by the Government showing exactly which of the recommendations had been accepted by them, rather than the general statement that we were given earlier, because it is impossible for us to wade through the text of the Bill to see as to which of the recommendations have been accepted and which have not been accepted. I say this thing because the House did not have an opportunity to consider this measure in the Select Committee. We were not associated with the Select Committee as that was not a Joint Select Committee. Naturally that comes in the way of considering a measure of this kind, because it is highly technical and there may be many other things which would require the very serious and meticulous attention of the Members *who go to the Select Committee.

Now, the first thing that I want te point out from the evidence is that about 17 batches came before the Select Committee to give their evidence. Except three batches, all the other 14 batches were from the industrial and business circles. Therefore, you can well imagine that the

'evidence that was given there before "the Select Committee was weighted 'clearly in favour of the big business and those people wh$_0$ are in a financially high position. Almost all the 'Chambers of Commerce came, for example to give their evidence. Nnv, J do not see as to why the Committee did not take the initiative to get the evidence of others. Apart from the working journalists' representatives, lawyers' representatives and others, they should have seen the taxpayers' representatives, whatever it is. It is a small organisation. I think that in such matters the employees' unions should be brought in to get their opinion. I understand that the Income-tax Employees' Association ....

SHRIMATI TARKESHWARI SINHA: May I point out that they did not debar anybody from appearing before them, from giving evidence before the Select Committee. It depended on the parties and persons concerned whether they wanted to give evidence or not. We did not debar anybody from the Select Committee.

SHRI P. N. SAPRU (Uttar Pradesh): May I then ask how and to whom your invitations were sent?

SHRIMATI TARKESHWARI SINHA: A notification was issued saying that evidence was to be recorded from such and such date. Persons or parties or institutions, if they wanted their evidence to be recorded, were free to do so. When they expressed their desire that they would like to appear before the Select Committee, certainly they were invited.

SHRI BHUPESH GUPTA: I know that much, Mr. Deputy Chairman. I shall deal with it politely, mildly and sweetly. I shall answer the point that she made. If Mr. Mornrji Desai were here. I would hav$_e$ spoken harshly on this subject. Now, that much we know that it is *open* to anybody to go and give evidence.

SHRI DAYABHAI V. PATEL (Gujarat): Why this provincial distinction? To Mr. Morarji Desai he will speak harshly. To the hon. lady Minister from Bihar, he is very kind.

SHRI BHUPESH GUPTA: The Swatantra mind must be i$_n$ evidence in such a manner not only in regard to the public sector, but also towards the fairer sex. Anyway, that is not my point here. Here I understand that it is open to everybody to give evidence, but it does not just happen that way. After all, when this matter of recording evidence came before the Select Committee, the Members of the Select Committee, specially the Government, should have taken the initiative in getting some evidence to know facts. That is the main point. Here it was not dealing with a crime of the type that somebody is a complainant or is a defendant. Here the Government and the Select Committee were confronted with formulating the Income-tax law of the country in *a manner which would be most principled and most effective. Therefore, it should have gone out of the way, if you like that way, to get people to give evidence. Nothing would have been lost if an extra man was worked in this matter by the Finance Minister to secure the opinions and evidence of people who have had certain other types of experience, than those gentlemen who came and gave evidence before the Select Committee. Therefore, it is no consolation for us. It may be a consolation and solace for Mr. Morarji Desai and for the hon. Ministers in the Department, but it is no consolation for the public that every year, where there is tax evasion of a very high order—to which I shall come later—and where there is tax avoidance, the people have to bear the brunt of the nation's economic development and so much is taken out of them through indirect taxes and so on. Therefore, people would like to know what was done by Parliament when this

[Shri Bhupesh Gupta.] matter came up for consideration. We can plead techincal justification for it, but have we got any moral justification for this matter, if we do not set about the task in a proper and serious manner? Now, Sir, this evidence clearly shows that it was a pressure that was brought to bear upon the Select Committee and naturally the last persons to be consulted in the matt;r of income-tax would be the leaders of the Federation of Indian Chambers of Commerce and Industry. They would be the gentlemen of big money. Well, Sir, if I may put it. that way, they are on the top, they are not the witnesses, because it is well known today in the country that if tax evasion and tax avoidance are taking place, the responsibility must first and foremost be fixed on the wealthy sections of the community, and these are the people who come to give evidence here. It is all right, take their evidence if you like, but, as you know, what kind of evidence will they give? It is well known. Then the other side should have been also unfolded through the evidence coming from other quarters who know how these people operate. There are almost in every industry trade union organisations of the employees, and so on. We get information not from the gentlemen of big money but from the trade unions who function there, who tell us from time to time as to how manipulations go on. Was it not the duty of the Government to find out as to what they have to say before the Select Committee when evidence after all was taken? Government failed in this matter. Leadership wa_3 lacking and again something went wrong, because after that I have seen letters from various quarters saying this thing or that thing. I do not say that everything they say is right, but it seems that, given a little opportunity or an invitation or if they were asked to come, they would have come and given evidence. How many Members of Par[1] lament went there? Nobody. No doubt thoy will be discussing it here, but it was open also to Members of Parliment to go there. There is no justification to say that they did not come. How you arrange your affairs; is very important.

Now, Sir, the question we would like to be discussed in this House is this. I know there are experts here who will be giving very technical opinions and will be dilating on the various clauses of the Bill. That is very important specially when we do not have the opportunity of dealing with such a subject in the Select Committee. But then the broad questions are also very important. These should be judged according to us from an economic and social point of view, economic point of view because the taxation in the context of planning assumes more and more urgency. It depends upon what type of taxation you have. To that I shall come later. I stressed the social point of view because the fiscal policy is an instrument in the hands of the Government to eliminate, to reduce, if you like, the income disparities, to level up certain things at the bottom especially and to enforce certain social objectives that we have in the Directive Principles of our Constitution and which we have formulated and stated in the Second and Third Five Year Plans. Therefore, this taxation measure is one which is not merely technical or strictly fiscal. It has a broader economic significance and an equally important social aspect. Therefore, we judge it from the policy angle and from the administrative angle, because policies should be judged in the light cf our economic and social objectives, and administration should then be considered from the point of view of how the machinery of tax collection, the apparatus is working, especially when we have this story of very colossal avoidance and evasion of income-tax.

Sir, let me come to a statement made in the other House by Mr. Asoka Mehta. I was astonished when the leader of the Praja Socialist Party said that we should take the tax out of politics. If you take the tax out

o£ politics, then what remains? Because the entire policy of the ruling class is reflected in its taxation policy. Arid tax cannot be neutral. In fact, as you know, Sir, the American Revolution had that aspect: no taxation without representation. Therefore, I do not understand how a knowledgeable ana intelligent person like the Praja Socialist leader could have made such a suggestion tiiat taxation should be isolated from politics and that the matter should be approached in a sort of neutral manner.

SHRI M. S. GURUPADA SWAMY (Mysore): I think the hon. Member has misunderstood the whole thing, what Mr. Mehta said. He said that there should not be any political protection to tax assessees. Politics should not be imported into tax assessments. That is the meaning of what he said. He is misinterpreting the whole thing.

SHRI BHUPESH GUPTA: Well, Sir, I accept what he has said. But even what Mr. Giirupada Swamy has said is not valid here. I would explain it by saying that political parties control it. Taxation policy comes through those agencies, and other classes and social groups act and react to the taxation policy. Politics come in. It is a very simple thing. I think the Praja Socialist leaders and our other friends who rise so high on certain political matters forget to see certain things in the affairs of life. Everywhere it is politics. Governments stand or fall with the taxation measures. Parties rise or fall with the taxation measures. Sir, you see what a controversial matter in certain circumstances it becomes. Here again the State helps one class, attacks another class, leading to action and reaction. Naturally political fight develops. If, for example, sales tax is imposed heavily on the people, certainly I believe the Praja Socialist Party would come up against the State to fight it. Similarly we will also come up against it, all Congress-men will come up and fight within the Party that such taxes should not be imposed. It becomes an issue to a g*eat extent between the social groups and the political parties representing the social groups. That should be bOiiio in mind. Here in this taxation measure I am concerned with direct tax. It is the class policy of the Congress which is reflected with a vengeance. This is the positio.i, If you take the entire tax structure of the country, what you see there is not a correct loyal reflection of the social objectives that have been stated and. set forth in the Five Year Plans or in the Directive Principles of the Constitution, which good things are written there, but the very case hardened class policy of the capitalist class. This is the main crux of the matter. Here there is no question of socialism. Here there is no approach to the socialist pattern of society as they ("ill it Here there is not much consideration shown to the certain objectives they have put up about the removal of income disparities and social inequalities, and so on.

Now, Sir, take the case of taxation. Here we are concerned with the Central Government because we are dealing with the Central Government in this matter. We know that there are many sources of revenue, customs, Union excise duties, and all that. Let me deal with the direct taxation position. But of course we cannot judge direct taxation apart from the entire tax structure of the country. Mr. Kaldor pointed out that it is a wrong policy—and he is no Communist—to look at the taxes in an isolated way. There should be an integrated system of taxation whereby we surround the people who are capable of paying taxes and stop all loopholes in collecting the taxes so that they do not slip through the fingers. Those that are liable to be taxed must be taxed. Such is the position. In 1949-50 the total gross revenue of the Central Government was Rs. 321'53 crores out of which direct taxes accounted for Rs. 115-37 crores, or 37 par cent of

[Shri Bhupesh Gupta.] the total gross revenue. Indirect taxes accounted for Rs. 196-16 crorcs

or 63 per cent, of the total 1 P.M. gross revenue. Now you come

to the 1960-61 Budget and you find here that today our total gross revenue comes to about Rs.727-76 crores out of which direct taxes ac--oount for Rs. 196-74 crores or 27 per cent, of the total gross revenue, whereas the indirect taxes account for Rs. 531 02 crores or 73 per cent, of the total gross revenue. What is the trend? The share of direct taxation in the total gross revenue has declined in these years, shall we say in a decade, from 37 per cent, to 27 per cent., that is, by 10 per cent., whereas correspondingly you find here that the share of indirect taxation has gone up from 63 per cent, of the total gross revenue to 73 cent, of the total gross revenue. Such is the position. One could have understood it if everybody was prosperous in the country- The other day many hon. Members said that the conditions of the people were bad and that many sections of the community really suffered, lived in starvation, in poverty. In such a situation, well, you see this picture of reversal of the proportion in favour of the assesses under direct taxation and against these who pay indirect taxes, namely, the common man. This is contrary to social justice and that too at a time when concentration of wealth is taking place in the country, when the income of the higher income groups, especially in the corporate sector—monopolists, and so on—is going up and when all these balance sheets published so far for the year 1959-60 clearly show that the industry is enjoying a boom and that some of them are paying very high dividends and making a lot of capital gains, and bonus shares and all that are being issued. In such a situation of a terrific, tremendous boom, in one section of our social life, namely, where the rich and the wealthy class lives, you have the reduction in the percentage of their share in the gross revenue, whereas you have an increase in the ire of the common man whose condition is by all accounts not what it is expected to be; in some cases it has considerably deteriorated. Such is the position. Therefore, this aspect should be borne in mind.

Then, within this group of direct taxation, there are certain persons who have their personal income; there are others, and there is, of course, another category—companies and corporations. And I find that the assessees here are much less than one million in the country. First of all, I think that with the proper administration of the law, there should be a greater number of assessees under the existing law, and many people are not assessees. But that is not the point. The other point here is that among those people who have successfully avoided assessment, there are many well-to-do people in this higher income group—I do not say that they are always at the top. That again creates difficulties and that is wrong. The State suffers, the country suffers, because of the deficit, and the deficit which is caused by such avoidance is to be made up by the common man through the mechanism of indirect taxation and so on.

Now, we come to this point. The Direct Taxation Administration Enquiry Committee's Report says: —

> "Large number of assessments were pending at the end of every year. In 1958-59 only 71-2 percent, of assessments were completed and 4,55,872 out of a total of 15,87,228 assessments were pending."

This is the position. The back-log in this matter is considerably high.

> "Undisposed cases in the cases of higher income groups, i.e., income above Rs. 25,000 annually show a very high percentage in that group, *i.e.,* nearly 32 per cent, of cases in this group remained undisposed at the end of 1958-39."

What do you see here? People with higher incomes, people belonging to the higher income group, are in a position to keep their things pending, and take advantage of it. We suffer. Budget comes every year, monies do not *come, and* monies have to be iound. There are other taxes which are imposed on the poorer community.

> "Similarly, Estate Duty assessments pending at the end of 1958-59 were 3,115 out of a total of 10,779, again nearabout 32 per cent.".

> "Wer.lth Tax assessments pending at the end of 1958-59 were 12,590 out of a total of 56,667, *i.e.,* about 24 per cent.".

Now, what is this? I am quoting really from the Report of the Direct "Taxation Administration Enquiry Committee. It shows how the upper income groups, the higher income groups, are in a position to evade taxes and then keep their things pending to this extent as is indicated here. After that they say—

> "A continuous increase in the amount of revenue remaining in arrears has been a disquieting feature of income-tax administration in India for a large number of years"

'This is the conclusion to which the Enquiry Committee came.

At the end of 1958-59, the amount of income-tax arrears was Rs. 271-60 crores. Of this, Rs. 81.01 crores (29·83 per cent.) were out of demands raised during 1958-59, Rs. 35-65 crores (13-13 per cent.) out of demands raised during the preceding year and Rs. 154-94 (57-04 per cent.) were out of demands raised in earlier years, i.e., more than two years old. Such is the position. This is what is happening in the Income-Tax Department, this is how things are going on. 'The Report further says—

> "The figures disclose that more than 50 per cent, of the arrears were outstanding for two years and over. The table also shows that the •arrears out of demands raised during the year itself are considerable. While the difficulty itt effecting collections out of old arrears is understandable, the appearance of large sums out of current demands themselves as arrears is quite disquieting."

This is what is stated on page 101 of the Report. Now, Sir, coming to the question of tax evasion .....

MR. DEPUTY CHAIRMAN: Before you go to the next point, I have to say that you have taken half an hour, and the time allotted to your party will be 45 minutes. You will Vjave another 15 minutes.

SHRI BHUPESH GUPTA; . . . the Report says: —

> "Though evasion of tax is common to all classes of citizens irrespective of the income group to which they belong, opportunities for it vary according to the nature of the income earned by them. Opportunities for evasion are trie largest when the income is derived from business, profession or vocation."

This is an effective answer to those who say that the higher incidence of taxation is the reason for large-scale tax evasion. Such is the position. What is the cause of tax evasion? The Report observes—

> "While we cannot deny that the higher the rate of tax, the greater will be the temptation for evasion and avoidance, we feel that the tax by themselves are not to blame for the large extent of evasion in the country."

These are some of the observations made therein. There is shortage of time; otherwise I could have quoted many other observations from the Report itself. Therefore, one thing is established and that is that tax is evaded at the top level and by people who have got money, and the administration somehow or other

I Shri Bhupesh Gupta.] has not found its way to make them behave properly and assess their inccmes with a view '.o bringing out the money from that quarter. This is the position. Therefore arrears accumulate. Now, Sir, as far as arrears are concerned, something interesting is happening in the country. Our arrears were nearly Rs. 300 crores. Then it came down to— something was said about it—or was brought down to Rs. 136 crores or so — something was written off, and so on. So such a thing happened. Government does not furnish proper explanation in that regard—what was the assessment, etc. Only some arrears were recovered—no more. But then the Government owes it to the country, furnish an explanation to the country, why it was assessed in that manner, and how is it that after a period of time they have to write off Rs. 100 crores as being of no consequence, not recoverable at all. This must be clarified to the country.

Then, Sir, the question comes about this taxation measure. Now here the Bill says many things but here I would just refer to what Shri Morarji Desai, who is now in Bombay, said again in Bombay. He said it on July 23, 1960 at a reception given by the International Forum. Mr. Morarji Desai is reported to have stated that there wa,; nothing wrong in giving out the information as to how much a person had been assessed in a particular year by the income-tax authorities and that giving out such information would lead to a healthier public life.

This is what he said. Taking advantage of that statement I tabled a Bill at once for the implementation of that statement—the Indian Income-tax (Amendment) Bill, 1960—but in this House it could not be introduced—I did not have the permission of the President. But where is this provision today? The public should know who are the assessees in the higher income groups, specially in the corporate sector. If the names are published in Calcutta, Bombay, Madras and so on, then other people may probably come forward and tell you or write to you to say thut such and .such people have not been properlv assessed, whereupon you can set in motion your machinery of investigation, and find out whether the complaints are justified or not. People do not know the position and yet we were told the other day suddenly that there were only 102 people whose wealth of all types amounted to Rs. 50 lakhs or more in each case and which was liable to the Wealth Tax. Everybody knows that the number would be much more. Suppose the names were known in Calcutta, or were published in the Calcutta papers, that these were the people whose wealth amounted to Rs. 50 lakhs or more and had been assessed, then of course the people of Calcutta would have come forward and told you: "No, your list is very very incomplete. There are other people—my next door neighbour, people in my office—whose wealth, to the best of my knowledge, is more than this Rs. 50 lakhs and therefore the matter should be gone into." But you do not give any opportunity to the people. Hide and seek game goes on.

Then, Sir, I would refer to a case. That case was brought to the notice off Government and that case was of Messrs Pashabhai Patel & Co. of Bombay. In this case, in a letter written to the Commissioner of Income-tax on the 14th of April, 1957, by one Mrs. G. B. Dalai, things were pointed out. At that time Mr. Krishnamachari was the Finance Minister and the letter went to the Chairman of the Central Board of Revenue, Mr. A. K. Roy, and this thing was pointed out But no action was taken. From this letter that I have got in my hand I must read out that portion which has got to be clarified, and let the Finance Minister do it.

> "The firm exercised their influence on Shri Morarji Desai with the result that their income-tax was compromised for a meagre sum of Rs. 14 lakhs "

I do not vouch for it, I cannot say whether it is right or wrong, but here are people who write such letters. Also the Prime Minister has been written to on this subject by Mrs. G. B. Dalai. The point is that no enquiry was made, and if an enquiry was made, we would like to know what happened to this particular case over which correspondence went on from the person, and she gave her name, her address and so on, and specific allegations were made about income-tax evasion. And certain allegations were made against the Government also. Her letter also went to the Prime Minister and others. I wanted to have copies of all the letters that had been sent 'before, before I took up that subject. Now I have got a whole bunch of letters written *to* the various authorities. I do not vouch for the correctness of the matter, because I do not know it for certain, but it seems from what is written here, that there is a serious allegation—to say the least—a serious allegation against the Government and against the Finance Minister as to the manner in which a particular case had been compromised.

Now, Sir, this is the crux of the matter. As far as the rich peoule are concerned, they get somehow or other—well—their 'hings compromised; that way a kind of settlement goes on. I have brought to the notics of 1>he House very many other cases. Once I brought the case of a businessman in Patna, who was making *benami* transactions with a person who had no address in Calcutta—who has a faked address in Calcutta but lives in Nepal; his name was given; everything was given here, and on that account the Government lost. Similarly ether cases have also been brought to tine notice of the House, but the trouble i9 that we are not told exactly what is being done. Well the hon. Members opposite may brush this aside*—as if certain party advantage is being taken out of it—but the money that I wont is for the State; that will come to the State exchequer, and I do not know the political affiliations of these people, and so on. But the point is that something is wrong somewhere, and that is how things are going on as far as evasion of tax is concerned.

Similarly tax avoidance is becoming a flourishing art, and I believe it is the most flourishing art in India today, practised by the upper classes, by the millionaire classes, and they keep special accountants, people who retire from the Government services with considerable knowledge of accountancy and for whom Government suddenly find jobs with the big business concerns where they are supposed to advise on tax matters. How many of such people we have got entrenched in big business is to be found out. This is how the entire set of tax avoidens, more specially the multimillionaires are cheating the Government. But then this measure does not go into this at all. Even when it is brought to the notice of the authorities, they will not handle it. There, Sir, the policy is one of protecting their interests; rebates, concessions, tax holidays and a plethora of such things are meant for the upper classes.

Now charities have been mentioned. Everybody knows that our multimillionaire classes are not so charit-as they seem to be, not so Godfearing as they seem to be, not so solicitous for the people as they appear to be. Charities are an anachronism when there is tax evasion in the country or tax avoidance in the country, and I do not know how they are going to handle this question of charities. I have no time to go into it in any great detail. Well. Sir, we would not like the people to live on charities. What we want is that charities should also be ta::ed except in certain cases—we can understand it—but then there are a good number of exemptions given, opportunities are given in order that charities can be created to cheat the Government and the exchequer, and thereby make the Government put more burdens on the people. We find today that many charities are coming up. Well, what is the reason? Now an industrialist

[Shri Bhupesh Gupta.] can be charitable to his workers in the factories; an industrialist can be charitable or an employer can be charitable to his office employees. There he can show is magnanimity, his charitable instinct. But what they do? They take the money, create all kinds of trusts with a view to evading tax and getting on that way. Now I do not know how you are going to handle such a thing in this matter.

Then, Sir, there is the question of foreigners, and here I want strict regulations. But then the reciprocal double-tax avoidance agreements are there. They are there; we suffer, and the Englishman gets the benefit out of it, because there are very few Indians who are earning money there, in England, or for that matter, in other countries too, but we have got a whole number of Englishmen here earning a lot of money, and although there is the reciprocal ' doubletax avoidance arrangement—well—the way it operates does not certainly help our people but certainly goes to the advantage of the other people who are already in a preponderant position in the economic life of this country. There is no equality here and it seems to me that, though technically reciprocal, the operation of the arrangement for the avoidance of double tax goes to the disadvantage of the country,

Then, Sir, I come to the question of the tax administration. First of all I say that this policy be changed. I want the people at the bottom of these taxation tables, that is to say, the lower income groups, to be given relief if possible, whereas I want the people at the top to be taxed more. I gave an example here in the House the other day and I repeat it today. When Mr. Rothschild died he left 11 million sterling and I think about £.9 million were taxed under estate duty, death duty and so on. But when our multimillionaires die, you do not tax them because they had so arranged their things before their death that after their death you cannot impose this kind of duty at all on those who succeed them. This is another aspect of the matter. Direct taxation, therefore, has to be clearly directed against those with whom the money lies, and money lies in tha corporate sector, among the monopolist elements, among the wealthy sections, among the Princes and so on. I do not se2 why the Indian Princes should not be brought under the Wealth Tax and why some of their incomes and earnings should be left out of taxation. Privy purses they get; still they are not taxed because there is agreement there. But many agreements with th$_e$ people are being violated. There is breach of faith with the people at every point. Why then must we-stick to that kind of agreement when' the country is in such need of money and resources? Why taxation measures should not be directed against them also, I cannot understand.

Therefore, Sir, the problem is one' of increasing direct taxation on the upper classes, on the richer classes and[1], on the corporate sector. Therefore, the whole scheme and mechanism of exception and equivocation should be seriously gone into. As long as that. remains we cannot get very far.

As far as the administration is concerned, I am not one of those who blamo everybody in the administration. There are som$_e$ wrong types of people but ther$_e$ are some good people also. Therefore, please do not understand that I am always blaming the administration. But in the Income-tax administration there are certain things which the Central Board of Revenue should consider because it is their responsibility to see that the moneys ar$_e$ collected, tax laws, as they are are implemented. Why is that not so? There is a close connection between b·g money on the one hand and certain high officials in the income tax apparatus on the other, including Ministers. This is the position.

Now you may ask; How to prove it? Everything cannot be proved here in a speech. But then it is possible. If things are gone into, certain thing*, can be found out. Things have come

out sometimes but we have not pursued this matter. Therefore, the question of administration is very very important. Those who have any connection with the big business of that type, or are suspected to have any connection with them should be removed from the income-tax apparatus, no matter at what level they are. If they are at the top level, it is all the morj serious and they should be removed. Therefore, Sir, here it is important that the Income-tax authorities in the Central Board of Revenue keep an eye on affiliations, connections, attitudes and so on of the people. For example, with the best of intention I would not put even an honest man like Shri Dahyabhai Patel in the Income-tax Department, not because he is personally bad but because he is so fond of big business that, whenever a question will come up involving certain big business in the matter of taxation, his heart will beat for the big men and not for the common folk. Therefore, such people should not be there, Sir.

Then, Sir, minor officials should be encouraged and the Income-tax Department should have its own proper intelligence; 1 do not think they have a proper intelligence. And that intelligence should be directed against where the money is. It is no use chasing small men because even if you collect a thousand rupees or two thousands rupees from them by way of taxation, you will get very little. But if you can catch a big fish, it is well worth having it.

SHRI J. S. BISHT (Uttar Pradesh): Will you enlighten us as to how many big fish there are in India? I can tell you that there are les.s than 30 people with a fortune of Rs. one crore.

Sura BHUPESH GUPTA: Then, of course, it is not very difficult to catch all of them, if the number is so small. H_e asks as to how many big fish are there. I am not saying they are ten crores. You know how many are there. Now the election fund is coming and you will be knowing some of them. That is not the point. You know the big fish because you believe in big trade. Therefore, Sir, this should be gone into. They should b_e taxed. This is most important.

Here everything is a kind of lecture as if everybody is at fault in the lame degree. It is not so. According to the Direct Taxes Enquiry Committee we know who are to be blamed most. We know where the tax evasion is taking place in a concentrated form causing heavy loss to the Treasury. Therefore, all our mechanism, all our laws, all our institutions, all our apparatus for that matter should be directed against that strategic point where the money lies, where the evaders are lurking. Such is the position.

Now, Sir, I do not wish to say very much. So far as this Bill is concerned, we will support it because it has some importance in certain matters. But then the entire policy of the Government with regard to this taxation,, especially Income-tax, needs rethinking especially in the context of planning. We want, therefore, such income-tax laws as will enable us to tap the resources that are lying with the rich to the maximum extent possible and help the fulfilment of the-social objectives, at least direct the country in that direction, in the direction of achieving the economic objectives that we have set before ourselves. Our present taxation policy is presently directed towards supporting the upper classes, the capitalist classes. Therefore, Sir, it suffers from very fundamental and serious defects. Maladministration also is there following from the collusion that exists between the big money and the admi- • nistration. That is all I had to say.

SHRI P. N. SAPRU: Mr. Deputy Chairman, Sir, there is only one grievance which I share with Mr. Bhupesh Gupta in regard to this measure, namely that the time given to us to consider this complicated measuie is; a very short one.

[Shri P. N. Sapru.] THE VICC-CKAIRMAN (SHRIMATI T. NALLAMUTHU RAMAMURTI) in the Chair].

We had hoped that we would be given more time to go through a complicated measure of this character. We had been working the whole week and it was impossible lor me, speaking quite frankly, to go through the report of the Select Committee, through the Bill with that care which the House has a right to expect from Members who speak on measures of this importance.

May I also say, Madam Vice-Chairman, that it was a pleasure to listen to the lucid manner in which our lady Deputy Minister presented the case for this Bill. We regret the absence of Mr. Morarji Desai. But I am glad that his absence has given the lady Minister an opportunity to make a contribution to debate in this House.

Having said this I will go on to consider this Bill. Now, Mr. Bhupesh Gupta's attitude is a very simple one. He does not believe in the system of mixed economy that we are working. He wants to do almost everything that he can to sabotage that system of mixed economy. I am myself a convinced socialist but socialism, as understood by us, is a vast doctrine and there is a lot of rethinking being done in socialist circles all the world over. We have also been doing a good deal of rethinking and we just cannot reneat the slogans which Mr. Bhupesh Gupta has no doubt learnt very well from Moscow and from Peking, perhaps more from Peking than from Moscow. I have never been a supporter of big business in this House and I have my own prejudices against the wealthier sections of the community, though I myself belong to a class which has many contacts with them but I would like the questions raised by this Bill to be considered in the context of our national welfare, and look at this measure from a broad point of view. I am prepared to say that the Select Committee has given thought and attention to this complicated matter. This does not mean that I agree with almost everything that they have said. There are points which require re-consideration. There are clauses which require reconsideration and I shall briefly refer to them.

First I would make a reference to the definition of the words 'Charitable purpose'. Sub-clause (15) of clause 2 defines 'charitable purpose' as including relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. These words 'not involving the carrying on of any activity for profit' were inserted by the Select Committee—we did not have a Joint Select Committee unfortunately—and the question for consideration is, whether these words should find a place in this Bill. I personally believe in social justice. I do not believe in charity in the ordinary sense of the term but ws have very great charitable institutions and just as one does not want to ride a horse to death, we do not want to go to the length of making private charities dry up.

Now I would like to know why it is necessary to insist that these charitable purposes must not contain any object which involves the carrying on of any activity for profit. I will give you a concrete case. Take for instance, a society which is running a newspaper. It is running a newspaper, not for the purpose of profit but for the purpose of liberal education. In the 'Tribune' case which went up to the Privy Council, the Privy Council held that the word 'charity' included a trust which was intended for liberal education of the people through newspapers and so on. In another case—I have not had the time to go through the decisions carefully, otherwise I could have quoted from them—the question was whether a Khadi and Spinners' Association could be looked upon as a charitable association or not The

view taken by the Privy Council was that it was a charitable institution and in both the cases, they took a broader view of the word 'charity' than the Indian courts had done. Of course, this word 'charity' you can trace, if you know the history of equity jurisprudence, to the Statute of Elizabeth and you will find that in elementary text books on equity jurisprudence. Now the newspaper makes a profit. There is a society which runs the paper. The society is a charitable society and it runs the paper. The profits of thai paper help to carry out the objects of the charitable institution which has established it. The profits do not go into the pockets of any shareholder. They do not go into the pockets of the directors. They go into charitable channels. Many organisations of a charitable nature make profits but those profits are ploughed back in directions which lead to the furtherance of charity. Why should, therefore, this carrying on of any activity for profit, in that sense, be disallowed? I think that it will hinder the development of many charitable institutions. It will hit them hard. I do not think the Select Committee has looked at this question from the right point of view. The original clause in the Bill was, I think, rightly conceived and it should have been allowed to remain as it was. I am sorry that a change has been made which may lead to difficult arguments in courts in the future. It may pave the way for litigation.

I will now come to clauses 11 and !3 of the Bill. I am not, by conviction, a religious man at all. I pride on calling myself a rationalist though I do not know whether in every sphere of life I am a rationalist, and whether there is not some superstition often attached to my rationalism.

SHRI BHUPESH GUPTA: You are mixed there also, rational and religious.

THE VICE-CHAIRMAN (SHRIMATI T. NALLAMUTHU RAMAMURTI) '. No interruptions please. 438

RS—3.

SHRI P. N. SAPRU: But I am not dogmatic in regard to matters of religion. I do not know whether there is an after-life or whether there is no after-life. Maybe I am sometimes inclined to believe in it but I have got an open mind on this question, but I have deep reverence for men who hold strong religious convictions, who have certain faiths. I have not developed, fortunately or unfortunately, the attitude of the mind of a scoffer and therefore, I think the question whether we should permit religious charities to function at all, even if the activities are confined to their own religion, deserves to be considered from a broad angle. Our Constitution has given the right to every religion to propagate and to manifest its faith.' That right, I submit, you cannot take away, by just saying, well, we are not going to give any quarter to any religion in any shape whatsoever. I know that this i_3 not the object of the Bill. But I cannot understand why a trust created by a particular religion or for a religious purpose should not be granted total exemption for purposes of income tax. I am not thinking in terms of caste, because so far as caste is concerned, I would not like any caste to be allowed to establish a charitable institution. But 1 cannot understand why a religious community or a person with a charitable disposition and having certain fixed religious beliefs, should not be permitted without being taxed on the total income to build a temple, a mosque, a church, or should not be permitted to create a trust to enable people to undertake pilgrimages to various places in the country or which would enable persons to go to Mecca or to visit Jerusalem or Rome, I mean places which are places of pilgrimage for people of his religion. I would not deny that right to my friends over there also. They make very often visits to Moscow and Peking. I do not see any reason why there should be this ban on religion, why this prejudice should be there

[Shri P. N. Sapru.] against religion. A trust for a sectioa of the public is also a public trust which benefits the country.

(Interruption by Shri Bhupesh Gupta)

Let me say this to Mr. Bhupesh Gupta. Let us be clear as to what we mean by this word "secular". By this word "secular" we do not mean that we are an "anti-religious" State. We do not mean that we have banished God from the State or from the individual's life. That is not the meaning of the word "secular". We are secular in the sense that we have no established church in this country. We are secular in the sense that we make no distinction.....

SHRI BHUPESH GUPTA: Or established temples.

SHRI P. N. SAPRU: We are secular in the sense that we make no distinction between one religion and another and we follow a policy of complete impartiality towards all religions. Therefore, I say in all humility that considered from the constitutional point of view, it may not be a reasonable restriction within the meaning of article 19 of the Constitution, it may not be a reasonable limitation considered from the point of view of article 14 of the Constitution or considered from the point of view of article 25 of the Constitution, to make a distinction between a trust the benefits of which enure to the entire community and another trust, the benefits of which enure to a particular community. I would, therefore, earnestly, without giving up any principle of secularism, say that the Select Committee has not looked at this question from the right angle. There are many people who want to make charities and the limited concessions that we give them of exemption for purposes of calculating their total income should apply to trusts or charitable trusts of all character. Let me just point out the clauses. Clause I 11 says:

"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—

(a) income derived from property held under trust wholly for charitable or religious purposes,. to the extent to which such income is applied to such purposes ki India; and, where any such income is accumulated for application to such purposes in India, to the extent to which the income so accumulated is not in excess of twenty-five pef cent, of the income from the property or rupees ten thousand, whichever is higher;"

I do not see why the limit of Rs. 10,000 should be so arbitrarily fixed. Further it says:

"(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and: where any such income is finally set apart for application to such purposes in India; to the extent to which the income so set apart is not in excess of twenty-five per cent, of" the income from the property held: under trust in part;"

And then comes part (c) which is even more difficult to understand and I venture to think that it will be a task, it will be a job for our law-courts to interpret it.

(c) income from property held under trust—

(i) created o$_n$ or after the 1st day of April, 1952, for a charitable' purpose which tends to promote-international welfare in which India is interested. to the extent to which such income is applied *to* such purposes, outside India;"

In the first place, why fix this date as the 1st day of April, 1952? Take the Council of World Affairs, which is an organisation that was established, I think, in 1944. Dr. Kunzru will correct me if I am wrong about this year.

PANDIT HRIDAY NATH KUNZRU: 1543. /

SHRI P. N. SAPRU: Well, it was established in 1943. This is an institution which tends to promote international welfare and it certainly is an institution in which India is interested. Why should the Council of World Affairs be excluded because of this particular date, from the benefit of this clause? Apart from that, how are you going to determine whether an organisation is or is not an international welfare-organisation in which India is interested? What are the criteria which the court will have to apply in these cases? Are they to go by a certificate of the External Affairs Department that such and such organisation is one for international welfare in which India is interested or are they to apply some other objective tests? If they are to apply other objective tests, they will have to go into realms into which courts of law may not go and they will have to delve into realms of diplomacy.

(Time bell rings).

I thought no time limit has been fixed. Anyway, I shall wind up very soon. I will require only another 5 or 10 minutes, if you will please permit me.

PANDIT HRIDAY NATH KUNZRU: Is there a time limit imposed on each Member?

THE VICE-CHAIRMAN (SHRIMATI T. NALLAMUTHU RAMAMURTI) '. Twenty minutes are allowed to each Member.

SHRI P. N. SAPRU: M^dam Vice-chairman. I would say that if a time limit is fixed, the person who is speaking must be told what the time limit is. so that he may arrange his arguments accordingly.

THE VICE-CHAIRMAN (SHRIMATI T. NALLAMUTHU RAMAMURTI) I A time limit of 20 minutes was fixed and 23 minutes have been taken.

PANDIT HRIDAY NATH KUNZRU: How can a time limit be fixed for the discussion on a Bill?

SHRI P. N. SAPRU: On a Bill there 10 time limit. The rules do not say that. You can say that it will be seven hours for the Bill, but there is no time limit for a Member. Anyway, I will finish soon. I will invite attention to clause 171 which affects joint Hindu families. I will not read out the entire clause for that will take time. The meaning of this clause is that it will be for the Income-tax Officer to decide whether a family is joint or not, after seeing such evidence as is placed before him. According to the Mitakshara law, as interpreted by the Privy Council, a family becomes separate the moment a man declares that he has separated. A partition by metes and bonds is not necessary. They have laid it down in so many cases and all that a court has to do when I, as a member of a Mitakshara family, declare that I want separation, is to ascertain my share. That is the only responsibility or the function of the court. I know that the old section in this matter was a little defective, section 25, but there is something in this clause which I have not been able to understand at all. There is an Explanation here, "Where the property admits of a physical division, a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition". There can be tenants in common. People governed by the Dayabhaga law are tenants in common. Apart from that, take a concrete case. There are, shall we say, five brothers and they have a house which yields them Rs. 500. Each one of them lives separately but each one of them receives Rs. 100 from the tenant. Why should all of them be taxed on the notional rental value of the house? Where is the element of

[Shri P. N. Sapru.] social justice in all that? How is this clause defensible under the law as we understand it? Why should it not be possible for Hindu brothers or sisters or the relatives to arrange among themselves to have common management, that so far as the profits are concerned, they shall be shared equally but there will be no separate status? The clauses in regard to this separate status business are very loosely worded and require very careful consideration. I will invite your attention to clause 287 which permits publication of penalties in certain cases. I may say that I am strongly in favour of publication and wide publication of information respecting penalties in case of defaulters, in case.s where people have been cheating the Income-tax Department but then this publication should be made—if you are to follow certain principles of justice—after the judicial process is over and the judicial process, if you read clause 287 of the Bill—I think that is the clause—will not be over until after the Appellate Tribunal has made a reference to the High Court and the matter has been finally decided by the Supreme Court. You cannot prevent a litigant from utilising articles 226, 227 and 32 of the Constitution. I think, speaking purely from a legal point of view, that care has not been shown to this measure which the House has a right to expect from those who bring statutes before us for ratification.

(Time *bell rings)*

I will just wind up. There is no time-limit. I assert my right on that point but I bow to your wishes. I will just finish, very soon.

I would like to say one or two words about the clause which relates to unregistered companies. This clause undoubtedly changes the law as understood by lawyers in Solomon's case, that is the historic case, on the question of private companies. However, I am not opposed to that. The reasoning or the judgment in Solomon's case has been very much undermined in subsequent cases, particularly in cases during the War and, therefore, I am not against directors of unregistered companies being made to make up the loss due to their negligence or dishonesty. This is an important point I wanted to mention. There are many others which I can mention in regard to this complicated measure. A complicated measure is being rushed through without giving this House an adequate opportunity to express itself. This House was not associated at any stage with the Select Committee. I do not think, Madam Vice-Chairman, that this was what you would call a financial measure, and had we had some Members of this House on the Select Committee, we could have kept ourselves in touch with them and we might have been able to make a more specific contribution than we are able to under the circumstances under which we are labouring today.

Thank you very much for the courtesy and the patience with which you have listened to me. I think I have abused your goodness very much but I hope you will forgive me for this. It was important that I should make a few points clear and I think I have done so within the time at my disposal.

SHRI DAHYABHAI V. PATEL: Madam Vice-Chairman, the present measure is a logical consequence of certain steps that this House had taken and I welcome many of the hea thy provisions of this Bill. The Law Commission made certain recommendations about codifying our law, particularly in the matter of income-tax where it was clouded by so many amendments hastily made, and the simplification of the measure in this manner is going to benefit both Government and the public and, therefore, I welcome this measure. There are certain aspects of the measure which I think should have been considered by Government, and as the previous

speaker, Mr. Sapru, pointed out, if Members of this House had been asso-ciated with the Select Committee, perhaps these aspects would not have been left out.

2 P.M.

Sir, at the outset I would like to draw the attention of the House to a small point which perhaps comes right at the end—clause 288—where the Government now proposes to put a restriction on persns who are to appear before the Income-tax Officer on behalf of an assessee. Already the cost of living has gone up and the ordinary man is finding it difficult to make both ends meet. There are many people who are simple assessees, who have a steady income. And they have to fill up their returns. It is not possible for them to appear before the Income-tax Officer again and again and they have to have somebody to appear on their behalf. By this restriction, the Government, shall I say, is trying to raise a monopoly for a certain class of people who would appear on behalf of assessees before Income-tax Officers. It is not a very desirable or healthy feature. Assessment of income-tax has been taking place in this country for a number of years. There are certain people who, though they have not acquired the high qualifications mentioned here or even the ordinary Degree of B. Com., have appeared successfully before Income-tax Officers and carried on their business for the benefit of the Government who gets the benefit of the assessment and for the benefit of the assessee who is saved the trouble »f going to the Income-tax Officer, of filling up of forms, etc. Therefore creating this monopoly for a small number of people with high qualifications who should only be allowed to appear on behalf of the assessees is not a method that can be welcome. If a restriction has to be put, the least that the Government could have done, as has been done when such restrictions have been put, was to recognise those people who have been in the profession and who have been doing this for all these years and allow them to practise. Perhaps a restriction for newcomers in the business would have been, according to the views of Government, to a certain extent justifiable. I am, however, not in favour of the proposal.

Madam, there are certain provisions relating to charities also which require to be reconsidered. The Select Committee have made some welcome changes but they do not go far enough. The proposal in clause 13(b) that exemption from taxation in respect of charitable trusts should be available only where the Trust is open to all citizens of India, and is not restricted to any particular religious community or caste is not justifiable. The restriction was ::ot there in the original Bill. Trusts for the benefit of the public or for a section of public or in favour of a particular religious community or caste are recognised by law as valid Trusts and there is no justification for denying these exemptions under the law to such Trusts where members of a particular community or caste get the benefit. This provision will make impossible the creation of such Trusts and members of the public being benefited thereby. Already the sources of charity are drying up because of the measures that the Government have been takfhg and this will be a further deterrent to people who give charities.

Apart from clauses 11 to 13, I would also like to draw your attention to clause 88 on the same subject in regard to donations for charitable trusts. The donor is exempted only if the trusts are non-sectional and non-denominational in character. If people are minded to make donations even to a section of the public, they should not be penalised by taxation. I wish the Government had taken a more generous view of this matter.

The next point I would refer *to is* clause 28(iii) according to which the

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>me derived by a trade, professional or similar association for specific services performed for its members will be taxable. This is a matter on which also I think the Government and the Select Committee should have taken a more generous view. There are many many associations which are formed for the benefit not of any particular individual and the income does not go to any particular individual. It is used for the benefit of the association and it does not go as profit to somebody. Therefore I do not think it right that this should have been brought under taxation. Business Leagues, Chambers of Commerce, Real Estate Boards> Boards of Trade not organised for profit and no part of the net earnings of which enure to the benefit of private shareholders or individuals are exempted in the U.S.A. Similar exemption should be granted to such bodies in India. It has to be borne in mind that Chambers of Commerce and lions are intended to to their members and .his country is going to be industrialised, if the pace of industrialisation is to be increased as our Government wants to do, I think the growth of such Associations is something that Government should encourage and not deter by such measures.

I would next refer to clause 32 which provides for depreciation allowance. Certain business enterprises during the course of their working involve wastage of capital, for instance, mining. To enable wasting assets to preserve their capital and to ire sufficient funds to develop and ial form of depletion allowance may be granted. It is further suggested that the prospecting and exploration expenses should be allowed and any expenditure incurred in connection with the wasting assets should be treated as capital expenditure. Sir, in trade or business like mining, the person who takes the initiative has to spend a lot of money and this provision is going to act as a deterrent on him.

Clause 33 provides for development rebate. The clause as amended does not provide for developmnt rebate being available, where an individual or a Hindu joint family is succeeded by a partnership or a limited company. I do not understand clearly why this distinction is made. If development rebate is allowed to a company, the Hindu joint family which also acts as a company should be given the benefit of this particularly when, as our hon. friend, Mr. Sapru, just pointed out, Hindu joint family is something specified. It is denned in law; it is not anything vague and if the law recognises it, then I think this benefit of rebate should go to the Hindu joint family also.

Now I come to clauses 61 to 62. Under present section 10(1) (c) exemption from the operation of the section is conferred on trusts which are not revocable either during the life time of the beneficiaries or for a period of ' at least six years. The exemption in respect of the latter category, that is, trusts not revocable for a period of six years, is proposed to be withdrawn in respect of trusts created from and after 1st April, 1961. There is no justification for removing the exemption for trusts not revocable for a period of six years. It may be noted that this provision still obtains in the U.K. Income-tax Act, section 404, or. which our law is based. In many cases settlements are made for the benefit of disabled children, widows, etc. The income from the trusts is to be absolutely held from the very beginning for the benefit of the beneficiaries and the settler does not derive any benefit from the income. In such circumstances it is not equitable to treat it as income of the settler.

There seems to be a little confusion in t!i of the Government regarding clause 73, which refers to speculation losses. I am not at all for speculation and I do not want to encourage any type of speculation. But the principle of not allowing speculative losses to be set off against other incomes is wrong. It will pre-

vent genuine hedging transactions. And hedging is something that is recognised as part of normal legitimate business. It is a normal cushion on which a lot of business is carried on and as long as that is so, I do not underderstand why this restriction is placed. It would seem that under the instructions a dealer or investor in stocks and shares cannot enter into hedging transactions in scrips outside his holdings. This is not practicable when a *bona fide* hedging transaction is resorted to and the holder of a scrip should not be forced to hedge only i_n that particular scrip. Already people who invest money are being subjected to a number of restrictions. They are being taxed. The laws being what they are today in this country, a person who tries t_0 live only on the income that he has made by investment would find that he has nothing left at the end of twenty years. Under such circumstances the man who tries to use his income or what he has saved in early years wisely should not "be put to such disabilities.

Clause 79 is, again, a provision which is unnecessarily creating difficulties. It provides that a company should not be allowed to carry forward its losties xmles 51 per cent, of the share capital remains in the hands of the same shareholders. This provision is contrary to the basic principle that the corporation is a separate entity from the sharehalders. Here the Government is trying to treat the individual shareholders separately from the joint stock company. Then, what is a joint stock company? The Government is striking at the root of the basis and principle of a joint stock enterprise, which is wrong. Further, the clause puts the onus on the assessee to prove that the change in the shareholding was not effected with a view to avoiding or reducing tax liability. I do not think this is a desirable provision and the Government should reconsider the "position.

Clause 87 provides that rebate on insurance premia would not be available unless the premia ar_e paid out of income chargeable to income-tax. This provision is a departure from the existing law. A person should be enabled to pa}' premia also out of moneys gifted to him by another person. The provision will also make it difficult for assessees to prove that the insurance premia were paid out of income chargeable to tax. For instance, the premia may be made by cheques drawn on a bank account in which have been credited both taxable and non-taxable income. The assessee may lose the whole or a part of the rebate in such e case. This is inequitable and unjust.

Then, I come to clause 138. By this clause th_e Commissioner may disclose to any person, on application and on demand after paying a prescribed fee, information as to the amount of tax determined as payable by the assessee in respect of any assessment, if in his opinion there are no circumstances which justify its refusal. This, I think, is a very unhealthy provision, the consequences of which do not seem to have been covered. Even if the fee prescribed were nominal, or a little more than nominal—Rs. 1 or Rs. 5— it is not going to prevent people, who are minded that way, to create difficulties for people. We have known that such provisions of law hav_e often been abused and why create something that is not going to help Government and that is going to create difficulties for the people? There are uneerupul-ous people always wh_0 are willing to take advantage of such circumstances. Why unnecessarily give them a loophole or handle?

Then, I come to clause 10(10). The Select Committee have modified this provision so that the benefit of exemption from tax at present available in respect of gratuities payable to Government employees is extended to persons in private employment also. A sum equal to hall a month's salary for each year of completed service calculated on the basis of the salary for the three years immediately preceding the year in which the gratuity

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is paid subject to a maximum of Rs. 24,000 or 15 months' pay, which ever is less, is to be exempted. In this connection I would like to point out that the modern tendency is this. Large corporations all over do not give just one half month's salary. They usually give a month's salary and, therefore, the exemption should be in respect of a month's salary and not half I would also like to point out the difficulties that certain rules make in this connection. I want to refer to tbe exemption as is applied to a gratuity fund. A distinction is sought to be made or the rule or the provision as it stands today would mean that a gratuity is exempted from tax. But where, as seems to be the recent tendency, a gratuity is funded or insured with the Life Insurance Corporation, when the money is pay able to the beneficiary, it would be li able to tax. This is an anomalous position and I would request the Gov ernment to reconsider clauses 10(10) and 17 (2) (v), so that such an ano maly does not occur. Perhaps my reading of the provisions is not correct, but I am advised that that would be the case, and, therefore, in the interests of the employees of the Life Insurance Corporation, who are now more or less employees of the Government, this matter should be considered by the Government. These are briefly some of the provisions to which I would like to draw the attentioji of the Government, and I would request the hon. Minister to see that the defects which are there and which are easily remediable should be remedied. Otherwise on the whole the measure is to be welcomed, and I am glad that Government has come forward with this proposal.

SHRI K. SANTHANAM: Madam Vice-Chairman, I welcome this Bill. This Bill is undoubtedly a vast improvement on the existing Act. Owing to the innumerable amendments during these forty years the old Act had become an almost impenetrable jungle, and no one except a professional accountant or an income-tax authority could make head or tail out of it. Therefore, Ij wish to pay a warm. tribute to all those who have tried to bring about the much needed reform in point of presentation which we find in this Bill. The income-tax law has been made fairly intelligible, coherent and on the whole simple. Therefore, the Law Commission, the Direct Taxes Administration Enquiry Committee, the Select Committee and all the officers concerned deserve warm praise for their efforts.

Madam, I have tried to read this Bill not so much from the point of view of an assessee but from the point of view of a citizen who wants the income-tax to give increasing returns-to the national exchequer, and I feel that a great opportunity has been missed not only to make rationalisation of the presentation of the Act but also of the actual content of the Act. For instance, there is no present justification for having an income-tax and a super tax separately. There may be a justification for separating the assessment of individuals and firms from the assessment of companies, and if tlie Income-tax Bill had been codified as income-tax for individuals and firms and corporation tax for companies, then a greatly needed reform would have been brought about. As it is, at the point of Rs. 20,000 they have to make a sudden jump. Instead of having a graded income-tax which goes from 3 per cent, or 5 per cent. to 80 per cent, or 90 per cent, according to the slab rates, we have got all kinds of conditions and limitations relating to income-tax and a separate system of deductions and conditions for super tax.

Madam, many Members have referred to the provisions regarding charitable trusts and donations. There has been some confusion regarding the actual provisions on these matters. So far as clause 13 is concerned, it does not affect any trust, even though it is a religious or caste trust, which exists today. The prohibition of income tax assistance for the formation of such trusts is confined to those

which may be created hereafter. Madam, it is said in clause 13: "(b) in the case of a trust or charitable institution created or established after the commencement of this Act". With regard to all the other trusts, they continue, I believe, to have the existing privileges. I do not see any serious objection to the withdrawal of the concession for such trusts to be created hereafter because our country is full of innumerable trusts for Muslims, for Christians, for Parsis, for everyone, so that there is no particular need for creating more of such sectarian or religious trusts. But I find this however in Explanation 2:

> "A trust or institution created or established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of sub clause (i) of clause (b) of this section."

I think this has been carelessly drafted because today one can build a temple separately for the Scheduled Castes and claim exemption, and in fact it will be against our policy of national integration. We are trying to bring the Scheduled Castes and all the backward classes into the existing big temples. We have fought a great battle for forty years for the admission of these backward classes into the existing temples, and now you want to provide a clause which will encourage the building of such separatist temples. If this clause had been confined to purely educational, health and social reform measures, it would have been all right, but it is drafted so broadly that any kind of thing which> is purely communal, which tries to separate the Scheduled Castes and backward classes from the rest of the community, can become a sort of public charitable institution. I hope the hon. Minister and the Central Board of Revenue will look into this and see what can be done. At least if thev had said "such trusts as may be approved by the Central Government", there would hav$_e$ been some check on it, but as it is, it is absolutely general and you canno' prevent it. The same thing applies to donations, clause 38. Here again in Explanation 1 it is said:

> "An institution $_0$r fund estab! ed for the benefit $_0$f scheduled castes, backward classes, scheduled tribes or of women and children", and so on.

What is exactly the definition of the word "benefit"? Suppose ou$_r$ Communist friends establish a$_n$ institution favouring to preach atheism for the Scheduled Castes in their area, is it for their benefit or not? Will it be for the income-tax officer to judge or the court? Who will judge that? Was it not right when you put these explanations and exemptions to say what sort of institutions and what sort of donations you wanted to encourage? I think this requires careful revision. And in this matter of donations, I wish to make one earnest appeal. I do not mind if for the current expenses of religious institutions you do not allow any income-tax relief to them. But, Sir. take the case of the big temples in South India, take the Juma Masjid or the famous Christian Church in Mangalore. These are not religious or sectarian institutions but they are our historic possessions. Now the renovation of a temple like the one at Taniore, or Trichy or Conjeeva-ram or Tirupati requires lakhs and lakhs of rupees. Many of these temples are badly in need of repair and renovation. Sir, is it not to be considered a national charity to give donations to these temples? I think i wrong, I think you are making a great mistake in preventing donations being given for the renovation and repair of these great national institutions. Though they may technically be religious or you may call them sectarian, they are really a great national inheritance. We should not allow them to go. For instance, all the Hindu temples of South India, of j Madras, are being managed by »

[Shri K. Santhanam.j Religious Endowments Board which i been set up by statute, and it is meanaging them on behalf of the Government of Madras. Is any donation given to the Endowments Board for the repair of a temple, say, at Conjeevarom or at Tiruvannamalai which is badly in need of repair, to come under this provision? I think this matter requires further consideration and I hope that the Government will take a really broad view of this matter.

Now, Sir, I come to some provisions in which the present Bill is unneces sarily generous. Take clause 33. It refers to development rebates. I can understand development rebates be ing given for industries of national importance but that clause i rovides for the grant of rebates for plant and machinery of every kind. The plant an(] machinery may be for a distillery; it may be for a perfumery; it may bp for some worthless purpose. Why should you give development re bates for all such purposes? Why don't you put in the same provision as in clause 84 saving thnt the develop ment rebate will be given only to such plant and machinery as may be ap proved by the Government? Then you will say a lot of money. As it is, this development rebate is encourag ing the diversion of our scarce capital resources to all kinds of flimsy, useless and luxury industries. I cannot see what justification there can be for giving development rebates to such concerns.

Sir, I am very glad to find that in clause 287, provision is made for the disclosure of information about certain persons who have been subjected to penalty. I welcome this. It is an extension of the provision in clause 138 which was passed by a separate Bill in the last or other previous session. At the same time I do not think that this goes for enough. Why should this be treated as a question of punishment? What disgrace is there to be told that I pay so. much income-tax and super-tax, and what advantage can any opponent take of that infor-

mation? We have already provided that if the opponent wants, he can put in an application and can get the information Why not publish the names of the assessees of incomes, say, over Rs. 10,000 ov Rs. 15,000, so that the public will be interested in knowing it? Whole groups of people, especially in business, in profession, traders, lawyers, doctors and others, will be anxious to know who the people are in their own profession who pay a great deal of income-tax, and the payment of income-tax at the proper level may become essential for the maintenance of one's status in one's profession. I do not know what exactly is the inhibition in the mind of the Government in making such rather limited provisions in this matter. Annually there should be an issue of the Gazette of the Government of India giving ....

SHRI J. S. BISHT: Half a million.

SHRI K. SANTHANAM: No. I have said between Rs. 15,000 and Rs. 20.000. I do not think that we shall have half a million people who pay income-tax for an income over Rs. 20,000.

SHRI J. S. BISHT: Over Rs. 10,000 you said.

SHRI K. SANTHANAM: All right. You can increase it. I said Rs. 10,000 to Rs. 15.000. I do not mind it even if it is Rs. 20,000.

SHRI ARJUN ARORA (Uttar Pradesh): After all, We publish the voters' list.

SHRI K. SANTHANAM: That is...

SHRI ARJUN ARORA: The voters* list is so voluminous.

SHRI K. SANTHANAM: I do not want it to be so voluminous. Now, it is considered to be a matter of prestige to evade income-tax. I want that a tradition should be established that it should be a matter of prestige to pay high income-tax and if certain people are induced to pay more in-

come-tax than they are really liable to for the purpose of this prestige, that also should be welcome because it is a sort of voluntary contribution to our national exchequer.

I find that there are many mistakes *in* drafting also. Though it has gone through so many channels, some mistakes have crept in. At least i_n the case of one mistake, the Government have to amend it here before it can be put on thn Statute Book. In clause IS, in sub-clause (b), the operative portion has been left out altogether. I find that the Select Committee did not take note of it; probably i_n the original Bill also it was there. How it escaped the notice of the members of the Board of Revenue and the legal draftsmen, I do not know. But it is human to make mistakes. I do not want to attach much importance to it, but it is a thing which has to be corrected here. And, therefore, I suggest to the hon. Minister to correct all such mistakes because, if at least one clause k corrected here and the Bill is taken 1o the Lok Sabha, they would have the opportunity to correct the other anomalies and mistakes.

Sir, I have given notice of various amendments but I do not want to trouble the House with them now. But I would touch only a few more points In the case of salaries, there is, I think, a serious anomaly which has escaped notice. What I find, is that salaries include perquisites but in the definition of perquisities, all amenities provided for persons getting less than Rs. 18,000 a year do not come. Thus, if a perron gets Rs. 5,000 as salary, he can be given by way of travelling allowance or food allowance or some other allowance except house allowance, another Rs. 10,000 and the Income-tax Department cannot do anything about it. I think this matter has not been properly scrutinised. I know it has come from the previous Act. I do not know why accountants and others have not realised the implication of this provision. It will be easy for employees to fix low salaries and high allowances. Instead of paying income-tax on Rs. 12,000 it is worth while for a person to bargain with his employer to get half by way of salary and the other half by way of allowances, when these allowances will not go into perquisites and so they will not be taxable. Then we have got the opposite anomaly also tr>at in the case of persons getting more than Rs. i<;,000 today, all these allowances are treated as taxable income, and if a certain allowance in the name of conveyance allowance is given, rince that allowance is included in income, he will not be entitled to the deductions to which the other people, who own cars, are entitled. I think there is some confusion here in the matter of drafting.

Similarly, Sir, if the Central Government issues securities tax-free, even then the interest on them is liable to In the original Bill they had made special provision that no tax shall be payable on interest received o?i securities of the Central Government issued tax free. Similar was the case with securities issued by a State Government tax-free, in which case the tax will be payable by the State Government concerned. Now they have no provision made for the rece'pt of interest tax-free; they have not said that, where the securities are issued tax-free, the interest shall not be taxed. In clause 181 they have provided that:

> "Inccme-tax shall be payable by a State Government on the interest on any security issued by it tax free."

And, so. where a State Government issues any security tax-fare, there the State Government pays the tax 0a the interest, and the man who receives , the interest also pays the tax. This is double taxation. I do not think this matter has been properly looked into.

I do not want to take more time of the House, and I shall make the other points when the clause-by-clause consideration is taken up.

Thank you, Madam.

PANDIT HRIDAY NATH KUNZRU: Madam Vice-Chairman, the Bill before us raises many points, but 1 propose to confine myself to a very few of them. I shall deal more particularly with those provisions in the Bill which relate to charitable institutions, that is, trusts or societies registered under Act XXI of 1860. It is a matter, as one can easily understand, of gTeat public importance that public institutions engaged in carrying on work of general public utility should riot be hampered in any way in the discharge of their duties. If any.-thh. is done under this Bill, which would reduce the income of these institutions and thus reduce their,capacity for carrying on public work, it is obvious that, though the Government may increase its income by a few thousand or a few lakhs of rupees, t'ois will be contrary to public interest. I shall, Madam, deal first with item (15) of clause 2 which deals with Definitions. Item (15) defines a charitable purpose, and it says:

> "'charitable purpose' includes relief of the poor, education, medical relief, end the advancement of any other object of general public utility rot involving the carrying on of any activity for profit;".

Now, Sir, if it had been said, "not involving the carrying on of any activity for profit", I could have understood it; that limitation would have been perfectly legitimate. But there is no such limitation here. If any activity is carried on, which adds to the income of an institution—a charitable institution—I suppose it will be liable to taxation. I suppose that that activitity which results in a profit to * the institution will not come within the definition of "charitable purpose" and will, therefore not be exempted from income-tax. Now, Sir, there are many institutions in every part of the country, which are genuinely subserving the public interest in one way or another.

Take for instance, an orphanage, where orphan students are maintained Now such an institution may have, say, a printing press and it may make money thereby. The object of their having a printing press is to train the boys in some gainful occupation so that, after receiving such education as they are capable of profiting thereby, Miey may not find themselves without any means of earning their livelihood. T!-<ere was—and is, I believe—such an institution at Poona called the Anadi Vidyarthi Griha. It is one of the best institutions of Poona, one of which Poona is legitimately proud. I do not know whether itj printing press makes any profit or not but, if it does, and it is taxed under this Bill, I think that it will be an act of great disservice to the |

SHRI AKBAR ALI KHAN: Quite ri*;ht.

PANDIT HRIDAY NATH KUNZRU: Take again, Madam, a society start ed in order to help students. It is registered under Act XXI of 1860. It collects subscriptions to give scholarships to students, helps them 'o obtain medical relief and opens a shop at which it sells books to them. It may make some profit by the sale of books, but is it right that the income of such an institution from an activity which may be supposed to involve the carrying on of this activity for profit should be treated as legiti mate? I think it will be an act of great injustice to tax such a society. I could give other instances, instances relating to the Servants of India Society or the All-India Seva Samiti. The Servants of India Society has a printing press at Poona. I shall not go into the circumstances in which that press was started. It is a very old thing. It has practically come ta with the Servants of India Society, but it is *r.* source of profit to the Servants of India Society. In these days when the sources cf puWic charity ire drying up, when it is extraordinarily difficult because of the taxation that 's being levied year after year to obtain donations, such associations like the of India Society have perforce In have some means of aontirn-

ing their existence without having to appeal at every turn to the public for support. Now, I take it, Madam, that under the definition of "charitable purpose" given in this Bill, the income of the printing press will be liable to taxation. Now, is it right that this should be done?

Madam, the Statement of Objects and Reasons says that this Bill was drafted after full consideration of the Report of the Law Commission and the Direct Taxes Enquiry Committee. The Law Commission did not recommend that any change should be made in section 4(3)(i) of the existing Income-tax Act. That section covers charitable and religious trusts. The Government cannot, therefore, appeal to the authority of the Law Commission for the change that it has made.

Now take, Madam, the Report of the Direct Taxes Enquiry Committee. I arn familiar with its Report. That Committee seemed to me to have considered only the cases of public trusts started by big businessmen and industrialists and it found that big business was using charitable trusts as a means of evading taxation and, therefore, it suggested methods of stopping this evasion, of "plugging the holes" as the Deputy Minister said. It did not concern itself at all with, what I may call, genuine trusts, institutions devoted wholly to the public good, no part of the income of which can be xised for the benefit of any individual. Now, how do you justify treating trusts created by big businessmen and industrialists and other public institutions which have been started foil the sole purpose of serving the public in one and the same way? What is the justification for this?

There are if I may give, Madam, again instances like the Servants of India Society. Its constitution prevents any member of the Society from using the funds for his own private purpose. There is a Council of the Society which decides how expenditure should be incurred. The accounts are audited by a Chartered Account ant and so on. No part of the income of this institution can be used by any member of the Society for his own private purpose. A member can re ceive only the allowance fixed for him under the Society's rules and no more. How can such an institution be supposed to be in the same category with trusts and institutions started by big businessmen in order to escape taxation. Surely here is a case for differentiating between these two classes of trusts or institutions registered under the Societies Registration Act of 1860.

SHRIMATI TARKESHWARI SINHA: I mav explain that societies like the one that the hon. Member is mentioning are not going to be taxed. He is slightly mistaking a charitable purpose for the means of carrying out that purpose. Even if the profit of a particular institution is for the primary object of carrying out that charitable purpose, it will not be taxed.

SHRI AKBAR ALI KHAN: It should be clarified.

SHRIMATI TARKESHWARI SINHA: That is why I said that the hon. Member was mistaking charitable purpose for the means of carrying out that purpose. That should not be really confused with that. So also the primary object is the former one, i.e., charitable. Where any profit or any business is carried out for fulfilling the primary object of charitable purpose, it is not going to be taxed.

SHRI AKBAR ALI KHAN: It covers activities carried on for profit.

SHRIMATI TARKESHWARI SINHA: Yes, activities carried on for profits, like the one the most honourable Dr. Sapru spoke of. He gave the example of the Tribune. There are so many newspapers that come and create trusts and say that they are carrying out the object of public education

[Shrimati Tarkeshwari Sinha.] whereas they will really get^ benefit out of it. Therefore, specifically it is to cover cases like the publishing houses which may be carrying out their business of private profit. They will certainly say that they are carrying out the business of public education. It is really to Cover such types of business so that they may not take advantage of this particular situation that we have put these words.

SHRI K. SANTHANAM: Am I to understand that the hon. Minister makes a difference between charitable purposes and charitable institutions?

SHRIMATI TARKESHWARI SINHA: I am not making any difference. I am making a difference between a charitable purpose which is the primary object of giving tax exemption and the means of carrying out that purpose. I am only saying that it should not be.

SHRI BHUPESH GUPTA: The hon. Minister should know that there is difference between a charitable purpose and a charitable institution. They are not the same thing. There may be an institut'on which we call charitable purpose. It will not be covered.

SHRI AKBAR ALI KHAN: Here the point was different.

SHRIMATI TARKESHWARI SINHA: That point has been clarified in the subsequent measures. The point that Dr. Kunzru was referring to was specifically this: He was referring to the definition. Therefore, I pointed to the other doubts which had been raised by the hon. Member, Mr. Bhupesh Gupta. Those have already been clarified in the subsequent portions of the Bill.

PANDIT HRIDAY NATH KUNZRU: What the Deputy Minister has said doubtless represents the intentions of the Government and to the extent to which she has explained them I welcome what she has said. But I am concerned with the legal effect of the provisions that I have read out, namely, the definition of "charitable purpose". The language is so wide as to cover all possible activities which enable a society to earn some money

apart from public donations. 3 P.M. If what the Deputy Minister

has said is the purpose of the Government, that is, the income derived by public institutions of the kind that I have mentioned from their activities will not be taxed, then that purpose ought to be made clearer than it is. Surely the definition of 'charitable purpose' here does not make 'the mind of the Government in that respect clear. I will draw her attention to the definition of 'charitable purpose' given in the Bill as introduced in the Lok Sabha. The words 'not involving the carrying on of any activity for profit' were not there. Consequently the position of societies like the Servants of India Society was perfectly clear. It is the addition of these words that has made the position difficult and I have to point out to her that the definition of 'charitable purpose' given La the Bill as introduced in the Lok Sabha was in the form in which it stood after full consideration of the recommendation of the Direct Taxes Administration Enquiry Committee and the Law Commission report by the Government of India.

Now I come to clause 11 which also affects public trusts. Clause 11(1) (a) says that certain kinds of income—

> "shall not be included in the total income of the previous year of the person in receipt of the income"—

What are those kinds of incomes? They are:

> "income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to r such purposes in India . . ."

What I want to point out here is that income derived, say, by the Servants of India Society from properties ot

the kind mentioned by me will not be regarded as income derived from the property held under trust for charitable or religious purposes because of the definition of 'charitable purposes' in clause 2(15). Again it is said that the properties will not be taxed if they are accumulated in excess of 25 per cent, of the income from the property or Rs. 10,000 whichever is higher. However, I shall not go into this particular thing because the subsequent sub-clauses make the position much easier than sub-clause (1)(a) does. But what I want to draw her attention to is sub-clause (4) which says:

> "For the purposes of this section 'property held under trust' includes a business undertaking so held . ."

Does this mean that if at the time the trust is formed, a profit-earning concern is part of it, then its income will be exempted from taxation but if the profit-earning concern is started by the trust after its establishment, then it will, be liable to taxation? I am trying to reconcile clause 2(15) with clause 11(1) and 11(4). If that is the effect of clause 2(15), then I say that there has been some mistake in the drafting of these clauses.

SHRIMATI TARKESHWARI SINHA: May I clarify this to the hon. Member? Actually clause 11(4) applies really to property including the business undertakings. For instance, a trust may be there. A trustee or donor might be giving a factory or a firm or shop for the benefit of that trust so that the shop can do business or the factory can manufacture things and get profit and out of that, fulfil the object of the charity or trust. What happens sometimes is—and these cases have come to our notice—suppose a factory has got a capacity for an annual income of Rs. 15 lakhs but for avoiding a particular portion of the tax, sometimes the trustees or the donors have manipulated the accounts. They say that the income of the factory is only Rs. 10 lakhs and not Rs. 15 lakhs, thus avoiding tax pay-t on Rs. 5 lakhs which goes to their own pocket. For plugging this hole, actually powers were taken by the Income-tax authorities to scrutinise the accounts to find out that the income shown in the books is the correct one and has not been more. That was the only safeguard that has been provided by the sub-clause.

PANDIT HRIDAY NATH KUNZRU: I am glad to have this explanation I think the real reason for this apparent conflict between clause 2(15) and clause 11(4) is due to the fact that the words "not involving the carrying on of any activity for profit" were added by the Select Committee while the other clauses were allowed to remain unaffected by it. I know that clause 11(a) was added by the Lok Sabha.

SHRIMATI TARKESHWARI SINHA: That is about excess income. If the Income-tax authorities find out that in Dlace of Rs. 10 lakhs, actual income is Rs. 15 lakhs, then that Rs. 5 lakhs will not be exempted.

PANDIT HRIDAY NATH KUNZRU: Where the trust is a fraudulent trust, nobody wants it to be protected but here again, I ask the Government to consider the case of public trusts of associations genuinely for rendering service to the public. Is no distinction to be observed in regard to these two classes of institutions? Are you so anxious to stop by every means in your power the evasion of income-tax by fraudulent businessmen and industrialists, as to injure the interests of those institutions which are genuinely working for the public good and the whole of whose income is devoted to public purposes? That is the point. I hope that the Deputy Minister will be able to clarify this point further.

There are only two more matters' that I would like to deal with before I sit down. One is regarding clause 13. A good deal has been said about it by the previous speakers but I

[Pandit Hriday Nath Kunzru.]

would like to support their views by-saying that the trusts started for religious purposes should be exempted from taxation. Shri K. Santhanam said that it would be undesirable for people to build temples for the Scheduled Castes and Scheduled Tribes and thus keep them separate from the rest of the community. This is not, I imagine, what will happen. Probably some charitably-minded Hindus who do not want that the Scheduled Castes should be treated as if they were not a part of the Hindu community, may build temples to which the Scheduled Caste people shall have access in *common* with other classes of the Hindu community. How can you object to such a thing? We ask that religious and moral instructions should be given in our schools. The Education Ministry appointed a Committee under the Chairmanship of Shri Sri Prqkasa to report on that matter. How can the Government then say that the income of religious trusts or money given for the establishment of religious trusts will not be exempted from taxation?

SHRI K. SANTHANAM; May I remind the h»n. speaker that I wanted only the power of discrimination. I do not mind some temples provided they are temples of that type. We do not want separatist institutions. Somebody must have the power of discrimination to see what kind of charity is established.

PANDIT HRIDAY NATH KUNZRU: I have no objection to discretion being vested in the Board of Revenue. I say so, because it has a reputation for efficiency and integrity. But I am afraid that the Board of Revenue, under the pressure of the present circumstances may try to put pressure on Income-tax Officers to obtain more income than they are doing at present from the places within their jurisdiction. I have been credibly informed, Sir, that the Central Board of Revenue has sent out instructions to Income-tax Officers that they should try in every possible way—that is to say, in every legitimate way—to increase the income-tax to as large an extent as possible. That is why I am chary in such vital matters such as those I have referred to, to depend entirely on the discretion of the Central Board of Revenue.

The last point that I should like to deal with relates to clause 265 of the Bill. This clause says:

> "Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in the case."

PANDIT S. S. N. TANKHA (Uttar Pradesh): That is the present law also.

PANDIT HRIDAY NATH KUNZRU: But when the Income-tax Act is being altered, when it is being amended, when it is being made more stringent in some respects, why should not an existing provision be suitably altered? According to what canon of justice can you say that when an appeal is pending, say. in the Supreme Court, or when a reference to the High Court has not been decided by the High Court, the tax shall be paid by the ass?ssee? It does not seem to be right that this position should be maintained simply because it is contained in the existing Act.

I hope these matters will receive the consideration of the Government, particularly the matters dealt with in sub-clause 2(15) and clause 11 of the Bill. They go to the root of the matter so far as trusts and public institutions run entirely for public purposes are concerned and I am sure that the Government does not want that these institutions should cease to exist or should reduce the work that they are doing. I hope, therefore, that they will introduce suitable amendments in order to make the

intentions of the Government as explained by the Deputy Minister, absolutely clear to all people who have no connection whatsoever with the Government.

SHRI G. S. PATHAK (Uttar Pradesh): Mr. Deputy Chairman, this Bill was absolutely necessary, that is to say, this Bill has been introduced at the proper time. Since 1922, there have been numerous amendments in the Act occasioned by various reasons. There were constitutional changes. There was the perennial battle between the tax evader and the tax collector. The tax evader wanted to avoid payment of tax, while keeping within the letter of the law and the Government tried to make changes in the law so that the tax might not be evaded. Otherwise too, conditions changed and there were certain activities which had to be carried out and that also occasioned changes in the Income tax Act. The arrangement of the existing statute was illogical. The present rearrangement is more logical and it can be more easily understood by the practitioner, by the layman and the businessman. For these reasons, Sir, I welcome this Bill. It has run to 298 clauses and five schedules, but on reading the entire Bill one is left with the impression that this length of the Bill was justified.

Sir, I shall take up first this vexed question which is being discussed since this morning, namely, the question relating to charitable purposes and charitable institutions. Sir, it appears that this is a case of good intentions not well expressed. The definition as it existed in section 4 of the *Act* did riot contain the last part of the new definition, i.e. "not involving the carrying on of any activity for profit;". The definition as it existed led to dispute in courts and the question arose as to what was the meaning of the expression "object of general public utility". There were cases like the All India Spinners Association case and other cases and it was held that if the object is commercial profit or private profit, then that v/ould not be covered by the expression as it existed. New, the Law Commission, of which I had the honour to be a Member, recommended no change because the law was well understood and thus, the addition of the expression "not involving the carrying on of any activity for profit" seems to be superfluous. It may be that the intention may be well expressed by changing this expression so that there may be no doubt left about the intentions of the Government. Now, Sir, take a ease like this. There is a hospital or a society for nursing facilities. The intention of the society or those who conduct the hospital is to apply the entire income of the society or the hospital to charitable purposes. Let us suppose that the wards are divided into two categories, one where full charges are made from the patients, another where no charges are made and the intention is that— where charges are made, the charges may amount to profit—the profit will be utilised for the purpose of maintaining the other ward. Now, that will be a case where although the charitable object, namely, medical relief, answers the description of general public utility, that charitable object involves an activity for earning profit, because if you cannot derive any profit from that part of the ward where you are charging full rates, you cannot maintain the other part and thus cannot provide facilities to those who cannot pay. Therefore, if this definition is allowed to stand, the result will be that such an institution would answer the description, namely, the advancement of any other object of general public utility involving the carrying on of an activity for profit. The first part would be satisfied but so far as the second part is concerned, it will be predicated that inasmuch as this object of general public utility involves the carrying on of activity of running the hospital for profit, this is not a charitable purpose. Now, Sir, in a court of law, we are concerned with the intention as expressed, not the intention unexpressed. Therefore, it is necessary . . .

SHRI AKBAR ALI KHAN: Even though it may have been expressed in Parliament?

SHRI BHUPESH GUPTA: It has no v<<lue.

SHRI G. S. PATHAK: Therefore, the result of maintaining this definition ' will be that it will introduce confusion in the law. It will not' be in accord with the real intention of the Government. It will not be in accord with the principles laid down judicially in the highest courts. Now, Sir, that it is not the intention of Government to strike at institutions which carry on or whose objectives involve an activity of profit would be clear from clause 11, sub-clause (4). There is implicit in that clause the requirement that business which would earn profit could be property which is subject to a charitable trust because otherwise it will not be possible to treat business as part of the property. Now, take -a case like this. An industrialist, charitably-minded, makes a trust of his entire property, including his business. Now, that case would be covered by sub-clause (4), and for purposes of this sub-clause, that business would be treated as property held under trust, that business would bring in income and that income would be exempt from tax. It is quite clear, therefore, that there will be incongruity and there will be inconsistency between sub-clause (4) of clause 11, and the definition, if the definition remains as it is or is not amended or the last part not deleted.

Now, as regards sub-clause (4), the language, in my submission, is again defective. The exemption depends not on the application of the money to charitable purposes but on the basis of the entry in the account books. I lyill read it for you:

> "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 detsrmine the income of such undertaking in accordance with the provisions of this Act relating to assessment;"

Therefore, power is given in such cases to the Income-tax Officer to determine the income of such undertakings. Consequently, it is quite clear that if there is a business fetching income, that income would be entitled to> exemption.

> ". . .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 . . ."

The application of this sub-clause depends on the entries in the account books, not on the question whether it has been applied or not applied. The formulation of the law should have been that the Income-tax Officer shall determine from the account books or such other evidence as is available before him what part of it has been applied for charitable purposes. That would have been a correct formulation of this provision. Therefore it Appears to me that there is incongruity or inconsistency between sub-clause-(4) and the definition.

PANDIT HRIDAY NATH KUNZRU: And clause 2(15).

SHRI G. S. PATHAK: That is what I said, definition. When the Bill is on the anvil here, if there are doubts expressed as to the language of the statute as it is to be passed, this is the time when those doubts should be removed by making suitable amendments and it should not be left to the courts to decide why it is that Parliament knowing what were the judicial precedents, knowing that judicial precedents treated commercial profit or private profit as something which

would vitiate a trust in the sense that the trust whose object involves an activity of this kind would not be a trust whose income will be exempted, left it like this. That should not be left to the courts and if the question arises in the courts after the Bill is passed as it is, the argument would be: Why is it that Parliament, knowing that in the correct statement of law profit was qualified by "commercial" or "private", omitted the term "commercial" or "private". It might _ then be argued that the omission of the words leads to the conclusion that the intention of Parliament was to exclude all those institutions whose object related to an activity bringing in profit, that it was immaterial to what purpose those profits were applied. That will be the argument there. Now, when the Bill is going to be passed, I submit that we should not allow litigation of this kind, when the matter can be clarified at this stage.

So far as the provisions relating to charitable institutions are concerned, I am happy to note that the Government has taken into account the practice of creating trusts which has been indulged in by some businessmen and industrialists for the purpose of accumulating profits not to be applied to charitable purposes but to be applied to their private purposes. There have been many such cases and the practice was growing.

There is one very good feature in this Bill and it is Chapter X. Although there was a provision in the Excess Profits Tax Act where the Excess *Profits* Tax Officer was entitled to disregard a transaction which was entered into with the object of avoiding excess profits tax, there was no such provision in the Income-tax Act, and this Chapter is devoted to striking against transactions which are entered into for the purpose of avoiding taxes. Of late there has been a change in the judicial attitude towards this matter in England particularly and in India also. Although it has been held that it is open to a citizen to arrange his affairs in such a way that his transactions may not attract tax— that is his right—and the State then cannot say that the tax has been avoided or evaded, yet such attempts have been looked upon with disfavour because a citizen should not be allowed to enjoy benefits without sharing burdens although he may be within his legal rights. And it has been said by a very high authority on income-tax law, Lord Simon, that avoidance of tax increases pro *tanto* the load of tax on the shoulders of the great body of good citizens who do not desire or who do not know how to adopt these manoeuvres. Sir, there are a number of provisions in this Bill which strike at this evil and every right-minded person would welcome such provisions. But the rigour of the law has been softened by making provisions in favour of honest citizens who may show that the transactions are *bona fide* and the facts being within the knowledge of the assessee he is the best person to place the facts before the Income-tax Officer and if the Income-tax Officer is satisfied that the transaction was bona *fide,* and that it was not intended to avoid tax, then in that case the transaction will be upheld and this avoidance provision would not apply.

There are other devices also which have been struck at. For example, it had become very common to enter into an arrangement with a managing agent, for instance, that he would be paid a certain amount of remune-' ration for a certain number of years and the duration of his service was fixed. Then, in collusion, the service was prematurely terminated and a large amount of compensation waa paid by agreement and very often through arbitration. The result was that this compensation was not treated as income and such large amounts thus escaped taxation. There is another kind of device which has also been struck- at here, that is, the cash-credit device and so on. I will" not

[Shri G. S. Pathak.] enumerate them here and I think provisions which prevent avoidance of tax are a very happy feature of this Bill.

Now I may say one word about the harassment that was sometimes caused by an over-zealous Income-tax Officer. What he did was this: he would apply the provisions of the present section 34 by adopting a_ device. And the device was he would call for the account books although they wer$_e$ not necessary and then he would say that he had received information through the account books that so and so had escaped assessment. In this way he satisfied the letter of the law and sometimes honest assessees were harassed. Now, there is a provision made in clause 147, Explanation 2 which says:

> "Production before the Income-tax Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section."

Now, the Government was aware of this harassment and I again congratulate the Government on taking notice of such an action on the part of some of the Income-tax Officers, not many, and making a provision for it, although I am still apprehensive that the word 'necessarily' will create .trouble and the aim intended may not be achieved in some cases.

The last thing that I wish to say is that the Government, in framing the Bill, has taken note of the modern set-up and the current need for the advancement of certain activities in this country. The Government has made certain provisions which promote scientific research. It has taken note of activities like the mineral oil industry. Some provisions- have been made to facilitate it. It has also made some concessions in favour of small industrial undertakings. Having regard to the entirety of the considerations which are appropriate to this Bill, I feel that it is a good measure. It is necessary to enaet such a legislation and I would, therefore, support the motion.

SHRI BABUBHAI CHINAI (Maharashtra): Mr. Deputy Chairman, the present income-tax law was enacted in 1922 and now the Government have brought forward a consolidated Bill after nearly 40 years. In between at several stages and at different times amendments have been made. The amendments having come on different occasions due to different reasons have made the present law a little confused and, therefore, sometimes it has become very difficult to interpret it. I, therefore, welcome this effort of the Government. Also, this Bill has been made on the basis of the Law Commission's Report and the draft which they had prepared. The Bill, as'I said, primarily aims at introducing order, simplicity and system into the income-tax law. It would have been well if this opportunity had been availed of to simplify the tax structure as well along with the other enactments which are taking place by the introduction of this Bill. As the Law Commission has said, without simplification of the tax structure, if you are going to simplify the income-tax Act, *ii* would not serve much purpose. Though absolute simplicity in the income-tax law is not feasible, still if the present Bill had attempted simultaneously a revision of the tax structure as well as simplification of the clauses, I think that would have served a great purpose both to the assessees and those who have to implement the same. I must also here congratulate the Select Committee, which has introduced many amendments in the Bill as against the original Bill introduced in the Lok Sabha. I further congratulate the hon. Finance Minister on having accepted the suggestions of the Select Committee with all the magnanimity

of heart which he has got. Even though one cannot say that the Bill as it has emerged from the Select Committee and from the Lok Sabha is foolproof, I must say that it has gone a long way in satisfying the assessees. And I am sure that while implement' ing the same the Government, those who are in charge of implementing it, would feel the same way.

Then, Sir, with the passing of this measure, the codification, consolidation and simplification of the Act will he, I hope, complete and there will be no necessity to come forward time and again, as they used to come in the past, for amending the law and once again jumble up something which would be difficult both for the assessees and those who are going to implement the same. More than the law what matters is the way it is administered. Income-tax is not generally liked by the assessees, but it is possible to reduce their agony if it is administered by those who are in charge of it in a little humane way. It is not my desire to say that those who are in charge of implementing this law should be in any way liberal in their collections. Every pie that Is due to the Government must be paid by the assessee and, if not paid, must be collected by those who are in charge of it. There cannot be any two opinions about it. At the same time, there is room for some humane treatment to the assessees and I am sure that those who are in charge of implementing it would take care of it. The attitude of suspicion must go. Income-tax Officers, as I said, should be concerned not only with collecting every pie that is due to the Government, but at the same time they must get it by a little human touch.

The Income-tax Advisory Committee that has been recently constituted at the Centre is a welcome step and will go a long way in ensuring this human touch which is very badly necessary between those who are implementing the Act and the assessees. I have ona Mggestlon to make in this regard. Just as the Central Committee, if an Income-tax Advisory Committee is constituted at the State level, then the members of that Committee would be in constant touch at the State level with the officers in charge of implementing the income-tax law. They may have frequent discussions with the members and thereby iron out all those small difficulties which the assessees are facing. Coming to the provisions of the Bill, I welcome the changes made by the Select Committee, as I have said, and in particular the procedural changes in regard to charitable trusts and income-tax on gratuities paid to employees in the private sector. Sir, the treatment of section 23A Companies, fixing time-limits in regard to the reopening of assessments, etc. is no doubt welcome. The list of industries eligible for exemption from super-tax in respect of intercorporate dividends has also been enlarged. While welcoming these changes, I would say that there is still large scope for further simplification of this particular clause and also for making certain changes in the law. So far as charitable trusts are concerned, trusts with annual incomes ofup to Rs. 10,000 have been completely exempted, but it is further provided that a trust with an annual income exceeding Rs. 10,000 will not be subject to the restrictions relating to accumulation of certain conditions are fulfilled. But in view of the fact that our economy is expanding at a very fast pace, I would welcome it if this limit of Rs. 10,000 is raised to Rs. 20,000.

Sir, the Select Committee has recognised the genuine difficulties experienced by section 23A companies and has made some provisions for deduction of certain items before arriving at the distributable profits. It must, however, be realised that with the growing importance of section 23A companies some sort of encouragement needs to be given for the retention of the profits in the business so that the companies may expand their activities. I would also

[Shri Babubhai Chinai.] go to the extent of suggesting that in a period like this when industrialisation is going on at a rapid pace, which is the prime necessity, section 23A should be kept in abeyance for some time. If this suggestion is not acceptable, then I would suggest that at least the percentage of profits statutorily to be distributed should be reduced in the case of industrial and manufacturing companies and proportionately in the case of other companies as well.

The next point I would like to touch upon relates to the question of depreciation allowance and development rebate. I feel, Sir, that the Government should reconsider the whole question of depreciation allowance and development rebate. The 120 per cent depreciation allowance and development rebate now granted should be capable of being written off by the companies with the agreement of the Department in a certain number of years, the percentage in particular years being left to the company's attitude or requirement. Also option should be given to the assessees to write off depreciation either by the' straight line method or by some other way. It is also necessary to reconsider the grant of additional depreciation allowance and the third shift allowance which had been previously given and now withdrawn. This is a very important matter and I would appeal to the Government even at this stage to reconsider this because this will give a much needed relief for the further development of industries in this country. Further, Sir, in the cas« of business enterprises whose work involves wastage of capital, for example mines, they should be enabled to preserve their capital and assure sufficient funds to development and work. In such cases a special form of depreciation allowance should be granted. There is also one point arising out of clause 33 dealing with development rebate. This clause requires to be amended so that when the business of an individual or a Hindu undivided family is succeeded by a partnership or a limited company, the successor entity is eligible for the benefit of development rebate to which the predecessor was eligible.

The Select Committee have done well in expanding the list of industries eligible for the benefit of exemption from super tax under present section 56A. The list of industries under present section 56A has been enlarged on the last two occasions. Therefore I would suggest that *Government* should take power as and when necessary to expand the list as we have been diversifying our industries and as different types of industries are coming up, and it will be necessary for the Government to go on adding industries after industries as we bring new industries in the industrial field.

I would next like to say something about the liability of directors for tax of section 23A companies. The Finance Minister has been very kind enough to agree that the liabilities of the directors of private limited companies which went into liquidation and in respect of which taxes were due would not be operative retrospectively unless the directors are guilty of tax evasion. He has recognised that it would be unfair to penalise directors who had taken up the directorship without the knowledge that personal liabilities for tax arrears would devolve upon them. It should be recognised that this provision is opposed to the fundamental and basic principle that a limited company is an entity different from the directors. Clause 179 which also puts the onus on the director for proving that the non-recovery of the tax is not due to his negligence or misfeasance or breach of duty is also opposed to ordinary principles of jurisprudence in regard to onus of proof. This is very hard on the directors to prove because they do not know what the exact position is when they accept the directorship.

Lastly, I would like to refer to the liability of non-profit making organisations. These associations are formed

for certain specific purposes. They do not intend to make profits nor do they distribute any profits to their mem-bens. They mostly subsist on their subscription income and they always run at a deficit. Some such associations own some properties or investments. Even the income from such properties and investments does not suffice to meet their day to day expenditure. In spite of it, they are assessed on their investment or property income. This is not reasonable. The Direct Taxes Administration Enquiry Committee had recommended that long term administrative arrangements may be entered into by the Department with such associations whereunder the associations would be taxed on the entire surplus of receipts over outgoings without allocation. The position regarding the taxability of non-profit making associations has not been made clear in the Bill, and I would suggest that it should be made claar.

Sir, with these observations I support the Bill.

SHRI SURESH J. DESAI (Gujarat): Mr. Deputy Chairman, before I offer my remarks on the Bill, I would like to pay my compliments to the hon. Finance Minister and the Select Committee for the excellent work they have done. I wish the Rajya Sabha had been associated with the Select Committee. To my mind this is not exactly a Money Bill. It is more or less a Bill dealing with administration and procedure of the income-tax law. Anyway, even though we. have not been associated with the Select Committee, I find that the Select Committee have done really good work. A number of amendments were moved in the Select Committee and the hon. Finance Minister was good enough to accept many of them. On the one hand he had to see that the revenues of the Government did not suffer and on the other hand the interests of the assessee had also to be safeguarded.

Sir, the Bill which has emerged from the Select Committee is a much improved measure and we should welcome it. The Income-tax B'*" which is before the House is a major revision of the income-tax law. The first Inccme-tax Bill came to 4 P.M. be introduced in this country as early as 1860. Within the first five years of the passing of that Bill, there were about 20 amendments to the income-tax law. Gradually more and more amendments came to be made. In 1922, there were many important amendments made but even after that, there have been something like eight to ten amending Bills passed in regard to this law. As soon as it was found that there was a loophole which had to be plugged, a piecemeal measure was introduced. As a result of these various piecemeal amendments, the income-tax law has more or less become obscure, involved, and highly complicated. The arrangement of the sections, as the Law Commission has pointed out in its Report, is also very illogical. The present Bill undertakes to revise the law and to simplify the same. To a certain measure, the Select Committee has succeeded in simplifying the income-tax law. But the law cannot be simplified as much as one would wish to. Unless the structure of taxation is simplified, the income-tax law cannot be simplified. Further, if it 13 put in a very simple form so as to be understandable to a layman, the income-tax authorities will get more and more power. After all, these are very complex concepts —earned income and unearned income, casual income and regular income, income derived from property, profession, business, salary, etc. These are all highly complicated concepts and they will have to be properly defined. If they are not defined, what will happen will be that the income-tax officers will get more and more power and they will interpret these provisions as they like. That is why the law cannot be made too very simple. But at the same time it cannot be gainsaid that there is much further scope for simplifying the income-tax law. After all, the whole taxation structure is such that it can be further simplified. We have not only got the Income-tax, the Super-

[Shri Suresh J. Desai.] tax and the Corporation tax, but We have also got the Gift tax, the Expenditure tax and the Wealth tax and also the Estate Duty. Then there are a number of provincial legislations also like the sales tax, etc. There are also further Central legislations like the Preference Shares (Regulation of Dividends) Act, etc. Recently, I got a notice from one of the biggest industrial companies. It is stated there that they want to regulate the distribution of dividend to preference shareholders according to the Preference Shares (Regulation of Dividends) Act. It is one of the biggest industrial concerns of the country and they mention in their notice that if the interpretation of clause 3 of section 3 of the Act is such and such, then such and such things will be done. It means that the reputed solicitors of the company who are the legal consultants to this big industrial concern are not sure of the correct interpretation of clause 3 of section 3 of the Preference Shares (Regulation of Dividends) Act. This is because the law itself is obscure. There is much scope, I believe, for further simplifying the law. The whole taxation structure of the country therefore needs to be simplified. Take for instance, section 23A of the Income-tax Act. It introduces into the Income-tax Act a concept which is very complicated, and very often it results in injustice being clone to the assessee. At the same time the Government says that if the section 23A companies do not wish to distribute their profits to avoid tax, what else can the Government do? There is some truth in the arguments advanced by both sides. But this can be simplified by ev^en raising the corporate tax to a certain extent but doing away with anomalies like section 23A.

Then, Sir, the Bill which has come out of the Select Committee has also provided a basis of justice which was lacking in many provisions of the Income-tax Act. For instance, I would refer to the provision about appeals. That has been much improved. When the Income-tax Department levied a penalty, there was no provision for appeal unless the penalty was paid. The tax had to be paid and the penalty had to be paid and then only the appeal had to be made. Now, Sir, there is a provision for appeal without paying the penalty which has been introduced in the present Bill. Then about the cancellation of registration also, when a firm wanted to be registered and if its registration was refused, then there was an appeal. But if the registration was once accepted and was later on cancelled, there was no appeal. Now, the present Bill provides for an appeal in such cases also.

Then ther$_e$ is the question of reopening of past assessments. The Bill which is before the House provides that there is a finality of assessment after sixteen years. After sixteen years. the assessment cannot be reopened and. it also provides that Rs. 50,000 i$_s$ the maximum financial limit given for any one year. So, these are provisions which are very salutary and provide a basis of justice to the income-tax law.

Then the Bill also makes the Income-tax Department more efficient. For instance, there is a time-limit now prescribed for submitting returns. Then a time-limit is also prescribed for the assessment to be completed and a time-limit is also prescribed for refunds to be granted in deserving cases. So, this will mak$_e$ the Income-tax Department and the administration of the income-tax law also more efficient.

Sir, the fourth main feature of the Bill i$_s$ plugging the loopholes which had been found in the old income-tax law, that is, the existing law. As far as the question of loopholes is concerned,' there is much evasion of taxes. The income evading assessment is estimated to be Rs. 500 crores or Rs. 600 crores; sometimes it is estimated to be much more because it is more or less based on conjecture. We do not exactly know the income which is escaping assessment. But I

would like to make a difference between what is called the avoidance of tax and the evasion of tax. If the assessee arranges his affairs in such way that the tax liability does not attach to him, then he is within the law. After all, the High Court judgements, even the judgement of the Privy Council also, say that the assessee has the full right to arrange his affairs in such a way that the tax liability does not attach to him. There is nothing wrong in it. But when the income is much more and the assessee declares his income to be much less and conceals the income, then I should say that it is evasion—an unfortunate thing, a very undesirable thing, and it should be stopped. It can be stopped in a number of ways, by educating the assessee, by instilling consciousness in him. At the same time, while I am on this point, I would also mention one thing which is very pertinent. That is, if every citizen of the country knows that every pie that the Government takes from him is well spent, perhaps he will be forthcoming to pay the tax liability attaching to him. But what happens is this. We find that in so many public projects there is so much extravagance and waste of money. At times we find that there are big losses incurred by one department after another. The audit reports say that big losses are incurred by sheer negligence and carelessness. So, naturally a sort of psychological impression is created as to why the Government needs more money. It is a wrong impression. When we have undertaken huge development projects under the Five Year Plans, certainly the Government needs money and money must be provided. After all, it must come from the citizens of the country. But a wrong impression is created amongst certain classes of people that the money which is being given to the Government is not being properly utilised. So it is to be remedied both ways. On the one hand the Government has to be careful in seeing that every pie that it receives from the people by way of taxation is sacred money, is well spent and is not wasted. At the same time, Sir, a consciousness should be instilled in the people also that evading a tax is a way of defrauding the Government, that it is not merely defrauding the Government but is also'defrauding the country. After all Government needs money not merely for running its administration; it takes the money also for the country's development, and when the people who can afford to pay do not pay the tax due from them, they are defrauding not merely the Government but the country actually, and their act comes in the way of the developmental plans of the country. So, as I said, it is both ways. Government should be careful to avoid losses through negligence and carelessness; at the same time the assessees should be made more conscious of their duty to the country. These are the general remarks.

Now, Sir, I come to the clauses of the Bill. Most of the clauses have already been dealt with by many hon. Members. Only a few, I shall refer to. First I shall refer to subclause 10(6) (vii)—it is about foreign technicians. It is mentioned in subclause 10(6) (vii) (a) (ii):

> "in the case of any other technician, such remuneration due to or received by him during the thirty-six months commencing from the date of his arrival in India, and where any such person continues to remain in employment in India after the expiry of the thirty-six months aforesaid and the tax on his income chargeable under the head "Salaries" is paid by the employer to the Central Government (which tax in the case of an employer being a company may be paid notwithstanding anything contained in section 200 of the Companies Act, 1956) the tax so paid by the employer for a period not exceeding twenty-four months following the expiry of the thirty-six months aforesaid;"

Now, Sir, taking this clause together with sub-clause 6(6), let us see what the Latter says:

[Shri Suresh J. Desai.]

"A person is said to be 'not ordinarily resident' in India in any previous year if such person is—

(a) an individual who has not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more;"

When these two clauses are taken together, it means that in the case of a foreign technician who is in this country, usually on contract for five years, only for the first three years he will be treated as a person "not ordinarily resident" in India, but for the next two years he will be treated as a person resident in India. This particular category of assessees, who are called "not ordinarily resident", and they enjoy certain benefits over both resident and non-resident assessees. In fact the original Bill wanted to do away with thi? definition and this class of assessees, but the Select Committee has introduced this provision again, and this class of assessees is still being maintained—"not ordinarily resident" assessees. Now in the case of those technicians who are on five-year contracts, for the first three years will be treated as "not ordinarily resident", but for the next two years if they are treated as 'resident', then their total world income will have to be taken into calculation to assess the rate of their tax liability in India. Now this is not a very desirable provision when we want to attract foreign technicians to this country, and usually they come for a short period of four years or five years, and if on their world income they are taxed, it is not very proper. So these provisions taken together—sub-clause 1(M6) (vii) (a) (ii) and sub-clause 6(6) make the position a little contradictory, and the technician will be put to a disadvantage.

Then, Sir, I shall take up sub-clause 10(10) along with sub-clause 17(2)(v), and among perquisites is included, in sub-clause 17(2) (x):

"any sum payable by the employer, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund, to effect an assurance on the life of the assessee or to effect a contract for an annuity;"

Now, Sir, under sub-clause 10(10) gratuities have baen exempted, to a certain limit, with certain restrictions. Gratuities paid by private firms have been exempted also. But here, Sir, the position is a little anomalous. If a gratuity is paid by a private company to its employee at the time of his retirement, that gratuity is exempted from tax. The employer will also write it off, I mean will be allowed to treat that gratuity as business expenses. Then there are certain employers who create a certain fund in order that, from that fund, the gratuities may be paid to the employees when they retire. In that case the amount of that fund going as gratuity will be exempted from income-tax and the employee's contributions to that Fund will be treated as business expenses. Then there is a third way also and that is a more scientific way, but that third way is not contemplated here, in this subclause 17(2)(v). The third way is that if a fund is created and the employer has to put in a certain amount, the/employer, naturally, cannot calculate the exact amount which will mature into a gratuity. He cannot base his calculation in the same manner as an actuary will; it will not be actuarial calculation. So what he does is that he insures the gratuity with the Life Insurance Corporation, that such and such an employee should be given a certain gratuity at a certain time. And then the Lifa Insurance Corporation asks for a certain premium, which premium tht employer puts into the fund. He puts into the fund that particular amount of premium only. Now this is not

something new. There are so many companies which have proposed this arrangement to the Life Insurance Corporation, which the Madam Deputy Finance Minister can find out. So many well known companies have proposed it to the Life Insurance Corporation, because then the basis of calculation becomes a scientific basis. The Life Insurance Corporation undertakes to pay the gratuity. The insurance premium is paid by the employer into the fund; he puts into the fund only that actual amount, the actual premium, which is calculated on a scientific basis, on actuarial calculations. But under the Bill, the employer's contribution of the amount of premium to the Fund which is usually called the Approved gratuity Fund will be considered to be a perquisite allowed by the employer to the employee and tax will be charged on it from the employee. So that is a very contradictory provision. If it is an approved gratuity fund, the employer merely puts in the money in that fund—that is allowed—but if the employer takes out an insurance policy from the Life Insurance Corporation and if he pays into the approved gratuity fund only that particular sum of money which the insurance company demands as premium, then that premium will be considered to be a perquisite of the employee and the employee will be charged tax on that. So this is an anomaly and it needs to be removed.

Then coming to charitable trusts, •there are so many points which have already been taken up by the hon. Dr. Kunzru and other friends. I would refer to one point only about these charitable trusts. The Bill seeks *to* allow accumulations to the funds of the charitable trusts with certain restrictions. But there is one provision which reads:

> "the money so accumulated or set apart is invested in any Government security as defind in clause (2) of section 2 of the Public Debt Act, 1944, or in any other security which may be approved by the Central Government in this behalf;".

Sir, I would suggest to the Madam Deputy Finance Minister that in those Securities which are approved by the Government, the fixed deposits with scheduled banks may also be included. Now, fixed deposits of the scheduled banks are falling and it is necessary to boost them up by providing that accumulated funds of charitable trusts will be allowed to be invested in fixed deposits with the scheduled banks. Also first mortgage debentures may be allowed to be taken by the charitable trusts which want to accumulate their funds beyond a certain period.

Lastly, Sir, clause 288 provides for appearance by authorised representatives before the Income-tax authorities. Now, it is provided that only an accountant can appear and in the Explanation it is said:

> " 'accountant' means a chartered accountant within the meaning of the Chartered Accountants Act, 1949, and includes, in relation to any State, any person who by virtue of the provisions of sub-section (2) of section 266 of the Companies Act, 1956, is entitled to be appointed to act as an auditor of companies registered in that State."

Now, Sir, there is nothing objectionable in the provision as such but the practical difficulty will be that there are only 2700 Chartered Accountants in the country while there are something like 50,000 joint stock companies. These 2,700 Chartered Accountants are already doing the audit work of something like 50,000 joint stock companies and if the Income-tax business also is to be given to them, it will be a little difficult for them to manage. Then their charges will be very high. If we provide that the company's accounts must be audited by a certain qualified accountant approved by the Government or by an Institute which is approved by the Government, that is

[Shri Suresh J. Desai.] certainly desirable because, after all, the audit of the companies is a responsible job and it has got to be done with a certain amount, of integrity, with a certain amount of responsibility and with efficiency. But these accountants are supposed to argue cases before the Income-tax authorities who after all are going to judge the matter. As a matter of fact, it should be for the assessee to decide whether to engage a good lawyer, whether to

whether to engage, what is called, an Incorporated Accountant from the Institution of Incorporated Accountants which, understand, has got a membership of about 3,000. I understand this institute admits people who are only Commerce graduates or B.A. with Economics. Only such people are admitted to that Institute. They have got a membership of about 3,000. Incorporated Accountants. The Institution is run on very sound lines for the last ten years. Suppose they are allowed to take up this Income-tax work, it will much facilitate the assessees and the work will not be monopolised by the Chartered Accountants who are too few to deal with even the 50,000 joint stock companies in the country. So, my suggestion is that some way should be found to see that this business is not monopolised merely by a few people. These Incorporated Accountants, who are also trained accountants, can also be entrusted with this work.

Sir, there are certain other provisions which have already been taken up by the hon. Members who preceded me and I do not want to take the time of the Hon. House in referring to them aerain. with these words, Sir, I support the Bill.

SHRI A.D. MANI (Madhya Pradesh): Mr. Deputy Chairman, Sir, The Income-tax Bill is a remarkable piece of legislation at least for the speed it has been rushed through during the last two months. I recall that in 1939 the then Law Minister, Sir, N. N. Sircar, introduced the Income-tax Bill which sought to codify the laws as they stood at that time. That Bill took, I think, two sessions of the then Legislatives Assembly and the matter was gone into with the greatest possible care.

I believe that the purpose of this Bill is to meet the requirements of our developing economy. The Government wants more money and rightly so, and a measure to plug the loopholes in the Act in respect of tax evasion. As far as plugging the loopholes in the Bill is concerned, I think that would be generally welcome all over the country.

Sir, there are provisions in the Bill which have been assailed on the ground that they make a serious departure in respect of Company Law by fastening on the directors concerned the liability for the payment of taxes. I think it is a very welcome provision and I support these provisions of the Bill.

Sir, I should like to speak on the amendments of which I have given notice, particularly in respect of clause 2. The hon. Members who preceded me, pai-ticularly my hon. friend, Dr. Kunzru, and my hon. friend, Mr. Pathak, have dealt at length with that clause. I would like to deal with the clause from another point of view and would try to find out what purpose the Finance Minister had in mind when he introduced the words-

> "not involving the carrying on of any activity for profit".

The Finance Minister in his speech in the other House said:

> "The definition of 'charitable purpose' in that clause is at present so widely worded that it can be taken advantage of even by commercial concerns which while ostensibly serving a public purpose, get fully paid for the benefits provided by them, namely, the newspaper in-

dustry which while running its concern on commercial lines can claim that °y circulating newspapers it was. improving the general knowledge "of the public."

What the Finance Minister said in the other House is based on the observations of the Privy Council in what is well known as the Tribune case. When the Tribune fought its income-tax assessment on the ground that the running of a newspaper was an object of general public utility, the Privy Council ruled that running a newspaper was for dissemination of news and views and, therefore, it was a public purpose and an object of "general public utility". That is what the Privy Council ruled in that case.

Sir, I should like the Deputy Finance Minister to bear in mind that the Government should not do in one Ministry something which is hostile to the policies of another Ministry. The Minister of Information and Broadcasting happens to be a colleague of the Finance Minister and he has accepted the Report of the Press Commission which went into the question of the ownership of newspapers. I happened to be a Member of the Press Commission, We discussed this matter for nearly two years, and the best legal brains that were available at that time to us went into the question of the structure of ownership of newspapers. Though the Report of the Press Commission is now about eight years old,-its recommendations have been reverberating all through these years.

The other day we had a Non-Official Resolution on the question of ownership of newspapers. It was stated that tk Press Commission made a certain recommendation which has been accepted [1]ly UHS *jru vciTniiciii. xiic Press Commission after mature deliberations said:

"One method of providing diffusion of control without making any change in the ownership of the paper would be to transfer the management to a Public Trust. In our view. . . ."

These are very important words and I would like the Deputy Finance Minister to bear with me and to listen to these words.

"In our view, judged against the background of legislation relating to death duties and the high rate of income-tax, the pressure of circumstances might induce individual owners of large newspaper undertakings to seek a form of ownership by public Trusts as the best way of ensuring that the enterprise which they have started would be carried on with strength and stability as an efficient public service, A proposal was put before us that all newspapers, big and small, should be compelled by legislation, to come under the Trust form of ownership or control. While we do not recommend any compulsion of the type suggested, we do regard the Trust form of ownership as the most desirable of the alternatives we have considered for effective diffusion of ownership and control."

This report has been accepted by the Government and I believe that suggestions are being made to the news agencies also that they should convert themselves into public trusts. At least one of the newspaper agencies is paying very heavy income-tax. It would be a great help and a blessing to that agency if, for financial reasona, it seeks to convert itself into a trust. This is the decision which the Minister of Information and Broadcasting and the Government of India have taken on the Press Commission's re-

the Finance Ministry, a contrary recommendation is introduced in the Income-tax Bill and the hon. Finance Ministry while explaining the purposes of the Bill, singled out the newspapers which are working under trust. I

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would like to mention here that if it is expected that newspapers which are published in Delhi are going to convert themselves into trusts just to escape income-tax, I would like to assure them, as one who has had long experience of newspapers, that this is not going to happen. Everyone of these newspapers in Delhi, the big papers, has a turnover of more than one crore of rupees. They exercise vast power. They exercise vast prestige. The Minister are extremely nice to them and to their proprietors and do you think that they would like to forego all these advantages and give these newspapers to trusts?

SHRI AKBAR ALI KHAN: Is that your personal, experience?

SHRI A. D. MANI: My personal experience is that these proprietors of the big papers are the persons who get the best deal from the Government on every matter—however that is a matter in connection with journalism. What are the papers which would like to convert themselves into trusts? These are papers with a purpose, with a mission to fulfil and these are small regional papers. The 'Tribune' has played a very big part.

SHRI BHUPESH GUPTA: What about' Hitavada'?

SHRI A. D. MANI: 'Hitavada' too. The 'Tribune' has played a big part in stablising political life in Punjab and in developing public opinion. The 'Samyunkta Karnataka' of Hubli and now of Bangalore was the mainspring of the unification of Karnatak. That is also under trust. The Janmabhoomi group of papers fought a good deal against arbitrary rule in Saurashtra in the old days and it was in the vanguard of the struggle of the people of the States for freedom. There is again the 'Kesari' of Poona which has maintained ^ certain tradition. In none of these papers is there any question of persona] profit. Now these papers which have developed a certain tradition and these papers have not harmed the interests of the public, would come within the mischief of the Bill. I heard what the hon. Deputy Minister said about the intentions of the Government. What she says in this House will be of no consequence. It has not been stated by the Finance Minister. It has been stated, with very great respect to her, by a Deputy Minister and what the Deputy Minister of Finance said is not going to influence the Income-tax authorities. When a matter goes before a court of law, as my friend, Mr. Pathak, pointed out, the only consideration would be whether the section as it stands bears this construction that even newspapers which have been functioning as trusts in the interests of the public should come within the ambit or the mischief of the Bill, I would, therefore, most earnestly appeal to the Government to consider this aspect of the matter. We are now seeing a trend among the newspapers to convert themselves into trusts. By imposing this limitation on the Bill, under clause 2(15), they are trying to impede that development. It is a development which has been welcomed in England where the 'London Times' has become a trust too. It is not as if the Central Board of Revenue is going to get crores of rupees from these papers. The number of papers I have mentioned is small and I should like to have from the Finance Minister a statement of the expected income from the taxation of these newspapers because that has got a bearing. The Direct Taxes Administration Enquiry Committee says that in regard to as-sessees of less than Rs. 10,000, there should be no question of going in great detail because the amount is so small that even if there is some evasion, it does not matter. If the quantum of financial benefit which the Government is going to get is going to be very small, I should like to support those Members who have said that this clause must be amended. These pious intentions expressed on the floor of the Legislature do not help us at all

»nd in the interests of seeing that newspapers do function for the benefit of the public, I would most urgently request the Finance Minister to consider the proposal of th$_e$ amendment of the clause as it stands. I would like to add that the Law Commission itself said that Section 4 of the Income-tax Act, as it stands at present, was capable of various interpretations. The Law Commission says:

> "It appares that the intention of the Legislature is not clear from the present language of the Act."

Now this is the expert opinion of the Law Commission and they are trying to make it still a more confused document by introducing the clause 'not involving any activity for profit'. It would only mean that we shall have a fresh spate of judicial decisions on all these matters and we will be forcing these trusts to go into prolonged litigation before the Supreme Court in respect of the interpretation of clause 2 of the Bill. After all, the Government wants that the Bill should be clear. They should make it specific and even though they would like this Bill to be adopted in this Session, in view of the urgency of the matter, in view of the importance of the interests involved, I would suggest that the Finance Minister might consider accepting an amendment to the clause or I would like the old clause to stand, namely, "an object of general public utility."

I should like to refer now to the question of gratuity on which I have also tabled an amendment. Sir, the purpose of this Bill is to raise money and not to determine issue$_s$ of labour policy. The Government wants money. We understand that position. In the clause as it stands, they have provided that if a sum of more than Rs. 25,000 rupees is received as gratuity, they are entitled to tax the person concerned. I quite accept that position. W$_e$ do not want that limit to be lowered or varied. But they have brought in an issue relating to gratuity, namely, that it shall not exceed fifteen days' salary for each completed year of service I would like to mention here that the Supreme Court has given a ruling in a case relating to the Bharatkhand Textile Mills of Ahmedabad, when the Bench was presided over by Justice Gajen-dragadkar. In that case there was an award giving one month's gratuity. After the Empjbyees' Provident Fund 4et came in, the question arose whether they could give half a month's salary as gratuity. The factory wanted to give only half a month and the matter came to the Supreme Court and Justice Gajendragadkar held that it was not wrong to give one month's gratuity too. I have got a number of cases in which one month's gratuity has been given. In the case of the Indian Tools Manufacturers Ltd. of Bombay, one month's salary was given as gratuity for each completed year of service. In the case of the National Electrical Industries, Ltd. when the matter was adjudicated, one month's gratuity was given. In the Estrela Batteries «ase also one month's gratuity was given. I would like to mention that the quantum of gratuity is a labour matter and the Finance Minister does not have the responsibility of determining a labour issue on an Income-tax Bill. He is interested in getting money. I am not touching that Rs. 25,000 provision. But if he wants to prescribe in advance that the gratuity shall not be more than 15 days' salary for each year of completed service, what would happen is that even in a very big concern, say, like the Burmah Shell which has the financial resources to pay, if there is adjudication—I am only taking a hypothetical case—if there is adjudication tomorrow, they will rely on the provisions of this Act and say not more than 15 days' salary would be paid. There is no point in comparing those who are working in private enterprises and government servants. Government servants have got pensions. They go on deputations. They go in air-conditioned carriages disposing of papers. And they have got

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certain constitutional provisions which prevent them from being dismisses as easily as employees in a private concern. Persons in private employment are on an entirely different footing in •respect of security of tenure, from government servants. If a group of employees in a rich concern, by collective bargaining get one month's salary as gratuity for each completed year of service, why should this Bill hit them on the stomach? After all, the man pays tax after this limit of Rs. 25,000. So what the Government is trying to do is to determine a labour issue in this Income-tax Bill. Sir, the amendment suggested only refers to gratuity. To the limit prescribed in the Bill, namely, Rs. 25,000 I have no objection. But we should not go beyond it and try to see that a labour issu$_e$ is decided in this manner. Sir, the Government appointed a Bonus Commission. It may happen that the labour situation may so develop in the country that after some time a Gratuity Commission may also be appointed. Why bar the road to further exploration of this question by determining the quantum of the gratuity in this Bill? I would, therefore, suggest in the interest of those who are working in private concerns, that the Minister of Finance should agree to the amendment that I hav* suggested.

There is another provision to which I would like to make a reference and that is in respect of clause 287. I agree with my hon. friend, Shri Santhanam, that those who evade taxes and are punished should bear the penalty of exposure. Under that clause the CFX-tral Government has taken to itself the power to publish in the Official Gazette the names of persons on whom a penalty of more than Rs. 5,000 has been imposed if *the* appeal preferred by them to the Appellate Labour Tribunal has been disposed of. Sir, it has been generally understood that in election cases the Supreme Court has held the opinion that where matters of facts are concerned, if the High Court and the Tribunal agre<j, they do not go into matters of fact, But the work of Labour Appellate Tribunals itself has been open to serious challenge. The Law Commission mentions that very often there is considerable delay. This i$_s$ what they say about the Labour Appellate Tribunal; that there is considerable delay in disposing of appeals and very often it is said that the Tribunal spares very little time for the appellate work with which they alone are concerned. They also say:

> "Very often the members of the Tribunal attend to sittings at any time they choose, thereby not conforming to regular hours for the disposal of the work. A Bene}', of two members of the Tribunal hear the appeals, but in practice the contribution to the decision of the case by one of the members is often not appreciable."

There have been a number of judgements criticising the work of the Labour Appellate Tribunal and I would like to draw the attention of the House to the observation made by the High Court in the Bikaner Trading Company of Calcutta. The High Court says:

> "We have so far end'ired with patience the type of statement of cases which have been submitted to this Court in connection with which references have come. But we think that the limit has been passed and we should make some obcerva-tions."

SHRI ARJUN ARORA: May I inform the hon. Member thnt the Lrbour Appellate Tribunal was abolished by a legislation passed in 1956'

SHRI A. D. MANI: I am sorry, I mean the Income-tax Appellate Tribunal.

SHRI ARJUN ARORA: But the hon. Member has all along been saying "Labour Appellate Tribunal".

SHRI A, D. MANI: Thank you very much. I meant the Income-tax Appellate Tribunal.

> "One common feature of these statements of cases is that the appeal was heard by two members, whereas th& statement of the case, in almost every case, wag drawn up by one member."

Finally the Judges state:

> "We shall not say, out of respect for the Tribunal, that the members have acted in a careless manner, but we feel bound to say that the manner in which they have discharged their duty of drawing up statement of cases for this Court can only be called 'care free'."

This is the kind of work which the Income-tax Tribunal is doing. If one could be satisfied that on matters of fact, the Tribunal would come to reasonable conclusions, then we could have said, following the analogy of what the Supreme Court had ruled in election cases, that where the Income-tax Appellate Tribunal agrees with the Assistant Commissioner on matters of fact, the Government of India can go and publish the case straightway in the Official Gazette. I would like the names of all the defaulters to be published in the Gazette. But justice requires that if a person has appealed to the Supreme Court against a decision of the Income-tax Appellate Tribunal, the matter should be regarded as aub-judice and the Government of India should not publish the names, unless the matter is finally disposed of by a court of law.

I may also say that the way in which this clause has been worded, I am afraid, is veiy unfortunate. I would like hon. Members of the House to scan the phrasing of this clause. It runs thus:

> "If in the interests of revenue the Central Government considers it necessary so to do, it may also cause to be published by notification in the Official Gazette, the names and such other particulars as may be relevant of."

So this is not in the public interest. We know "public interest" is a phrase very often used in enactments. But here it is "in the interests of revenue". If I were to do a thing like thai, I would be charged with intimidation and a much worse word beginning with the letter "b" but the Government, for no other interest, but only for getting money, in the interest of revenue, can get it published. At least in the interest of the good name of the Government, I submit, this phrase should be dropped because only when it is in the interest of public policy should it be published. It might happen that if a man wants to file a case against the order of the Income-tax Department, the Income-tax Officer might come and say, "Look, I am going to publish your name in the Gazette. So pay up and don't bother to file an appeal" and thus wring the money out of the man. We have not become so mercenary as all that.

SHRI AKBAR ALI KHAN; It may be done after the final decision of the court.

SHRI A. D. MANI: Yes, that is why the amendment suggests that this should be disposed of finally by an appropriate court of law. As for giving publicity, the moment a man goes on appeal to the Income-Tax Appellate Tribunal with regard to an income-tax case, where the penalty has been imposed, the general practice for the newspapers is to publish the name of the person. Newspapers like to publish names of persons who are big in the news, and the greater the fine, the greater is the happiness with which the newspapers publish the name. So publicity is automatically secured. Why should Government try to publish it, before the matter has been gone into in appeal and when the matter is really *sub*-judice? Therefore Sir, I would really appeal to the Government to accept

[Shri A. D. Mani.] my amendment. It is not any desire on our part to give any kind of protection to persons who suffer a penalty.

There is one amendment of which I have given notice and that is in respect of clause 28 where I have said that after the word "income" the words "excluding revenue from subscriptions" be inserted. 1 believe as the law stand at present, an association formed for protecting the interests of a profession can have a subscribed revenue exempted from income-tax. There are associations which have got acquired property. I believe, the Federation of Indian Chambers of Commerce and Industry has got property. The property can be let out and there can be no objection whatsoever to such income being taxed. But where an association is formed for mutual service, to advance the interests of a profession, I think that the subscribed revenue should not be taxed. I may mention here that the Indian and Eastern Newspapers Society has a subscription of Rs. 1,000 per member. It is registered under the Companies Act and it pays income-tax. Perhaps the All-India Newspaper Editors Conference is not registered under any Act. But it gets certain revenue which will come within the mischief of this Bill. I would like to point out to the Government that professional activity in our country has never been on an effcient, continuing and coordinated basis. Even in the legal profession, as my hon. friend, Shri Sapru, and my friend over there would testify, the members of the legal profession, the advocates, have not formed an association which continuously functions. We want more of such associations to be functioning in, what I call, a developing economy, in a broad and freer world which the Constitution has promised. These associations require libraries; they require all sorts of amenities and libraries are extremely expensive to maintain, and at least the subscription revenue should be saved from the axe of the tax. I would therefore suggest that in regard to such associations they should exclude subscription revenue from the tax.

Sir, I would like to mention finally that I approve the provision of the Bill which provides that 75 per cent of the income of a charitable institution should be spent on purposes of charity. It may be that there are trusts which go on accumulating and there have been a number of restrictions imposed. While those provisions are welcome, regarding the continuance of the old institutions I would only repeat what the other hon. Members said that we do not want Government to put in in the Bill restrictions which will stifle voluntary activity. The Report of the Scheduled Caste Commissoner mentioned that in regard to various aspects of work for the Scheduled Castes it was only the private organisations and voluntary organisations which coqld function. In the interests of the functioning of such organisations I trust that the appeal made from this side of the House as well as from the other side of the House would be listened to and suitable modifications made to clause 2(15) and clause 11.

Thank you.

SHRI AKHTAR HUSAIN (Uttar Pradesh): Mr. Deputy Chairman, Sir, I rise to accord my support to the Bill that has been introduced and which this august House has been considering and discussing till now. We have heard some criticism but the bulk of the criticism on the Bill relates only to clause 13 relating to the taxing of charities. Now, I do not know why some of the critics have I chosen to criticise this clause 13; may-

be the number is such that it invites or provokes people to find fault with it.

• SHRI AKBAR ALI KHAN: It is not an auspicious number.

SHRI AKHTAR HUSAIN: As my hon. friend points out, the number is not considered to be particularly auspicious. But, Sir, considering the entire Bill I think we have to accord our full approval to the measure that has been introduced. Why? Because the existing Act of 1922 has undergone so many changes since its inception that it has been more of a patch-work than one rationalised legislation which either the tax-payer or those responsible for the administration of the Act could read consistently. Whenever there was a decision from a superior court to the effect that there was a particular loophole or a particular defect in the Act which required an amendment to be made, immediately a provision was added. This process of changing and amending went on and every time there was an amendment some new loophole was being found out. The tax evaders in some cases have been employing very highly paid officers to advise them to find out ways and means to enable the makers of profit to escape the payment of their legitimate dues to the Government. So they used to discover loopholes after loopholes with the result that immediately after one amendment had been made, another became necessary because some other loophole had been discovered. And these new trusts of which we have been hearing so much were the result of some of these loopholes that were allowed to creep in as a result of the annual or bi-annual or frequent changes in the income-tax law. I consider that this clause 13 about which so many things have been said has been framed in order to keep up to the present requirements of the time. We know that before 1922 there was no income-tax payable in this country and in the same way up to 31st March, 1962 there will be no tax payable on charities. But now taxes have been imposed on everybody. Even Members of this House used to receive Rs. 75 per day tax-free. Times have changed and the needs of our developing economy have necessitated the imposition of taxes even on the salary of Rs. 400 that Members of Parliament receive. Therefore there should be no grudging about the imposition of this tax on charities for the simple reason that charities which used to be the mainstay for the rendering of social services are now more or less superfluous because the social services are now being taken over by the Govern-ment. In a socialist society with our expanding economy with greater emphasis on social services, on education, hospitals and so many other things, the State is called upon to meet most of these expenses and therefore whatever was considered in the past to be the only sources of social benefits for the poor, it is now the duty of the Government and as such some of these charities have become superfluous. And if they have become superfluous, if most of their work is now done by the Government, if most of that expenditure is now incurred by the Government, out of its own funds, then I think it is fit and proper that these charities should also make their contribution like other personages.

Another criticism that has been levelled against this Bill is this. There is a provision for payment of taxes as a condition precedent to seeking redress from higher tribunals. That is the existing law. Now if a tax evader files proceedings before a higher tribunal and does not pay the tax due from him, the proceedings may be prolonged with the result that he will get an opportunity of disposing of his property. He will dispose it of be-*nami* in the name of his sons and other relations and when the matter is finally decided by the higher authority after a few years—because they know how to prolong this kind of

[Shri Akhtar Husain.]

litigation—there will be nothing left from which the authorities will be able to realise the tax that has been found and decided upon to be due from the assessee who in order to evade payment or escape payment might have started a frivolous litigation which eventually was decided against him. But at the time of the decision there will be no property from which the tax could be realised. I submit, Sir, that the Bill is an eminently reasonable one and it rationalises the present law relating to assessment and realisation of income-tax and it should be supported by all of us. I do not wish to join those who have found fault with the drafting of the measure. 1 think it is an admirably drafted measure which takes into account all the decisions that have been given and removes all the defects as far as possible from the existing enactment. I think that the Bill deserves the support of this House and should be passed expeditiously to enable all the other rules and other things to be framed in time so that work may commence in right earnest from the next financial year.

With these words, I support the Bill.

MESSAGE FROM THE LOK SABHA

THE APPROPRIATION (NO. 4) BILL, 1961

SECRETARY: Sir, I have to report to the House the following message received from the Lok Sabha. signed by the Secretary of the Lok Sabha: —

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Appropriation (No. 4) Bill, 1961, as passed by Lok Sabha at its sitting held on the 1st September, 1961.

2. The Speaker has certified that this Bill is a Money Bill within the meaning of article 110 of the Constitution of India."

Sir, I lay the Bill on the Table.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. on Monday.

The House then adjourned at five of the clock till eleven of the clock on Monday, the 4th September, 1961.

GMGIPND—RS—438 RsD—10-10-61—550