

[Shri Govind Ballabh Pant.] been arrested. The person who passed this information has also been arrested. Investigation is still proceeding to find out if any other persons have been guilty of this leakage or use of secret Government documents and can be proceeded against. As the case against the three arrested persons will soon be put before the court and further investigations are proceeding, it would not be advisable for me to give at this stage further detailed information which is in the Government's possession. Meanwhile, I can assure the House that everything possible will be done to punish those who have been guilty of this offence. In view of this leakage, Government are giving consideration to the improvement of the procedure in this regard in order to prevent such occurrences in future.

SHRI N. D. M. PRASADARAO (Andhra): The hon. Minister said that more particulars need not be given at this stage, but from the press we know that certain persons were arrested and we know even their names, for instance, that of the press foreman. Therefore, it is no longer a secret, and so, what is the idea of keeping the names of the arrested persons as secret?

SHRI GOVIND BALLABH PANT: ] think this House has greater responsibility than the reporters who sent their news to the press.

### THE SALES-TAX LAWS VALIDATION BILL, 1956

THE MINISTER FOR REVENUE AND CIVIL EXPENDITURE (SHRI M C SHAH): Sir, I beg to move:

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

The purpose of this Bill is to validate State Laws imposing or authorising the imposition of taxes on inter-State sales or purchases. As the hon. Members know, the Supreme Court in its judgment in the case of *Bengal Immunity Company Ltd., versus The State of Bihar* decided on 6th September 1955, that until Parliament by law made in exercise of the powers vested in it by clause (2) of the Article 286 provides otherwise, no State can impose or authorise the imposition of any tax on sales or purchases of goods when such sales or purchases take place in the course of inter-State trade or commerce. It has further been held that the majority decision in the case of *State of Bombay versus United Motors (India) Ltd.*, in so far as it decides to the contrary cannot be accepted as well founded on principle or authority.

This judgment made illegal all State legislations in respect of collection and levy of sales tax on inter-State transactions. Besides this, doubts arose whether the collections made upto 6th September 1955 (i.e., the date of the judgment) were legal. Some State Governments asked us to clarify the position and to take steps to validate the levies and collections already made, so that their revenue and budget position may not be adversely affected. The gravity of the situation could not be under-estimated, as in some cases suit notices for refund of the tax already collected had been filed. The total revenue involved according to our estimate based on details received from about 18 States is over 4 crores. For the whole of India the total revenue involved may be about 5 crores or so.

Action was to be taken before the normal notice period on suit notices for refund expired. Besides we were advised that Parliament has plenary powers of legislation under Article 286(2) and entry 42 in the Union List to make legislation under Article 286(2) retrospective. It was represented to the Supreme Court that the economy of States might be upset if the collected tax was refunded. The

Supreme Court mentioned that the States may appeal to Parliament which under Article 286(2) has ample powers to make suitable legislation.

Under these circumstances the Government decided with a view to safeguard State revenues to remove any doubts about the legality of the levies and collections already made and the Sales-Tax Laws Validation Ordinance, 1956, was promulgated on the 30th January 1956, by the President. The present legislation is moved to replace the Ordinance.

It may be of interest to hon. Members to have a brief picture of the background. Before the Constitution came into force, liability to tax was determined on the basis of the definition of Sale as given in the various Sales Tax Acts of the States. This was not a satisfactory position and caused several difficulties. A provision was, therefore, made under Explanation to Article 286(1) of the Constitution under which it was laid down that a sale or purchase shall be deemed to have taken place in the State where goods were delivered for consumption. In 1953, the Supreme Court ruled in the case of *Bombay State versus United Motors* that all transactions where goods were brought within the State of delivery by out of State sellers except those where the goods were intended for re-export out of the State would be liable to be taxed by the State where the delivery took place. On the basis of this decision the States began to tax non-resident dealers. This caused harassment to trade and an interim scheme was therefore drawn up in consultation with the States to provide facilities to traders, and Officers of the taxing State were required to visit 'Central places' of the States to which the dealers belonged.

However, the decision of the Supreme Court on the 6th September 1955, stayed the 'Interim Scheme' and all assessment and collection of inter-State sales tax had to be stopped.

In these circumstances and in order to safeguard State revenues already

collected as mentioned above, it was imperative to issue the above Ordinance and the present Bill is moved to replace the Ordinance.

MR. CHAIRMAN: Motion moved:

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

SHRI KISHEN CHAND (Hyderabad) : Mr. Chairman, this is a law to validate certain taxes collected by the State Governments on inter-State sales. The hon. Minister in introducing the Bill gave a background of this Bill. I submit that this is a very fundamental point and a Constitutional point. Ours is a written Constitution and in a written Constitution there is a certain procedure to be adopted when any Act or any Law is to be changed which is a part of the written Constitution. There is a distinction between ordinary laws and Statutes and a law involving the Constitution of the country. In an ordinary law the will of the people as represented by Parliament or the State Legislature is supreme. But when there is a law which is contrary to the Constitution, in such a case without changing the Constitution if we want to validate a law, we are really going against the fundamentals of the Constitution. In such a matter we will have to look round to other countries which have got written Constitutions, and see what is the practice there. As you know most of the democracies of Europe do not possess a written Constitution of our type and so we must go to the written Constitution of the United States and see what is the practice followed there. I may point out in the very beginning that under article 286 of our Constitution it is clearly stated that:

"No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of good? where such sale or purchase takes place

[Shri Kishen Chand.J  
(a) outside the State .....

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That means, in this case there was inter-State trade and, according to the Constitution, any imposition of tax is barred so far as the States Legislatures are concerned. Indirectly, the State Legislatures were taxing the people of the other States for which they had no power. The hon. Minister has really taken shelter under clause (2) of article 286 which says, "Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce." The contention of the hon. Minister is that the imposition of the tax was invalid or illegal and it was so held by the Supreme Court. Now Parliament has got power under this article to validate it. The first question will be whether, in the presence of the written Constitution, this validation will be for future purposes or for the back period, retrospectively. In this matter, you will have to refer again to the American Constitution. I will read out one or two passages from Willoughby's "On the Constitution of the United States". He says,

"The fundamental principle of American Constitutional jurisprudence is that laws and not men shall govern".

This means that it should not be left to the arbitrary whims and fancies of individuals to change the law at any time if they are against the fundamental principles of the Constitution. Supposing, there are two judgments the first holding the tax to be valid and the other holding it invalid. There will be conflicting judgments and what should be the procedure. The point is whether the final judgment really covers the previous judgment or not. In regard to this matter also, Sir, I shall read out a small para from the same Constitutional Law:

"There have been not a few instances in which Statutes have

been held invalid and later when again brought before the Court held valid or *vice versa*."

This is exactly applicable to our case. The tax was first held valid and then subsequently held invalid. Therefore, there is an exact parallel between these two cases. In this case the question has been raised as to whether the effect of the latter position should be held to invalidate all acts undertaken or in the other case invalidate all such acts. Logically, it would seem that such should be deemed to be the effect of the latter decision, according to the established doctrine. The established doctrine is, that if there was a previous judgment validating inter-State trade, and there is a subsequent judgment invalidating the inter-State sales the subsequent judgment holds good. Therefore, Sir, we are driven to this conclusion that the tax on inter-State sales is invalid, that the tax cannot be levied. The question before Parliament is whether Parliament should validate the thing. The second question is, whether Parliament has got the power to validate it retrospectively. Parliament has got certainly power to validate any future law which will impose any sales tax. That power is possessed by Parliament but we do not possess the power for retrospectively validating -the imposition of that tax for a limited period.

"SHRI H. P. SAKSENA (Uttar Pradesh) :  
So, you restrict the powers of Parliament.

SHRI KISHEN CHAND: When we have a written Constitution, we have in our wisdom, imposed certain restrictions on ourselves. Otherwise, there is no meaning in having a written Constitution. If we want to change it, there is a certain procedure for changing it. The sanctity is always given to a written Constitution and therefore, the procedure for changing it has been made very elaborate. Other statutes can be altered by just a sim-

pie majority but in the case of the Constitution, a two-thirds majority of the members present and voting is required in addition to a bare majority of the whole House. Such Bills have to go to the State Legislatures for ratification. Therefore the question raised by Mr. Saksena that I am trying to curtail the powers of Parliament is not applicable here. The framers of the Constitution have themselves restricted the powers of Parliament and therefore I submit that simply to come forward and say that it will upset the budget position of the various States is not right. One or two years back we passed a similar law in the case of Hyderabad which had imposed certain export and import duties on goods which were not within its powers. It went on collecting but later on it was found that that collection was incorrect and Parliament had to pass a law retrospectively.

It is becoming common practice that we try to cover up mistakes by giving retrospective effect to the laws that we pass. I do submit, Sir, that even if it were passed and the position was validated, we should be careful because we are toying with our Constitution, especially at the whims and fancies of the States whenever they make mistakes. So, Sir, there should be some solution for this. The hon. Minister has pointed out that the replies received from thirteen States showed that the amount involved was about four crores of rupees. On the All-India basis, it may be rupees five crores. The question is, should we, for the sake of five crores, change our laws at will or would it not be really better for the Centre to pay that much and uphold the sanctity of the law. In the absence of specific provision in the Constitution enabling us to validate laws retrospectively, we should not make use of such a procedure.

SHRI P. S. RAJAGOPAL NAIDU (Madras): What is the provision?

SHRI KISHEN CHAND: There is no provision for giving retrospective validity.

SHRI P. S. RAJAGOPAL NAIDU. Only in respect of criminal laws ex post facto laws cannot be made. There is no bar in respect of civil laws.

SHRI M. C. SHAH: He does not want to understand that. That is the difficulty.

SHRI KISHEN CHAND: In the matter of civil law, where you have deprived a certain person of certain property or certain rights illegally, and then you want to validate it, you will have to come to the principles of common law.

In common law, when a person has been deprived of certain rights and privileges, we should not, by Constitutional changes, validate it. One of the fundamental principles of justice is that by subsequent acts you will not deprive a certain person of certain privileges which he might have enjoyed in the past and therefore, I do submit that it is a bad practice that we are going to adopt now of validating laws retrospectively. I would request the hon. Minister to reconsider the question and see whether any other solution could not be found so that this difficulty may be overcome and yet we may continue to hold the sanctity of our Constitution.

SHRI B. K. P. SINHA (Bihar): Mr. Chairman, this Bill really raises two important issues, one of legislative propriety and the other of legislative competence of Parliament. Sir, to appreciate the issues properly and to come to a correct conclusion, we have to look to the contents of the Bill. It is a very simple Bill.

The Bill validates the laws imposing sales-tax on goods forming part of inter-State transactions in respect of a certain period—1st of April 1951, to 6th of September 1955. Secondly, it validates the levies and collections. The protection that this Bill seeks to give to the laws of the States is limited in character, is limited to a definite period of three years and a half, and it is limited again to transactions of an inter-State character. Again i+

[Shri B. K. P. Sinha.] validates the laws only if they are invalid merely by reason of the sales taking place in the course of inter-state trade or commerce. There is no omnibus or blanket validation. If they are invalid for any other reason, they remain invalid in spite of this law. That is, Sir, the content of the Bill.

Now I come to the question of propriety. Now what is the background? The hon. Minister gave in a short compass the background of the relevant article and the sales-tax laws of the States. In the pre-Constitution period the law of sales-tax was in a state of anarchy. The States needed revenues, and in their search for revenues, they threw their net very wide. The word 'sale' has a composite conception; for a sale there must be goods, there must be buyers, there must be sellers, there must be agreement to sell, agreement to purchase, payment of price and transmission of goods. Now the States took one or more of these elements, and on the basis of these elements they levied tax on goods. The result was that the same goods were subject to taxation by more than one State, and in some cases, by several States. This imposed an onerous burden on commerce. Sir, nationhood implies one economic union, one economic unity. Because of these sales-tax laws that unity, that commercial unity, was in danger. The States began to operate as if in distinct compartments. The free flow of goods and commodities was checked. To remedy this state of affairs, the Constitution put a ban on inter-State sales-tax. But it was realised by the framers of the Constitution that this ban may jeopardise the financial stability of the States. Therefore, it was provided in article 286—I think in sub-clause (3) or sub-clause (4), I am not sure—that the President had the power to continue those taxations for a year or more, till the 31st of March 1951. This provision was especially put in the Constitution so that the finances of the State may not all of a sudden be put in jeopardy. And the Presi-

dent used that power. From 1st of April 1951, the position changed. The Constitution, by article 286, imposed a ban on taxation of goods which formed part of the inter-State trade and commerce. One view was that the ban was absolute, and unless Parliament intervened, no State would levy a tax on such goods. The other view was that article 286(1) (a), especially its Explanation, freed certain area for taxation by the States even though Parliament had not intervened. The States adopted the second view which was in their favour, and on the basis of that view they levied tax on the goods which formed part of the stream of inter-State trade and commerce. But this area was very limited. If was not the whole area covered by inter-State trade and commerce. Only those goods which were delivered in a State for consumption, although they formed part of the stream of inter-State trade and commerce, were taxed. That was the view of the States and the States took advantage of that view. Naturally the dealers and the trader\* demurred. This matter was agitated in the Bombay High Court which held in favour of the dealers against the State. The matter went in appeal to the Supreme Court. The Supreme Court took a different view. It upheld the rights of the States to levy this sort of taxation, and the result was that not only Bombay, but several other States began to tax this limited area of inter-State trade and commerce. After two years or more the matter again came before the Supreme Court in another case—the Bengal Immunity Co. Ltd. Now the correctness of the view of the Supreme Court expressed in the case of the United Motors had been in doubt from the very beginning. One of the Judges of the Supreme Court had differed from that view, and therefore a bench of seven Judges was constituted. This Bench, by a majority of four to three, overruled the previous view and held that even in this limited class of cases unless Parliament lifted the ban, the States could not exercise the right of taxation.

Sir, in view of this judgment, the States were put in a difficult situation. What they had considered legal, and what the Supreme Court had considered legal, two and a half years back became illegal in view of the second judgment of the Supreme Court. And therefore, refunds were claimed by the traders. This put a strain on the finances of the States. Refunds amounting to Rs. 44 crores or Rs. 5 crores have already been claimed, and some more claims may possibly be made. Is it proper, Sir, then in the first year of the second Five Year Plan to allow the States to be mulcted of this revenue, of this proceeds, which they received legally under a previous judgment of the Supreme Court?

Moreover, Sir, one important aspect of this question has been ignored. It is not the traders or the dealers who really pay the tax. They are merely the collecting agents. It is really the purchasers who pay the tax. The dealers collect this revenue in drops from the various purchasers and deposit it in lump in the treasuries of the State. The money is not of the dealers. Now in many cases—why, in most cases—it is difficult to trace the persons, the purchasers, the buyers, from whose pockets this tax has really come out. In the circumstances to allow the dealers to get a refund would be tantamount to putting some windfall gain in their pockets. I do not think Parliament will allow this state of affairs to continue.

Therefore I feel this legislation has been rightly sought to be put on the Statute Book. We should exercise our power to put an end to windfall gains to the dealers at the cost of the taxpayers. I would go even further and plead for the prospective extension of this validation. This validation is merely retrospective. It operates merely in respect of the past. I submit that it should be made to operate in respect of the future also. I have already pointed out that the area of inter-State business affected is very very small and it relates only

to commodities that are delivered in a State for consumption. The area is small and also the burden on the inter-State trade is not great or onerous. And in the absence of prospective validation, the States will lose a substantial amount, a sizeable revenue. I was told by the Chief Minister of a small Part A State that his State would be losing an yearly revenue of about Rs. 40 lakhs. My State of Bihar, Sir, in the absence of such prospective validation would lose a revenue of a crore of rupees every year which is nearly three per cent, of its total tax revenue every year. Moreover the judgment opens wide the sluice gates of evasion. It has now become easy for dealers and easy for buyers to evade this tax, especially in the case of bulk purchases. Take the case of Bihar. Dealers used to get commodities from manufacturers outside Bihar and they used to sell them and they used to pay tax on them. When manufacturers in their turn despatched those goods to Bihar for consumption, they were liable to pay sales-tax. This sales-tax they used to realise from residents or consumers in Bihar.

[MR. DEPUTY CHAIRMAN in the Chair.]

In view of this, it is easy for dealers, when making bulk purchases, from outside from places like Calcutta, Madras or Ahmedabad to so arrange matters that the manufacturers instead of despatching the goods to the dealers, despatch them directly to the consumers. Since the supplies would be of an inter-State nature, they cannot be taxed.

I may add that this practice is increasingly resorted to by important dealers in my State. In the absence of prospective validation, it is my grievance that external dealers, dealers external to the State would be put at an advantage as compared to the intra-State dealers, that is to say, dealers inside the State. To give an example, Sir. The Tatas manufacture steel and many other things, and in this they consume a lot of coal.

[Shri B. K. P. Sinha.] The coalfields are situated both in Bihar and in West Bengal and in many cases they are equidistant from the Tata works. Now, in view of this judgment, and if we do not give it prospective validation, it would be easy for the Tatas to import all their coal from West Bengal, because then they would not be paying sales-tax.

SHRI KISHEN CHAND: They would have to pay the higher freight and the coal would be dearer.

SHRI B. K. P. SINHA: But I have already informed the House that the collieries are almost equidistant from the Tata Works. Another example is the Rourekela Works and still another is the aluminium plant. They would not purchase what they consume in their own States, but they would go to suppliers beyond the State borders. In view of this, I would urge on the Finance Minister to consider whether it is not proper to give prospective validation also by this measure.

It is said that the Constitution is being amended, in the light of the Taxation Enquiry Commission. But our legislative programme is a very heavy one and we are still busy with the reorganisation of the States and so we do not know if we shall have the time before the coming elections to amend this article of the Constitution. So this matter may take more than two years and my fear is that in the meantime the States would be losing a sizeable revenue. Therefore I would request the Finance Minister to consider whether it is not proper to introduce in this law prospective validation also. If that be not possible, he may bring forward another small Bill giving such prospective validation.

Next, Sir, I come to the question of the competence of Parliament. Article 286 of the Constitution imposes a ban on the taxation of goods and commodities which form part of the stream of inter-State trade and commerce. But this ban is not absolute.

This ban is subject to one exception and that exception is that Parliament may provide otherwise. The question now is, what does this "provide otherwise" mean? What can Parliament provide? What is the competence of Parliament? What is the ambit of power that the Parliament has got under this article? The ban can be lifted by one sentence Bill, by a Bill saying that Parliament removes the ban on taxation of inter-State trade and commerce. This removal will give unrestricted and unhampered powers to the States to levy sales-tax and the States may select one or more elements of sale and impose tax on them. Or while lifting the ban, Parliament may prescribe certain conditions, conditions relating to the varieties of commodities, the rate of tax, the quantum of tax, the elements of sales on which the State can impose a levy. Positively, Parliament may provide that the States are free to have sales-tax laws imposing levies on inter-State trade and commerce. This positive provision can itself be qualified. This Bill falls under the second class. Therefore, in my opinion, under article 286, it is quite clear that Parliament has competence to frame legislation of this type.

Some doubts have been raised on the ground of retrospective validation of this law. I may point out that this is one of the fundamental principles of the interpretation of a constitution that when a power is there, that power is both for retrospective and for prospective exercise, unless there are words of limitation, express or implied. And I do not find any word of limitation in article 286 (2); nor do I find any word of limitation, express or implied, in any other provision of the Constitution. Therefore I feel that this matter is within the competence of Parliament. As a matter of fact, this is not retrospective taxation at all. It is purely retrospective validation of a taxation law. And even the power of retrospective taxation Parliament does possess. This matter is not *res Integra*. The power of Parliament

ment to impose retrospective taxation was agitated in the case of *Government of India vs. Madan Gopal* and the Supreme Court held there was nothing in the Constitution which prohibited retrospective taxation. The same can be said about the States. My hon. friend over there quoted Willoughby and some other books. But I may point out that the scheme of the American Constitution is entirely different from our Constitution. Under the American Constitution many of the States, it is true, cannot levy retrospective taxation.

SHRI KISHEN CHAND: And I can quote any number of judgments of the American Supreme Court where they have held them to be invalid.

SHRI B. K. P. SINHA: Yes, I entirely agree with my hon. friend because the schemes of our Constitution and theirs differ. Moreover, there many State Constitutions specifically put a ban on retrospective taxation.

Therefore my friend rightly pointed to those judgments which refer to those cases. There it is specifically banned in the case of certain States. There is nothing like that in our constitution. What is good in America therefore cannot be good for us.

The Finance Minister said, I think, in the other House that the Constitution was going to be amended; that this particular article was going to be amended. I would like to stress on the Finance Minister the necessity of putting the amended article in a better language. This article has been the despair both of lawyers and of judges. The Supreme Court in 1953 took one view and in 1955 took a diametrically opposite view. Even in respect of article 286(2) with which we are directly concerned in the *Bengal Immunity* case the question of the ambit of power of Parliament was discussed and argued for some time and in spite of that the conception was not clear either to the

judges or to the advocates. The best legal brains of India appeared in that case and the matter was argued for more than three weeks. Mr. Justice S. R. Das presiding over that Bench— he is now the Chief Justice of India— indicated certain views which can be taken of the power which Parliament possessed but ultimately at the end of the paragraph he said that it was not for the court to indicate to Parliament what powers Parliament possessed. Now in the amendment I would like the Finance Minister to keep these observations of the learned Chief Justice in mind and see that the amendment is clothed in proper language, so that there may be certainty about the powers of Parliament and certainty about the powers of the States. To sum up, I feel that this is a proper exercise of legislative power. I feel that we should have gone further and validated the laws prospectively. I feel also that it is entirely within the competence of Parliament to frame a legislation like this and I therefore support this measure.

SHRI C. P. PARIKH (Bombay): Mr. Deputy Chairman, this Bill is a very important one because there are many aspects of this Bill. First of all, the legality aspect, the competence aspect or the propriety aspect has to be noticed by this House. With regard to the legality and competence aspect we can admit that Parliament has this power and there are so many cases which have been decided in that view.

Let us take the intentions of the Constitution which we have got to abide by. Under article 301 it is said: "Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free"

So the Constitution lays down that inter-State trade and commerce will be free. That is the governing clause of the Constitution. Then under



[Shri C. P. Parikh.] article 286(2) Parliament is given powers to impose such taxation. I quite admit that and Parliament is right in imposing this tax. But the main question arises as regards its validation prospectively or retrospectively. As regards retrospective validation there may be differences of opinion and I would not like to go into that question. But I would like to point out that though Parliament is given this power under article 286(2), there is a proviso and that proviso is very important. It says:

"Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution....."

These words are important—"immediately before the commencement of this Constitution"—

"... shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951."

So it is specifically laid down here that this inter-State tax on sales and purchase will be valid by the President's order up to the 31st March 1951, and not beyond that date. That, Sir, is very clear. When this was the provision under the article, many States—in fact, all the States in India—did not levy any tax till the end of 1953, nor did they collect any -until the United Motors case judgment of the Supreme Court came out. They knew very well in the years 1951, 1952 and 1953 that they could -not collect this tax on account of this Constitutional provision because the President had not passed any order under article 286(2). The States very clearly recognised that they were not competent to levy this tax and they did not in fact levy any tax ^on this account. When the United

Motors case judgment came out with the view that such a tax will be valid then the States began to levy tax right from March 1951. My whole objection is with regard to the period for which the tax has been levied. The tax has been levied even for the period 1951 to 1953 when the States knew fully well that they could not impose this tax. If they knew they were competent they would have levied it during that period and collected it also. But they did not.

Secondly, the mercantile community which is dealing in these purchase and sale transactions also knew that the States were not demanding the tax from them and their operations were therefore governed on that basis. We all know that the mercantile community who deal in those purchase and sale transactions are trading on a small commission, for a small percentage of profit and the sales tax may be even higher than that. During this interim period 1951 to 1953 neither the State had the intention to levy the tax, as is evident from the fact that they did not issue any notices, nor did the merchants know that this tax had to be paid. But when the United Motors case judgment came out in 1953, the States immediately came down upon the merchants and collected these taxes retrospectively from 1951, although no previous notice had been given. And what is more, the Central Government requested the States not to collect such tax. I think letters were sent to all the States asking them not to collect this inter-State tax in spite of the judgment in the United Motors case but except West Bengal all the States collected this tax, because this was a good source of revenue. The States thus ignored the warning of the Central Government and collected the tax. Now that action of the States has to be validated. Sir, really we have to divide the period into two, one period from 1951 to 1953 and the other 1954 and 1955. So far as the second period is concerned, I quite see that the merchants knew of the

United Motors case judgment and realised that they may be under a liability to pay such tax and as such some sort of a notice is there for the merchants that there may be this levy of tax. Therefore from 1954 onwards the tax is quite justified and it is equitable and fair.

But in levying this tax before 1953, in spite of this legislation which Parliament has thought fit to enact, I think, we have to see what is fair and equitable. First of all, we are now in this measure thinking of validating the law of the States that they are entitled to collect this tax from 1st April 1951 upto 6th September 1955. My whole point of difference is that the period prior to January 1954 should be excluded—even though the States are collecting an amount of Rs. 4 to Rs. 5 crores and, therefore, their budgets may not be balanced. I mean to say that even if the figure is divided, the figure will come to the extent of Rs. 2 crores or less in the case of sales tax collected or levied before January 1954. And I think that it is quite fair and reasonable that such a tax levied before 1954 should be refunded. Now, to whom the refunds should go? First of all, the argument is raised that the States' budgets would not be balanced on this account. The second argument is that the consumers who have paid the tax will not be able to get the refund. We have before us the statement of the Finance Ministry which has given the various ways, methods and modes of taxation in various States, which are entirely different. With regard to this inter-State sales tax, who pays the tax? It is a transaction between one merchant in one State and another merchant in another State, and the merchant who receives delivery in the State has to pay the tax. Now, I have to point out that these merchants are not many or innumerable. So, the refund to them before the 31st December 1953 is not impossible. These refunds can easily be given, because it is not a great number of

15 R.S.D.—4.

merchants to whom you will refund this tax. Another notable point is that these merchants, from whom we have collected this tax before 1st January 1954, had not collected any tax from the consumers, because the merchants did not know that they had to pay this tax and they did not collect it from the consumers. So, the argument which has been brought out in the Finance Minister's speech or the Statement of Objects and Reasons that the consumers will not be benefited is wrong, in my opinion, because the merchants who have traded in this during this period had no occasion to collect this tax from the consumers. It was not under the contemplation of the States or the merchants or the consumers that this tax can be levied. Therefore, I urge upon the Government that this period should be divided, that is, before 1st January 1954 the whole tax must be refunded to the merchants. That will be just, fair and equitable because taxation is not a matter to be easily treated with retrospective effect. We are going back to three to five years and I think we have not done it in the past. And I think for a few crores of rupees or so, we are violating the sanctity of certain principles with regard to the retrospective character of the Constitution. Wherever retrospective effect is to be given, there it is specifically mentioned in the Constitution. Where it is not to be given, it is silent and when it is silent it is not to be given.

Now, Sir, one more provision is very important. That is, under article 286 of the Constitution, Parliament's sanction is necessary for the levy of such taxes. Now, Parliament's sanction was not obtained by the States, from 1st January 1954, in spite of the United Motors case. I think the States were negligent in levying such a tax and not obtaining the prior sanction of Parliament, which they ought to have done under the Constitution. Therefore, the States have already made a mistake. Now, for the mistake of the States, should the merchants suffer, for the taxes which

[Shri C. P. Parikh.]

the States want to collect from them before the 1st January 1954? I think the States may have made a mistake. The revenue of the States would be in the neighbourhood of Rs. 1J crores or Rs. 2 crores on this account, during this interim period. It will not be much when it is divided between various States. Therefore, we must know what we are doing when we are giving retrospective effect. I can understand the retrospective effect being given, that can be valid, equitable and fair, if it is after the 1st January 1954. And that is my main point. If we do in that way, there is knowledge behind it. At present what we are doing is this. In the name of supporting the States to balance their budgets, in the name that this rebate will not be passed to the consumer, we are validating for a period much more in advance than what is justified in equity or in any law. And in such a case I do not know what repercussions there will be on trade. Mr. Sinha has pointed out that this should be prospective. I say as it is worded it can be prospective as far as sales before September 1955 are concerned because the wording is not clear—"and all such taxes levied or collected or purporting to have been levied or collected during the aforesaid period shall be deemed always to have been validly levied or collected in accordance with law." There was great discussion in the other House about this. And I think that after a long discussion it was indirectly admitted that there will be no further collection of these taxes after 6th September, 1955 for sales made before that date. I think that is on record, in the proceedings of Parliament. And I think indirectly Government is dommitted to this fact that after 6th September, 1955 there will be no such collection or further collection of taxes. Now, under the present Bill they can still collect from 1951 to 1955. Therefore, I want an unequivocal and unambiguous assurance from the Finance Minister, owing to the discussion which has

! taken place in the other House as well as the points which I am raising, that with regard to this there will be no collection from the 6th September 1955, in spite of this law.

Now, Sir, with regard to what is behind Government's mind, I think the Central Government is very worried. Perhaps the Finance Minister recognises that it is not a just and fair tax and this should not be collected and circulars were issued right from January 1954. Even the Taxation Enquiry Commission have gone into it and Government have not also brought any legislation after January 1954. After this United Motors case i judgment, the Government awaited the recommendations of the Taxation • Enquiry Commission. And the Taxation Enquiry Commission has also recorded that this sales tax has to be regulated in a much different manner. And, therefore, the Finance Minister i has very well recognised the thing and very rightly he has said that this inter-States sales tax would be examined in detail and a suitable amendment would be brought forward before us in that respect at an early date I think he will bring forward the Bill at an early date. But it means that he recognises the fact that this collection is not fair or equitable and will not be promoting and developing the internal trade of India, as envisaged under article 301 of the Constitution. ; It emphasises that such levies, if they I have to be made, will have to be i made in a much different form. In j short, I want two assurances from the ; Finance Minister. First of all, before j January 1954, this tax should be re-j funded in equity and in fairness. And I think even at this late stage in this ! House that change we may incorpo-j rate. With regard to the other, I want j an assurance that after 6th Septem-i ber, 1955, no State will collect or levy any tax for the operations which have been conducted from 1951 to 1955.

I think that Parliament is quite capable of and competent to enact any legislation. This Parliament is ! capable of having the Constitution

amended, At least we may know what we.

SHRI KISHEN CHAND: Then the regular procedure will have to be changed.

SHRI C. P. PARIKH: It will have to be Changed if we want to bring in a measure in conformity with the needs and requirements of the country. But when we hold this view, when we are doing this—I am not saying that this method of procedure is not correct—assurances should be given that the way in which the Government is proceeding will not do any harm to commerce. So, these are my suggestions.

SHRI H. C. DASAPPA (Mysore): Sir, viewed from any standpoint, I feel that this piece of legislation is absolutely necessary. But before I go into the merits of the proposition, I wish to make a few remarks on the general question of the way in which our Constitution has come to incorporate these particular provisions. I have not verified, but I have a recollection that the Draft Constitution as it was placed before the whole Country for eliciting public opinion did not contain any provision in regard to sales tax or inter-State sales transactions. And it was only at the time when the Draft Constitution was before the Constituent Assembly— and almost at the last moment— that these provisions, namely, article 286 and allied ones came to be incorporated in the Constitution Act. I may be pardoned if I were to say that our Constitution—the most beautiful and the most elaborate piece of Constitution that can be seen anywhere—went a little-far beyond its scope in trying to provide for the various details. My own view is that it would have been quite sufficient if they had laid down the general policy to which Shri Parikh referred as under article 301 or so— and it would have also been quite sufficient if they had included in the Union List item 42 which relates to

inter-State trade and Commerce. It would have been sufficient for the Parliament to be seized of the matter and then they would have felt the urgency of the matter and the Parliament would have applied its mind to this question of providing for inter-State trade and commerce. It would have certainly come forward in time with a suitable piece of legislation providing for it. But what has happened in this case? There is an interim period of one year provided from 1st April 1950 to 31st March 1951 which is to enable the States not to suffer financially because of this limitation put on taxation on inter-State trade and commerce. One would have expected that within that year, a piece of legislation would have been brought before Parliament and enacted to provide in every respect with regard to this inter-State trade and commerce. But such a measure I say, very unfortunately—was not brought before the House with the result that this terrible vagueness— I may also say confusion—has arisen in the case of taxation on inter-State trade and commerce.

Sir, I do not want to go into the legal aspects in detail because Shri Sinha has gone into them. But I say that this particular clause relating to inter-State transaction has been one of the most controversial things. It is difficult to determine when is it that it is an inter-State transactions and when is it that it is not so? It is quite likely that a transaction takes place within a State; the goods are delivered to the person who has got to transport them from that State to another State; it is construed that the delivery is itself a complete transaction and it attracts sales tax on that account. It may be that he says that the goods are meant for inter-State transport. But it is likely that between the time of delivery to him and the exact transportation outside the State, much of the goods could have been sold within the State. This became the real bone of contention. Let me tell the House that it is not

[Shri H. C. Dasappa.] that the States were anxious to misinterpret the piece of legislation deliberately with a view to reinforce their finances. It is never that. The point is that the interpretation that they had put on the clause regarding inter-State transactions was right from their point of view; whatever interpretation others might put upon it or whatever other interpretation the Central Government might put upon it they felt their own was the right one. Therefore, there was this confusion. I am glad that the hon. Minister has given us an assurance that he is going to bring forward a comprehensive piece of legislation. The sooner it is done, the better it is for us.

Then the question arose whether, in the circumstances, we should not pass a validating measure such as we have got before us. I think that this point of view has been answered sufficiently. I may again reiterate this fact in the case of those people who either have paid this sales tax or who knew that they had to pay it. Is it wrong for us to recover the amount from them now? The question which has been raised by my hon. friend, Shri Kishen Chand, is a very interesting one. I ask him if those dealers have added this sales tax to the prices that have been fixed for their own consumers, is it right for us to give them the benefit of a refund today? I would like him to answer this. I can quite understand certain exceptional cases referred to by Shri Parikh where dealers had not the slightest idea of having to pay sales tax and had not been served with notices of demand. If on account of this provision there is an attempt to recover sales tax from such men I can very well understand the justice of that case. But I ask: What justice could there be where they have passed on the taxation to consumers and have recovered from them the amount of sales tax which they have paid to the Government? What right have they got now to reimburse themselves

to the extent of the tax that they have paid? So, either from the point of view of propriety or of equity or of any moral consideration whatever, I am afraid that my good friend, Shri Kishen Chand, has no case for such a thing and it is the duty of this Parliament to see that there should be no such refunding to such people as have had the benefit of recovering the tax from the consumers.

Therefore, I find that this measure is a very necessary one. The only point for consideration is the one which Shri Parikh has raised as to the amounts that the State Governments may choose to recover from the dealers for inter-State business between 31st March 1951 and 31st December, 1953. I am sorry that we have no figures and it is a very difficult thing for us to come to any decision without figures. I would like -----

SHRI C. P. PARIKH: The merchants can prove that.

MR. DEPUTY CHAIRMAN: About Rs. 2 crores; that is what Shri Parikh said.

SHRI H. C. DASAPPA: We do not know, Sir. My friend was making a very rough case—a tremendously rough case.

SHRI M. C. SHAH: It is also not accurate.

SHRI H. C. DASAPPA: My own belief is this. I do not think that there is any State Government which will try to take advantage of this validating measure to tax afresh any dealer between the period, 1st April 1950 and 31st December 1955.

1 P.M.

SHRI C. P. PARIKH: I think that assurance is necessary.

SHRI H. C. DASAPPA: I think that kind of assurance is absolutely necessary.

SHRI M. C. SHAH: I fail to understand as to how the States can pass any legislation.

SHRI H. C. DASAPPA: I am afraid that the hon. Minister.....

SHRI M. C. SHAH: I was replying to Mr. Parikh's point.

SHRI H. C. DASAPPA: I have also been referring to Mr. Parikh's point. I am afraid Mr. Shah has not followed his point.

MR. DEPUTY CHAIRMAN: You can continue in the afternoon.

The House stands adjourned till 2:30 P.M.

The House then adjourned for lunch at one minute past one of the clock.

The House reassembled after lunch at half past two of the clock with MR. DEPUTY CHAIRMAN in the Chair.

SHRI H. C. DASAPPA: Mr. Deputy Chairman, I was dealing with the question of propriety towards the end of my talk. The question is whether the State Governments having been encouraged by the decision in 1953 to collect these taxes by virtue of the Supreme Court decision, should now be found fault with and be denied the advantage of those collections. Mr. Parikh split up this period between March 1951 and 6th September 1955 into two periods. My own reading of the situation is that between 1st April 1951 when the one year period provided by the Constitution expired and the decision in 1953—the United Motors' decision—I doubt very much if the States had resorted to the collection of taxes on inter-State trade. The issue mainly was one—more of delivery than of sales. If for instance there was a transaction between State A and State B, and the goods were to be delivered in State B, the question arose whether A could levy a sales tax on the sale because it was

a transaction in A State and the other alternate question was whether B could tax the same goods because it was delivered in B State where obviously it was meant for consumption. The presumption especially in a State where the goods are delivered is that it is for consumption. Now the United Motors case, if I understand correctly, said that the B State where the goods were delivered, could tax the articles on the presumption that it was for consumption at that stage itself. Therefore, as has been admitted even by the spokesman of the Government, this created a lot of confusion and that is reinforced by the obvious fact that the Supreme Court itself gave differing opinions on different occasions so that my point is that it would be wholly wrong for us to penalise the States because of a later decision for no more fault than the fact that they agreed or they fell in line with the earlier decision of 1953. That is one of the important considerations we must bear in mind. As I said, the transactions between 1st April 1951 and December 1953 may be very few. Even so, is it possible in a piece of legislation like this to make such a fine distinction? There is one apprehension however which you will kindly appreciate that on the strength of my friend Mr. Shah's Bill now, it is possible for the States to take advantage of the powers now conferred on them to impose taxes where they had not collected tax by even amending their own piece of legislation—Sales Tax Acts—in a suitable manner. I ask Mr. Shah whether it will not be possible for the States to collect taxes on transactions between 1st March 1951 and 6th September 1955 where they have not taken any steps in pursuance of collection of taxes so far. After all, the inter-State transactions are resorted to by fairly big firms—registered firms etc. Their accounts are readily available. Their accounts will have been already submitted to the incometax authorities and for the purpose of collecting sales tax with regard to other articles. So the books or accounts are readily available.

Supposing the State Governments find that there have been a large number of transactions on which they have not chosen to collect taxes by reason of the fact that they were inter-State trade or commerce, is it open to the State Governments to do so now? I want a specific answer from Mr. Shah but I am only hoping for this that no State Government will descend to the level of taking an unfair advantage because the Central Government or we, the Parliament, are going to their help today to validate a thing which obviously was not legal. So I think with these assurances viz., that it would not be fair to collect any taxes on these inter-State transactions between 31st March 1951 and 6th September 1955 merely because here is an enabling provision for the States—I think such an assurance is called for. The State Governments on their part, I am sure, are not wicked enough to make use of this for such an unworthy end.

SHRI C. P. PARIKH: What about refund?

SHRI H. C. DASAPPA: I have much sympathy for Mr. Parikh but I am afraid that in a piece of legislation like this, we cannot very well provide for all those refinements, I may say, in transactions. I am afraid it is not possible.

AN HON. MEMBER: If you don't collect.....

SHRI H. C. DASAPPA: Mr. Parikh is suggesting a refund but I must say that that would be altogether a difficult process. He is referring to a particular period between 1st April 1951 and 31st December 1953. I shall now deal with only one general subject. When this difficulty arose I know very well that certain States approached the Central Government to immediately convene all the Ministers dealing with sales tax and all the officers concerned, to work out a formula which was acceptable to all States, that would deal primarily with this question of inter-State trade and

commerce and also with certain other things where there have been wide variations between the rates of sales tax. I very well remember that the State with which I had something to do definitely wrote in 1951—about the end of 1951—when I knew this complication would arise. It was certainly open to the Central Government to have taken immediate action. It is rather regrettable that even when facts were presented to them, they did not take immediate action. Anyway it is no use conducting a postmortem examination today. I hope that my friend Mr. Shah will lose no further time in bringing this measure relating to inter-State trade and commerce as a whole to the Union. I have not very much more to add. I only say that though the amount involved is only Rs. 5 crores, that is no justification for us to see that this measure is not necessary.

This is after all a thing which could be justified on its own merits. As I said earlier, these dealers will be deriving an unfair advantage if there is to be any attempt at refund because the amounts would have been passed on to the consumers already. As such, I do not think they are going to suffer because of validating the recovery of these taxes on these inter-State transactions. I thank you very much.

SHRI H. P. SAKSENA: Sir, this imposition of tax on the sale and purchase of goods in the course of inter-State trade or commerce is a thing which is distasteful to me but this is not the point under debate here. We have to pass this Bill which has been already passed by the Lok Sabha in order to regularise irregularities committed previously. Not only most of the States but even the Centre were found napping in not taking the proper steps which the Constitution had provided to be taken.

I found my hon. friend, Mr. Parikh, to be speaking today as an advocate of the traders and of people belonging to the commercial community and

not even as a supporter of the Government or the consumers as he professes and sometimes proves to be.

So far as the Bill is concerned, it is a *fait accompli*. It has been passed by the Lok Sabha and is very soon going to be passed by this House. Of that there is no doubt, but it is not a edifying spectacle to be coming to the Parliament which is on the whole a supreme and paramount body and can do things which are not even fit to be done. According to the powers inherent in it, it has power to do what it likes. We all constitute that great power and it is up to us to see that it is used properly. For that reason, I say that it is not a very edifying spectacle to be regularising things which have been done in a most irregular manner.

My friend, Mr. Kishen Chand, deserves all my sympathies. Sometimes I pity him for the very simple reason that he is very fond of starting the attack. He is the first to rise up and launch a very serious attack against Government measures. I welcome it because I am sometimes very anxious that our opposition is growing weaker and weaker, and the more the opposition becomes weak, the less the life in the debate and the interest of those Members who are duty bound to support the Treasury Benches. Let me give one instance and only one, regarding the care which my friend, Mr. Kishen Chand, takes in preparing his notes on the subjects over which he speaks and he speaks on all subjects. He quoted Willoughby's Law regarding the United States of America and its Constitution. My friend did not take the least care to see that the Constitutions of America and India stand on a different footing. It is not a case of our copying the Constitution of the U.S.A. Without having regard to the conditions under which our Constitution was framed and prepared, he, in describing the U.S. Constitution said that the Constitution governed the country and not the men. Quite right. That may

be the character, nature and the merit of the U.S. Constitution but in our Constitution it is given to the Parliament to change that Constitution which we have given to ourselves whenever we like. That is to say, our Parliament is supreme and paramount and it is in its power to change any article of the Constitution or any portion of the Constitution whenever it so chooses. Dissimilar things are compared under the logic of my friend, Mr. Kishen Chand. It is not a very elevating position to take. .

There was a lot of discussion about the retrospective and prospective uses of this validating Bill. I do not agree with my friend, Mr. Sinha, who pleaded that the Finance Minister should give prospective effect to this Bill. So far as its retrospective use is concerned, it is essential and under the circumstances it should not be done away with but I am not in favour of its use prospectively. For that the remedy is open to us. The Finance Minister has assured us that a change in the Constitution will be made in the near future so that the future requirements may be met.

With these few words, there is not much to debate upon. I believe, I support the measure.

THE MINISTER IN THE MINISTRY OF LAW (SHRI H. V. PATASKAR): Sir, I would like to intervene in order to remove certain misapprehensions regarding this Bill. As we know, there is article 286 of the Constitution which says:

"No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place ....."

Then, there is clause (2) which says:

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



[Shri H. C. Dasappa.]

:  
the sale or purchase of any goods where such sale or purchase takes place in the course of inter-state trade or commerce."

This question was first taken right up to the Supreme Court in 1953 and they came to the conclusion that certain taxes on sales which were imposed by certain States were *intra vires* of the Constitution in spite of the fact that Parliament had not otherwise provided for them.

SHRI AKBAR ALI KHAN (Hyderabad) :  
It was a majority decision.

SHRI H. V. PATASKAR: In 1955, the same matter and the same point was brought before the Supreme Court and here they came to a different conclusion. They thought that on a proper interpretation of clause (2) of article 286, this was an imposition by a State and that it was being done without the Parliament otherwise providing for it. In between what had happened was that in certain cases moneys had been recovered. As a matter of fact, there was no recovery as the dealers had charged the consumers who were making the purchases. Something had to be done in order that an anomalous position may not arise. What we are doing now is that we are ratifying the levy, although it ought not to have been made. Several States wanted to impose this particular tax, and with our authority they could have done it. What we are now trying to do by this Bill is to give retrospective effect. And that was the only point which was of some importance. But if we look to the wording of article 286 (2), it says "Except in so far as Parliament may by law otherwise provide.....".

The whole idea underlying this article is that if such a tax is to be levied, then it should be by the lifting of this ban. I am sure that what could be done prospectively could also be done retrospectively unless the wording indicated otherwise.

SHRI B. B. SHARMA (Uttar Pradesh) : My point is this that this piece of legislation which we are considering today is not authorising the States to collect and levy such taxes. We are not therefore acting in accordance with the provisions of article 286 (2). Therefore, this piece of legislation, to my mind, is altogether *Mitra vires*.

SHRI H. V. PATASKAR: There is no question of doing anything against the Constitution. What we are trying to do is that if we can lift the ban so far as the future imposition of sales-tax is concerned, we can equally do it with respect to the tax which has already been imposed. And that is what this Bill proposes to do.

SHRI B. B. SHARMA: By what authority?

SHRI H. V. PATASKAR: Parliament has been given the power to authorise something.

SHRI B. B. SHARMA: There is no law to give retrospective effect to a piece of legislation....

SHRI H. V. PATASKAR: The tax was levied according to a law and it was the subject matter of interpretation. Now the only question was that there was a ban on the imposition of such a tax by law, and that ban had not been removed by Parliament. And now what the present Bill seeks to do is to remove that ban. I do not see anything in article 286 (2) which would justify that Parliament can do it only for the future and not validate what has already happened.

MR. DEPUTY CHAIRMAN: What is your reply to Mr. Parikh's question? Can the States which have not collected the tax on account of this decision impose the tax during the interim period?

SHRI M. C. SHAH: I will reply to that question. Leave Chandulal to me.

(Interruption).

SHRI H. V. PATASKAR: I would like to add one thing. It is pointed out in the Supreme Court judgment that all the States are realising sales-tax in respect of the goods which are actually delivered for consumption within their respective boundaries in view of a previous decision, and the reversal of that decision will upset the economy etc. Now we are impressed by that argument, because even for the Supreme Court it was a difficult matter. And then they say finally that if the State's economy is upset, the appeal must be to Parliament, which under article 286 (2) has ample power to pass suitable legislation. Therefore, you must take into account the fact that even the Supreme Court Judges had some difficulty. They thought over the matter very deeply to find out whether it was desirable that they should again try to interpret a thing which had already been interpreted in a particular way. Their only contention was that it was Parliament only which could lift the ban which had been imposed

SHRI C. P. PARIKH: For the future not for the past.

SHRI H. V. PATASKAR: Even for the past. If Parliament can lift the ban for "the future, why can't it ratify what has already been done? And what is tried to be done now is this. Now supposing my learned friend, Mr. Parikh, wants something to be done by his agent. He can authorise him to do that particular thing, and he can also ratify what has already been done, and probably he has been doing it all his life.

SHRI H. C. DASAPPA: They validate so many kinds of marriages.

SHRI H. V. PATASKAR: Therefore, to my mind, the question is very simple. Somehow or other, the Supreme Court thought it best to interpret it in this way, and what we are trying to do is to set it right by this measure.

SHRI P. S. RAJAGOPAL NAIDU: Sir, I shall be very brief. I listened with attention to the various speech-is and the arguments advanced by learned Members of this House. But the more I heard, the greater was the confusion caused to me about the whole thing.

Sir, article 286(2) is very clear. It says that "Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce." Sir, the Supreme Court, as most of us know it—we have been seeing the papers and also most of us have been going to the Supreme Court and listening to the arguments advanced on both sides, and also those of the various Advocates-General from all over India—in the year 1953, had held that the sales-tax imposed on sale or purchase of goods in the course of inter-State

trade or commerce was a

3 P.M.

valid tax. But again, in the year 1955, the Supreme Court had decided that it is not a valid tax, that the Parliament had not, by law, passed any legislation and so the sales-tax levied was improper and illegal. So the net result would be that the States that had collected several crores of rupees will have to refund the entire amount. There will be multifarious suits filed against each State Government and each State Government will certainly be faced with a number of suits in the respective law courts. That will also indirectly affect the economy of these States, because it is not a small amount with which they are concerned. They had collected a large amount. What are we doing in this Bill? It is stated in the Statement of Objects and Reasons:

"It is not considered desirable to validate the existing State laws prospectively, but it became necessary to take immediate steps to

[Shri P. S. Rajagopal Naidu.] validate the levy and collection or such taxes between 1st April, 1951 and 6th September 1955."

There is much force in the arguments of Shri Parikh in regard to the collection of the taxes from 1st April 1951 till the date of the pronouncement of the first judgment of the Supreme Court. I am able to gather that even such of the States as had not actually imposed any tax from April 1951 till the date of the first judgment of the Supreme Court, had, after the first judgment, levied a tax and made a demand for the payment of the entire tax, from the 1st April till the date of the judgment. I feel there is much force in the argument of Mr. Parikh. I also learn that this very Ordinance is being challenged in the Supreme Court. I do not know how far it is true; the hon. Minister should be able to enlighten the House on this point. But that is what I was told a little while ago, that even this Ordinance is being questioned in the Supreme Court. If that be so, we have got to be very careful in passing a Jaw like this. And.....

SHRI M. C. SHAH: In the Supreme Court"

SHRI P. S. RAJAGOPAL NAIDU: I am sorry, not in the Supreme Court, but in some other court.

SHRI M. C. SHAH: May be in some mofussil court.

SHRI P. S. RAJAGOPAL NAIDU: The hon. Minister says it is in a mofussil court, but naturally the appeal will come up to the Supreme Court where you have the Constitution Bench.

SHRI H. V. PATASKAR: The Government does not seem to have received any notice of it.

SHRI P. S. RAJAGOPAL NAIDU: But we meet so many people outside the House, Sir, and we get some '

information. It was the talk among the lawyers of the Supreme Court a little while ago that this Ordinance was being challenged.

SHRI H. V. PATASKAR: I am sure that will be a fruitful source for lawyers.

SHRI P. S. RAJAGOPAL NAIDU: I do agree with the hon Minister that this certainly will be a fruitful matter for lawyers, because such a huge amount is involved. What I am submitting is that that we have to be very careful in the matter of such a measure as this one.

Article 286(2) says:

"Except in so far as Parliament may by law otherwise provide now law of a State shall impose, or authorise the imposition of a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce."

And according to the Supreme Court's judgment, there is no law passed. Can we say then that the Bill we are now considering is a law? For the levy of a tax prospectively, article 286(2) will apply. But whether it will apply for the validation of a levy which has already been made is certainly doubtful. I do not think it will apply at all. What is the law under which we are trying to validate these taxes already imposed?

SHRI M. C. SHAH: Article 286(2) .....

SHRI P. S. RAJAGOPAL NAIDU: The hon. Minister says it can be done under article 286 (2). I beg to differ from his view. Under article 286(2) only the imposition of a tax prospectively can be made. The tax which the States have already levied and which according to the Supreme Court is a tax which is not lawful, a tax which was wrongfully levied, we are trying by this Bill to validate. The question here is, whether under any of the provisions of the Constitution

that can be done. I quite see that there is no ban or prohibition anywhere in our Constitution to make a law retrospectively, to validate the imposition of a tax which has already been levied. My hon. friend Shri Kishen Chand has tried at length to argue, quoting some passages from the American Constitution and my hon. friend Shri Saksena has very ably replied to his points. Whatever that may be, when there is no specific ban by the Constitution. I feel that under the common law, even under the equity law, we can certainly pass such a measure, if not for any other reason, at least just to see that the States will not be asked to dole out the several crores that has been collected. At the same time. I would very much like the hon. Minister for Legal Affairs once again to go through the provisions carefully and to see whether, to hold that the collections that had been for the first time made after the first judgment of the Supreme Court had been delivered should go with the tax collected from 1st April till the date of the first judgment of the Supreme Court, will be legal or not.

These are the only few points that I wanted to refer to.

SHRI N. C. SEKHAR (Travancore-Cochin): Sir, I do not want to oppose this measure for validating the sales tax already imposed by the respective States so far, in view of the difficulties that might arise otherwise, due to the civil suits against the respective State Governments. At the same time I want to refer here to certain doubts, not as a lawyer, for I am not a lawyer, but as a layman and I am giving the reactions of a layman. During the course of this debate the hon. Minister for Legal Affairs intervened to give an explanation of the judgment of the Supreme Court. Even after that explanation doubts persist to lurk in my mind. When we discuss measures here in Parliament as a sovereign body. I doubt whether the hon. Ministers take into account the large masses outside who are forced.

either by the Central Government or the State Government to pay either the singlepoint sales-tax or the multiple-point sales-tax. We have also to understand what kind of laws we are making here in the name of the administration of the country. But in fact our ordinary people, even the educated and literate, cannot follow the law you are making. That is one thing.

And secondly if at all one comes to understand them, he sees that a piece of legislation or a particular section of a measure is twisted this side or that side to fit in with the case of the administrators. That is what we actually see happening. I happened to read the proceedings of the Lok Sabha to know how our legal luminaries tackled this problem. There was a tough fight over this issue between our legal luminaries, particularly the Attorney-General of the Government of India and the equally capable lawyer Members of that House. But after having studied the proceedings carefully my whole sympathy was swinging to the opposing side, that is, to the argument marshalled by Shri N. C. Chatterjee. It may be argued how a Communist can be sympathetic towards such an argument which was in favour of a company in Bengal. This is not a question of a particular company or a particular lawyer. Here the question is how the Central Government who are responsible to the 36 crores of people and equally to the 23 States behave on particular occasions in respect of particular questions. This will be the argument of a layman. Do not take it as an argument of a lawyer. After having closely studied the Bill and particularly article 286(2) of the Constitution and the arguments put forth on both sides, my whole reaction is that the Central Government is taking a very wrong step in order to justify a wrong step. There is that definite provision in the Constitution. At the same time these State Governments have started to collect taxes on sale and purchase of

[Shri N. C. Sekhar.]

goods that come in the course of inter-State trade or commerce and the Central Law Ministry and the Finance Ministry have been looking at it quite complacently and only recently in 1954 or so they started warning the State Governments not to collect such taxes because it is against the provisions of the Constitution. Yet, they did not stop that. They go *on* collecting. The aggrieved companies go to the court, as the hon. Minister mentioned here, and the court gives its judgment. Immediately the Central Finance Ministry and the Law Ministry get upset and say, 'the States will go to dogs; the financial structure will go to dogs; the development programme will be at stake or impeded.' This is the obsession that has come upon you. And so you come here with some piece of legislation. But the general feeling of the people will be that these administrators go on twisting any law—the law that they themselves have made—to suit their own purposes, but not to do justice to the people, j Of course, the lawyers cannot under- j stand my argument. You can see only through the holes of law but I see through the feelings and sufferings of the common man. That is why I argue like this. Suppose the Travancore-Cochin State enacted some legislation some two years back to collect tax on sale and purchase of goods that came in the course of inter-State trade and commerce. They call for a particular company outside the State, a company which may have been trading with the merchant or merchants in Travancore-Cochin State and tell that company, 'you have been trading with so and so in our State. We have a law here and you have to give the tax for the last four years.' Unless that company pays the tax that is demanded, the Government will take some particular action. The company may not be allowed to send its goods which it was otherwise permitted to send. This is the kind of thing which is actually taking place.

The second point is whether this piece of legislation will actually lift the ban laid by article 286(2) of the Constitution. The Law Minister has explained that this will do the work of lifting the ban and so hereafter the State Governments can continue collecting the tax. It will not be illegal hereafter. But we know that there are two different judgments from a single court. How can one know that this piece of legislation will not give rise to further legal complications? Suppose in the light of the explanation given by the Law Minister and in the light of this piece of legislation the State Governments continue to collect this tax and suppose a merchant or a company goes to the court complaining against this collection and says that this piece of legislation is only retrospective to justify collection from 1951 to 1955 and that further collection is not justified and therefore it is illegal, what will be the position? How can we know that further complications will not take place? So my complaint is that the State Governments have acted in an illegal way and your running after them immediately to justify their action may not be correct every time. For the time being as has been explained by the Finance Minister it may be that the State Governments may have to refund Rs. 3 to Rs. 5 crores in case they are sued and in order to avoid that you are bringing forward this piece of legislation. If they are forced to refund this amount then the whole economic situation of the Government would be in jeopardy and the development programme will be in trouble. In order to avoid that you are bringing forth this measure. IJ. may be all right in view of that yj&U-will it be correct? Can the Government go on legislatives like this I do not say that the Constitution is immutable. It is mutable. Of course, it can be changed for the development of our country for the proper administration of the Government and for the benefit of the people. At the same time when a law is made, just as you do not allow an individual

to commit a crime, you should not also allow a State Government to commit a crime. The Central Government should be particularly watchful of the legislative activities of the State Governments just as you book people whom you do not like. This is all what I want to say.

SHRI B. B. SHARMA: Sir, my heart and head are in conflict. My heart sympathises with the Government and the Treasury Benches and also with the States which have committed the mistake of levying and collecting taxes which they had no power to do.

SHRI P. S. RAJAGOPAL NAIDU: They had the power to do under the first judgment of the Supreme Court.

SHRI B. B. SHARMA: They had no power to do as the law stands today. It is the judges who make the law; not we. We only enact the law. By interpretation they make the law; it is their interpretation which holds. Sir, as the law stands today, no State except in so far as Parliament may by law otherwise provide, can impose or authorise the imposition of a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce. Consequently this provision of the Constitution is not only imperative, but it is also binding and cannot be otherwise interpreted, unless Parliament makes another law empowering the States to impose such a tax—not even the President. The President was only given authority up to 1st April 1951 to continue the imposition and realisation and collection of taxes which were previously imposed and levied and collected. After that the power of the President also by order to legalise such collection was put an end to. Now, therefore, so far as the law as it stands today is concerned, according to the interpretation of subsection (2) of article 286 of the Constitution, there is no law authorising the States to collect, levy or impose or authorise the imposition of any such tax. If our friends \* in the Lega<sup>1</sup>

Department were so anxious to authorise the States to collect and levy and impose such taxes, Parliament could have enacted a law prior to the 1st April 1951, authorising them to do so as the Constitution intended. But they have been sleeping all these years to pass an enactment authorising the States to do that:— even though I do not know by what authority the States had been doing it. And now when their mistake has been detected by the Supreme Court, they have found out that they have to amend clause (2) of article 286. That amendment also is not forthcoming up till now. The law as it stands is this. Here is a piece of legislation which is not a law, authorising the States to levy and collect such taxes. It is a piece of legislation which makes the wrong appear to be right. How can they do it? There is no provision under the Constitution so far authorising to legalise an illegal act. So far as I can see the Constitution does not provide Parliament with powers to pass a legislation which, in effect, would be legalising an illegal act. Therefore, in my opinion, this piece of legislation is altogether *ultra vires*. They can only bring forward a legislation. They have the power to do it under this provision, to enact a law authorising the States to levy and collect such taxes. But under what power can they justify an act which is illegal? That is a question which I cannot understand.

Now, Sir, there is another point. The argument is advanced that there would be a spate of litigation and the lawyer's paradise will be open again. All these things do not authorise Parliament and the Law Minister to enact a law which is altogether *ultra vires*. And what will be the effect of this legislation, as my hon. friend, Mr. Naidu, has just pointed out, will again be called in question in the Courts and he had said that a case had already been instituted in some court somewhere in India. Had there been a piece of legislation existing in which there was some lacuna and which was detected later on, it could

[Shri B. B. Sharma.] have been rectified. We could say that it could be rectified by another piece of legislation and given retrospective effect. But giving retrospective effect to a law which does not exist, is a queer proposition which no lawyer would agree to. There is no law. If there is a law, I want to know it. Which is the law by which they are authorising the rectification of this mistake of the States for which they have been grossly negligent?

SHRI J. S. BISHT (Uttar Pradesh): Mr. Deputy Chairman, after all this long discussion and hearing the Minister for Law, the position boils down to a very simple proposition, namely, only Parliament in this particular case has got authority to pass a law giving retrospective effect to something which was illegal before. That is the only point now. Of course, we are in full sympathy with the Treasury Benches and we are all agreed that the State Governments that have levied this tax and collected this tax should not be called upon to refund those taxes. We are all agreed on that point and we also want that we should do everything in our power to help them to retain that money. The only point is this, whether under article 286(2) this Parliament can pass law, giving retrospective effect to the imposition of such a tax? Now, this sub-clause (2) of article 286 clearly states—I will not read out the whole section, but I will put it in the form in which its meaning comes out of this whole law. I will read out. No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place in the course of inter-State trade or commerce. That is the prohibition. That is to say, no law of a State shall impose. But there is one provision—provided that Parliament may by law otherwise provide, which is the real meaning. Instead of reading like that if you put it like that, then it means that the Constitution has laid

down that a State shall not be authorised to impose any such tax, but Parliament may otherwise provide that the State may impose that tax. Which all means that this is a provision for the future, prospective legislation. As it stood on the date the Constitution came into force, the intention of the Constitution-makers was clear, that these laws were already in force. If any State wanted or desired to impose such a law, it was prohibited from imposing that law altogether. In all such matters of inter-State trade if Parliament in its wisdom thought that such a law should be there or such a prohibition should be removed, then Parliament may pass such a law and then alone the States can do it. So, it is a sort of check put on the powers of the States and that check is that Parliament must first authorise them to pass such a law. Now, what happened in this case? Parliament did not pass any such law and the States levied certain taxes. And unfortunately, on account of the ruling, there were other States who came forward later on to pass that law. With the result that later in 1955 the Supreme Court held that this is all invalid. Now, the position is: can Parliament now give retrospective effect to this sort of legislation? This, in my humble opinion, is a very doubtful, extremely doubtful. Ordinarily Parliament or the Legislature of a State can pass a law giving retrospective effect to its legislation. There is no doubt about that. It can say that the law shall be deemed to have been passed from such and such date. But in the case of fiscal legislation, there is practically unanimity among the jurists—whether of America or of India—that every fiscal legislation shall be very strictly construed. And furthermore, if the provision of a Constitution is capable of two interpretations favouring the State and another favouring the subject, the interpretation that favours the subject shall be favoured. That is the usual thing. So, we are caught in this

dilemma, that this an interpretation which really favours the subject. The hon. Mr. Pataskar himself has conceded just now that this article authorised Parliament with regard to giving permission for prospective legislation. Quite so. But he argues from that—or rather infers—that if it is authorised to give permission prospectively, it is also authorised to give that permission retrospectively. That is where the difficulty arises, because, as I said, if an interpretation favours a subject in a fiscal legislation, I am afraid that the Supreme Court will favour an interpretation which favours the subject and not the other interpretation. I am afraid that, even if you pass this, it is very doubtful whether it will stand the test of law courts.

There is another difficulty. If Parliament passes the measure, it will itself give the seal of approval to that sort of interpretation because this law should have been that, since Parliament is authorised to pass law giving retrospectively effect, we should give it effect retrospectively and prospectively without discrimination. We here create discrimination for that very subject.

It is said that taxes up to the Cth day of September, 1955, whether it was right or wrong, valid or invalid, are validated. But with effect from the 6th September 1955 the judgment of the Supreme Court is accepted and the State and Parliament do not come in to give authority to the State Legislature or the State to levy that tax. In the Statement of Objects and Reasons, the only ground given is that pending such amendment of the Constitution, it is not considered desirable to validate the existing State Laws prospectively, but it became necessary to take immediate steps to validate the levy and collection of such taxes between 1st April 1951 and 6th September, 1955. That is not a very valid argument. I mean to say that, if you are thinking of amending article 286, that will be done later in six months or one year. But so far

as the present position is concerned, if we are not prepared to accept that position and we agree that Parliament, has got the right to pass a legislation giving effect prospectively and retrospectively—prospectively, of course, it gives the right if our interpretation is right—it can also give effect retrospectively and we should give effect retrospectively, that is to say from the 1st April 1951 onwards until of course, a new revision of the Constitution takes place under a new law.

MR. DEPUTY CHAIRMAN: If the tax has been imposed under the impression .....

SHRI J. S. BISHT: The State laws are already there. What we should do is that all these things should be validated retrospectively from 1st April 1951 onwards. We are validating them retrospectively only up to the 6th September, 1955. What I say is that, if we accept that, we should, validate them from the 1st of April 1951 onwards until you revise the Constitution, then, in that case, our interpretation that we can pass a law retrospectively can hold good in a court of law. That may be one way of arguing for our Attorney-General in a court of law. Then in the present form they will say, "You yourself accepted this position that you say that you are not going to do it for the future." That is to say, the States' power is gone; those laws are validated upto 6th September, 1955, but without prospective effect. That makes the doubt even greater. In the circumstances, I would appeal to the hon. Minister for Revenue and Civil Expenditure to explain this thing. With regard to the period from 1st April onwards, we shall see later on when the Constitution is amended so that the States will go on collecting taxes and our interpretation will hold good. The only difficulty is that you will take back.....

SHRI KISHEN CHAND: May I suggest that the Attorney-General be ask-



[Shri Kishen Chand.]  
ed to come and give his opinion in the matter because we would like him to clarify our point of view.

MR. DEPUTY CHAIRMAN: He has given his opinion.

THE MINISTER FOR REVENUE AND CIVIL EXPENDITURE (SHRI M. C. SHAH) : Sir, so far as the merits of this Bill are concerned, that is validating the levy and collection of sales tax for the period mentioned in the Bill, I find that there is no divergence of opinion except two hon. Members, one on this side and the other on the other side. Now, I will reply to those points that were raised by Members on both sides. But before that, I will say something with regard to the legal position that is being taken up by many Members of this House. I have heard distinguished lawyer Members, practising and non-practising, on both sides. And I am rather in a very difficult position, myself being a non-practising lawyer for a number of years. But when I hear lawyers arguing both ways, then we have to pick and choose. We anticipated that these points would be raised by hon. Members in this House as well as in the Lok Sabha. Therefore, we took precautions to find out exactly as to what the position was. Therefore, we prepared a big brief enumerating all those points that would be raised here as well as in the Lok Sabha. We requested the Attorney-General who is our Legal Adviser to advise us as to whether we could pass such a legislation under article 286(2). The second question was whether we could pass this legislation giving retrospective effect to this validation of levy and collection of sales tax, and we ' got this opinion.

The third point was just now raised by Shri Bisht: why should we not have it retrospectively also from the 1st April, 1951 to the time that a final decision is taken by the Supreme Court or Parliament enacts a legislation. We raised that point also arguing as to whether we would be justifi-

ned in enacting a legislation giving retrospective effect without having a prospective measure.

On all these points we have got definite replies from the Attorney-General. He was there in the Lok Sabha also and he has stated emphatically that we can legislate retrospectively though we may not legislate prospectively and also that we can legislate under article 286 (2). My colleague, the Minister for Legal Affairs, has explained at full length the legal position and if he is not able to convince my lawyer friends.

I am afraid that it will not be possible for me also to convince them. But the Government have to take some decision and so far as the legal position is concerned, they will certainly take the opinion of the Attorney-General and the opinion of the Law Minister as correct as we do not get that set aside by the decision of the highest court in the land.

SHRI AKBAR ALI KHAN: Will you please read out the Attorney-General's opinion?

SHRI M. C. SHAH: Yes, Sir. The opinions are these:

The main questions for consideration are: (1) the scope and nature of the legislation which Parliament may make under article 286(2), and, (2) whether such legislation can be retrospective.

2. The first question was the subject of argument in the Bengal Immunity Case but was not decided. (See Judgments of DAS J. at pp. 15-16 of the print and AYYAR J. at pp. 89-90 of the print). DAS J. observed that the opening words of clause (2) "clearly indicate that the lifting of the ban may be total or partial, that is to say, Parliament may lift the ban wholly and unconditionally or it may lift it to such extent as it may think fit to do and on such terms as it pleases"

The proposed legislation clearly cannot lift the ban of article 286(2) so as to validate legislation which was in excess of the powers of a State having regard to the provisions of article 286(1) (a) with its Explanation. This is important because as pointed out in my Opinion dated the 19th of November, 1955, the scope and meaning of the Explanation to clause (1) (a) of article 286 is itself a matter of debate. What has been decided is that in a case where there is a State which is a delivery and consumption State that is the State in which a sale is deemed to have taken place and which is competent to tax the sale .....

Shall I read the whole of it or only the portions concerned?

SHRI J. S. BISHT: Only the relevant portions.

SHRI M. C. SHAH:

"Therefore, if the proposed parliamentary legislation under clause (2) does not go beyond validating sales taxes imposed by States in reference to transactions of sales in which the goods have actually been delivered as a direct result of the sale for the purpose of consumption in these States the legislation would be within the scope of clause (2).

Now, with regard to retrospective effect:

"As to the question whether the legislation could be retrospective Parliament which has plenary powers of legislation under article 286(2) and entry 42 in the Union List would have power to make its legislation under clause (2) retrospective unless article 286(2) has by its language put a restriction on this power and empowered prospective legislation only. It may be argued that as article 286(2) contemplates first a law by Parliament enabling the States to impose a 15 R.S.D.—5.

sales-tax on transactions in the course of inter-State trade and then legislation to that effect by a State, the Parliamentary legislation lifting the ban on the States can only be prospective. The argument would not, I think, be a sound one. The clause imposes a ban on the States taxing these transactions except in so far as Parliament may by law permit them to do so. I do not see anything in the language of the clause which requires the Parliamentary law giving such permission to be prospective in its operation. The contemplated Parliamentary law may, therefore, be retrospective."

Therefore, Sir, with these opinions with us and with the explanation given by the Minister for Legal Affairs, I do not think that Government will be well-advised to accept the advice of lawyer Members here, practising and non-practising, as I said earlier.

Now, coming to the other point about merits, my friend, Mr. Kishen Chand, said that it would not be proper. He went further and said that since only a sum of Rs. 5 crores is involved, we should not do a thing which is not proper. On the other side, my friend, Mr. Parikh, while agreeing that there should be no refund, so far as the collections of taxes are concerned from 1st January 1954 till 6th September 1955 said that refund should be given for the period from 1st April 1951 to 1st January 1954. There is a mis-conception on the part of both hon. Members. Hon. Members are perhaps well aware that the Supreme Court gave a decision on the 30th March 1953. Till then, except for the two States who had passed levies for sales tax, no State Government had imposed sales tax according to the decision of the Supreme Court. These two States were Bihar and Hyderabad. They were collecting such taxes from the public before 1st April 1953, i.e. even

[Shri M. C. Shah.] before the date of the Supreme Court decision in the case of the State of Bombay and another V. the United Motors (India) Ltd., and others. Therefore, it boils down to this: All other States, twenty States, began to levy sales tax on inter-State transactions on sales and purchases according to the judgment of the Supreme Court which was delivered on the 30th March 1953. Some of the States began to levy taxes from 1st April 1953; they were only 5 or 6 States; the other States began to levy the tax on 1st January 1954. Now, according to the Supreme Court judgment, those States thought that they were empowered to levy sales tax on these transactions of inter-State sales and purchases from non-resident dealers, and therefore they were justified according to the judgment of the Supreme Court of 31st March 1953. Now, on the 6th September 1955 the Supreme Court over-ruled that judgment of 1953. Therefore, the question boils down to this whether the collections made by all the States during the period from 1st April 1951 to 6th September 1955 should be refunded. With regard to the two States, they had Sale Tax laws and according to that interpretation of the Constitution, they used to levy the tax as was decided upon by the Supreme Court in 1953. Therefore, the question of refund mainly came with regard to the States which began the levy from 1st April 1953 and 1st January 1954. Bihar and Hyderabad used to levy and collect the tax according to the Interpretation of the Supreme Court in 1953. Nobody had objected to it. After the decision of 6th September 1955 only, notices were served on certain State Governments to refund. The question is very important from the point of view of the revenues of the States and the policy adopted by the States. The States adopted this policy because that was the interpretation of the Supreme Court in March 1953. Therefore, we thought it proper and equitable and just that these States should not be made to refund the huge amounts that they had col-

lected. There is another element and a very important element too. The States collected these taxes from dealers, and dealers collected from consumers or from smaller dealers and so on and so forth. Suppose it is agreed that this refund should be made to these dealers who had paid the taxes ultimately to the States. Will those dealers ever give refund to those smaller dealers or the consumers? It is impossible to believe that those dealers who had collected from those who purchased from them or sold to them, would refund the tax to them. There may be hundreds of transactions in between the last dealer who paid the tax to the States and the first seller or purchaser.

So in equity, these dealers were not entitled to refund. Therefore we thought that we must come to the rescue of the States because they had collected and imposed taxes in good faith depending upon the judgment of the Supreme Court. Therefore we had to bring this legislation. Now we have here the representatives of the States and I feel that the States had acted in good faith and had collected in the *bona fide* belief that the judgment of the Supreme Court given in March 1953 was a correct one but somehow or other the Supreme Court took another view in 1955. I think that it will not be proper for the Centre to allow those States to suffer because of this action and as I just now explained, the equity was also on their side. Therefore I do not think anybody will be justified in saying that the States should suffer and should refund as the sum is only about Rs. 5 crores. Shri Kishen Chand tried to plead that as the sum is only Rs. 5 crores, why should we come to the assistance of the States? Rs. 5 crores means so much to all the States who are struggling for their finances and they have collected all this rightfully—not wrongfully, as they were authorised by the Supreme Court judgment in March 1953. (Interruption.) Let me finish and then I will reply to your points, Mr.

Parikh. My friend Mr. Parikh and Mr. Rajagopal Naidu said that from 1st April, 1951 to 1st January 1954 the taxes should be refunded. I do not know on what reason this argument comes forward from both these gentlemen. There are, two States as I said.....

SHRI P. S. RAJAGOPAL NAIDU: I said that it should be reviewed. I never said that it should be refunded.

SHRI M. C. SHAH: I am sorry. I thought Mr. Naidu only supported that last point. That argument had some force. Now I don't see any force whatsoever except perhaps to help those traders who had paid this sales tax to the States during that period. Bihar and Hyderabad were collecting taxes even from 1st April 1951 to the period mentioned. There was the judgment then and it was not then challenged, till then. That means those two States will have to give back.....

SHRI H. C. DASAPPA: For what period? And how much?

SHRI M. C. SHAH: Hyderabad has collected Rs. 22.44 lakhs and Rs. 30 lakhs are to be collected. A small State like Hyderabad to give back or lose Rs. 52 lakhs—I don't think any hon. Member will countenance such a proposal. Now Bihar collected Rs. 64.13 lakhs and there are no figures about the amount to be collected but even then Bihar whose revenue resources are always very much meagre will have to lose Rs. 64 lakhs. We cannot leave the periods between 1st April 1951 and 1st January 1954. It is not possible. I can have only this period. As a matter of fact Bihar and Hyderabad were collecting from 1st April 1951 till even the first Supreme Court judgment and even the second judgment and nobody had challenged. No trader had come forward to challenge but my hon. friend Mr. Parikh now comes forward to challenge on behalf of those people who paid those taxes from 1951 to

1954. So I think there is no logic, no reason to accept such a suggestion.

Now I was really surprised to find my friend Mr. Sekhar—a Member of the Communist Party—coming forward to take up cudgels on behalf of this big business who have paid the sales tax and also..... (*Interruptions*).....and also in the name of the common man. As a matter of fact the common man will get nothing from these big people who have paid sales tax and he does not want this legislation to be passed. But if this legislation is not passed, who will get the refund? As a matter of fact the complaint always is that our policy is to make the rich richer. Here is a gentleman from the Communist Party just advocating that these big people should get bigger by getting these refunds. What does he say? He says that it was a wrong action on the part of the States. I really fail to understand a Communist Member saying that the imposition of a sales tax was a wrong step. I understand that in those countries from which my friend takes guidance, there, the sales tax is the main source of income and here I find a Member of the Communist Party saying that the sales tax is a wrong step and to justify that wrong step, we are taking a wrong action in legislating this. I could have understood some Member with vested interests pleading this point of view but really I was surprised to hear this from a Member of the Communist Party.

My friend Mr. Sharma is rather very much convinced that his point of view is correct and that there is no power under the Constitution. He says that there is a conflict between the head and the heart. That was good. So I will appeal to his heart also now that we should come to the help of the States. Perhaps he comes from U.P. and U.P. will have to lose about Rs. 45 lakhs.

SHRI P. S. RAJAGOPAL NAIDU: U.P. can afford to lose.

SHRI M. C. SHAH: I am sorry—it is Rs. 46 lakhs. So I think he will give preference to his heart for the U.P. and will not object to this legislation. Of course, as my friend the Minister for Legal Affairs said, there will be a good paradise for the lawyers. I also agree with him that it may be so. 4 P.M.

We cannot wait till distinguished lawyers take the matter to the Supreme Court again and get a judgement. We will see how we can help the States if there is a decision against this. I am sure that it is not going to be so because we have taken a good deal of care to find out whether we can pass legislation under article 286 (2) and whether we can pass it retrospectively. The Supreme Court had also said that power vests with Parliament and so, we do not think there will be any difficulty in having this law passed.

If my friend, Mr. Parikh, wants to ask any question, I shall be only too pleased to reply.

SHRI C.P. PARIKH: I want to know whether the hon. Minister is quite sure that excepting these two States there are no other States which were collecting these taxes before 1st January 1954.

SHRI M. C. SHAH: So far as my information goes, these are the only States unless he gives me some more information. After the Supreme Court judgment, we received several representations and we adopted a sort of interim arrangement as it was brought out to us in these representations that there was a great deal of trouble for the non-resident dealers who had to show their account books, keep a separate book and so on. On these grounds we appealed to the different State Governments not to levy these taxes before 1st January 1954. Some of the States did not accept that position but accepted an earlier date, viz, 1st April 1954.

SHRI C. P. PARIKH: Will the States which have collected such taxes re-

fund the amount of tax levied and collected by them?

SHRI M. C. SHAH: I do not follow the question. The States will not. Why should they?

SHRI C. P. PARIKH: The hon. Minister said that only these two States had collected the taxes. I want to know whether the other States will refund the amount?

SHRI M.C. SHAH: There might be some mistake but so far as I know, there are only two States which have collected these taxes. No question of a refund arises. Will any businessman refund it? No. Why should the States refund?

MR. DEPUTY CHAIRMAN: The question is:

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

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill.

Clauses 2 and 3 were adopted.

Clause 1, the Enacting Formula and the Title were adopted.

SHRI M. C. SHAH: Sir, I move:

"That the Bill be passed."

SHRI KISHEN CHAND: Mr. Deputy Chairman, there has been a good deal of discussion and I suppose most of the points have been thrashed out but I may just draw the attention of the hon. Minister to this fact. This is a question of principle and I do not think there is any use bringing extraneous issues like what

happened in communist countries, whether it benefits big business or small business and so on. There is no point in discussing all this. Parliament should discuss the merits of the case. I do submit that the merits of the case should be discussed. On this the Finance Minister did not reply. He simply said 'Bihar would lose Rs. 64 lakhs, U.P. would lose Rs. 46 lakhs, and because a Member comes from U.P., he would not support this.' The discussion should have been merely on the merits of the case and the hon. Minister should have come forward to give us facts in that regard. According to the Constitution, discretion was given till the 31st March 1951. The Government of India and the States ought to have read carefully the provision as contained in the Constitution and ought to have implemented the provision. That is why they were given one year and three months. Even then, if they had wanted to impose sales tax, they could have very easily amended the Constitution. They did not think it necessary. The States went on collecting the taxes against the Constitutional provision, till the Supreme Court came forward and gave a judgment. Even here, there were conflicting judgments. Whether it is good or bad, I am not going into it but the Constitution has said something and the Supreme Court has held that the collection was *ultra vires* of the Constitution. Now, the question is, whether it has got to be refunded or whether we are going to revalidate it. Hon. Members have pointed out that under clause (2) of article 286, this cannot be made retrospective. May I suggest a very simple way of getting out of this difficulty? There is a provision which says that the President can, by order, direct the continuance of any tax on the sale or purchase upto 31st March, 1951. If the Government of India was very anxious to help the States they could have come forward with an amendment to the Constitution saying that the permission should be extended not upto the 31st March 1951 but upto the 31st September 1955, the date on which

the Supreme Court passed judgment. This would be an amendment of the Constitution for which there is a regular procedure provided. There will be nothing *ultra vires* in it. The date is simply extended from the 31st March 1951 to some other date. I still submit that taxation is essentially a right of every State and during the last 300 or 400 years, in the Constitutions that have been evolved in the world, great thought has been given to the right of imposing taxes. That is the fundamental right. This is a thing which affects every man. This is a law which affects the structure of our taxation. It is just possible that due to the majority we may pass anything which really affects every citizen of this country. I do not think it is fair, especially in taxation, because in this regard, there should be no retrospective effect given to taxation laws. This is restricted only to the budget making. Imposition of taxes is limited to one year only. You can re-impose the tax; you can revalidate taxes from year to year. If it were otherwise, we would have given authority permanently for the levy of taxes but that is not so. In these circumstances, to come forward with the argument that like other laws, we are also validating the imposition of taxes retrospectively is, I do not think, fair. We have discussed it at great length and I do not want to add to many arguments. I could quote any number of examples from other countries where taxation could not be imposed retrospectively. It is well known, and I am sure, when the matter goes up to the Supreme Court, the Court will hold it *ultra vires* because it is against our Constitution.

SHRI M. C. SHAH: Sir, I had heard some time back that there were certain people who, even if God were to come down and say "This is the position", would never accept it. And Professors also follow the same path, and therefore, at times it becomes very difficult to convince a gentleman who is determined not to be convinced. Therefore, whatever I say will not

[Shri M. C. Shah.] be acceptable to my friend. Prof. Kishen Chand.

I had just explained that there was no fault of the States which acted in good faith, and those taxes were legal and valid as pronounced by the Supreme Court in March 1953. After that pronouncement they began to levy taxes and collect them. The States of Bihar and Hyderabad thought in the same terms as the Supreme Court did in March 1953. We must look to the bona fides of the States concerned and we must look to the revenue position of the States concerned. As I said, if my friend, Shri Kishen Chand, had taken pains to understand the implications of the practical point of view that I put before the House, he would have realised that these refunds were not going to those who had paid them. They would really speaking go only to those who had collected them from down below, because there is no proof enough with them in order to distribute all those collections. And I am sure there will be none so philanthropic or so equitable and just as to distribute all those collections after taking the trouble of finding out as to who had paid those taxes to them. Therefore, taking into account all the aspects of the case, it was absolutely justifiable, proper and legal for the Central Government to, come to this decision after having taken plentiful care as regards the legality of the step that was being taken and after having consulted the eminent Attorney-General as against the opinions or some lawyer friends. Mr. Kishen Chand, in order to reply to my arguments, may say anything. I have no objection to that. But on merits I hope he will be convinced if he sleeps overnight over the action that we have taken.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed." The motion was adopted.

# **THE CONTROL OF SHIPPING (CONTINUANCE) BILL, 1956**

THE DEPUTY MINISTER FOR RAILWAYS AND TRANSPORT (SHRI O. V. ALAGESAN): Sir, I beg to move:

"That the Bill to continue the Control of Shipping Act, 1947, for a further period, as passed by the Lok Sabha, be taken into consideration."

Sir, as will be seen from the Statement of Objects and Reasons, the Control of Shipping Act, 1947, will cease to be in force on the 31st day of March 1956. This Act, as hon. Members are aware, was enacted during the Budget Session of 1947 to provide for the continuance of powers to license Indian Shipping and to secure priority control over coastal shipping which were originally conferred by the Defence of India Rules and which were subsequently continued in force till 31st March 1947 by the Emergency Powers (Continuance) Ordinance. The Act also revived powers conferred by the Defence of India Rules to fix freights and fares, in the coastal trade which had been allowed to lapse. The Act was expressed as remaining in force only for a period of one year, but Government were empowered by Section 1 to extend it by notification for another year. It was, however, decided in 1948 to undertake amending legislation for the purpose of introducing a comprehensive system of licensing for all ships engaged in the coastal trade and the opportunity was taken to extend the life of the Act for a further period of two years, i.e. up to the 31st March 1950. Although at that time this law could have been placed permanently on the Statute Book, no action to do so was taken as Government were then contemplating the promotion of legislation to consolidate all the laws relating to merchant shipping and so only an extension of time was sought. The life of the Act was subsequently extended every two years and it is now due to expire on the 31st March 1956, as I have said earlier.