Death Duties

By
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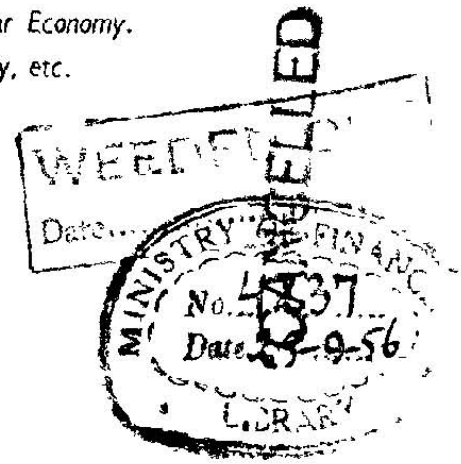

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AN INTRODUCTION

BY

THE HON'BLE SRI N. V. GADGIL

Death Duties form an important niche in the fiscal system of all advanced countries of the world. India has been toying with the idea of imposing such a levy for quite a number of years Our consideration of these Duties has, of late, shifted to a more serious plane. In all likelihood, in the very near future, death duties are likely to form an integral part of the direct tax system of the country. An attempt has been made in this Brochure to deal broadly with the various facts of this tax measure and certain important provisions of the Bill before the Indian Parliament Dr. Nata Rajan's Brochure, I am sure, would help the Legislators, publicmen and others to have a good idea of the issues involved. It should be particularly helpful to the University students.

N. V. GADGIL

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Death Duties

SECTION ONE

History.

Death Duties are inheritance taxes paid to the Government on the occassion of the transfer of property, real or personal, at or in connection with the death of the former owner. These taxes, although have come to occupy an important niche only recently in the fiscal systems of the advanced countries of the world, have a fairly ancient history behind them. Some sort of death duties, by way of transfer or mutation duty levied at 10% of the value of the property transferred at death, was in existence in ancient Egypt as early as 700 B. C. The Greeks, Romans and others all in turn copied the Egyptian example. In B.C. 169, the Roman authorities had already developed a form of inheritance tax. During the middle ages, in Europe, the tax was administered by the ecclesiastical authorities. From 1694 in England, the Public Exchequer took charge of it. From the 17th century onwards, the Governments of France, Germany, Italy, Switzerland and Netherlands began to impose death duties. In the 12th century, a beginning was made in China. Regular death duties of some sort came to be levied systematically in Japan from 1905. In India, the Moghul Emperors have always claimed the right to impose inheritance taxes on their subjects. Under the Zamorins of Calicut, a duty was levied on the value of the estates of the Mohammedan landlords. Otherwise, Bikaner seems to have been the only State, where for some time and uptil now a kind of death duty, graduated according to the degree of

relationship, has been levied. With the development of democratic institutions and fiscal systems, over thirty countries are now levying a tax on the estates along with some other variants of death duties as well. In the United States of America, all the States with the exception of Nevada impose inheritance duty. On date, death duties are in existence in Australia, New Zealand, Canada, South Africa, Straits Settlements, Hong Kong, Bahamas, Barbadoss, Ceylon, Jamaica, Tobago, Trinidad, British Guiana, Fiji, France, Germany, Holland, Switzerland, Belgium, Italy, Czechoslovakia, Austria, Sweden, Spain, Norway, Chile, Denmark, Argentina and Japan. Amongst the major countries of the world, India is the only one, which today does not possess death duty in its fiscal armoury, apart from the minor exception mentioned in the case of Bikaner State.

Are they good taxes?

Death Duties are, by every canon of public finance, good taxes. They fulfil the canons of ability, certainty, convenience and economy, the principal canons of taxation according to the classical economists. These taxes are levied only on those who have property of a certain degree and are able to bear the burden. "They form a perfectly clear and certain" method of taxation. The time of payment is also "sufficiently convenient", because they are levied only at the time the property passes hands on account of death. The tax brings in revenue to the Government with the minimum of squeeling possible, because the income is generally held to be a "fortuitous income" or "unearned income" and does not involve much sacrifice, if at all any sacrifice, on the part of the recipients! Of course, this argument is not quite true! The amount of tax to be paid is also clearly laid down by the laws and regulations of the country and, normally at any rate, there is not much doubt as regards the amount to be paid.

Those who object to the tax, base their arguments on the uncertainty of the yield, the inequality between yields arising out of frequency of deaths, fluctuations in the value of the estates and frequent changes in the rates of the duty by the States. Most, if not all the defects, with the exception of that of the uncertainty of yield, are experienced in the early stages of the levy of the duties and have been successfully surmounted by proper administrative rules and regulations. The minor defects, and whatever major defects there may be, are generally counter-balanced by the great advantages and ethical soundness of the levy of these taxes. Whatever the theoretical blemishes the tax may possess, since the tax is not paid during one's life time and it is only

the successors who foot the bill and that because they are in a happy financial position to do so, much may be forgiven.

Right of the State.

The growth in importance of death duties in the finances of countries is a feature of the 20th century especially after the first World War, their revenue yielding capacity being high among the highly industrialised countries of the world. Because the tax is adaptable to ethical and social canons and needs of equity, the duties have become popular. There was a time when any interference, by way of tax, with the properties inherited was considered to be an unwarranted interference with the unfettered and fundamental freedom to bequeath one's belongings! The growth in size of private property and the evolution of laws in this regard and the institution of inheritance all contributed to this tradition. With the painless transition to socialism, these ideas have long been consigned to the limbo of the past. Gladstone, while introducing the duty in his budget in 1853, stated: "The carrying of property in perfect security over the great barrier which death places between man and man is perhaps the very highest achievement, the most signal proof of the power of civilised institutions.....and an instance so capital of the great benefit conferred by law and civil institutions upon mankind, and of the immense enlargement that comes to natural liberty through the medium of law, that I conceive nothing more rational than that, if taxes are to be raised at all, the State shall be at liberty to step in and take from him who is thenceforward to enjoy the whole in security that portion which may be *bona-fide* necessary for the public purpose." Sir William Harcourt introducing the Finance Bill of 1894 stated that "the State takes its share first before any of the successors in title or beneficieries. "The reason on which this is founded is plain. The title of the State to a share in accumulated property of the deceased is an anterior title to that of the interest to be taken by those who are to share it. The State has its first title on the estate and those who take afterwards have a subsequent and subordinate titles. Nature gives a man no power over his earthly goods beyond the term of his life. What power he possesses to prolong his will after his death, the right of a dead man to dispose of his property is a pure creation of the law and the State has a right to prescribe the conditions and the limitations under which the power shall be exercised." G. D. H. Cole states, "What the legatee in fact inherits is not a sum of money but essentially a claim on the productive capacity of society. This capacity, the result of centuries of development, is in reality a social product, the common heritage of civilization, in which it would seem that all are entitled to share".

Complimentary to Income-Tax.

As compliment to income-tax, it has been utilised to achieve one of the greatest economic functions of the States, viz, to reduce the inequalities of wealth. The distribution of wealth by taxation of the accumulated property is always favoured by economists on the ground that it requires "no further justification seeing that such taxation provides not only a direct link in a chain toward effecting in an ordered and lawful manner the narrowing of the gulf between the very rich and the very poor which otherwise, perhaps, might only be bridged by political revolution with all that it involves; but also a means by which the very rich are enabled to pay to the State which has nurtured and protected them, some part of the great debt which they are alleged to have, but unable adequately to repay".

The obvious limitations of the income-tax are generally overcome by a carefully developed system of death duties. Under the existing income-tax laws of the world, barring houses, consumer's capital is as a rule left out of account. The income-tax does not measure and tax the satisfaction one derives from possession of costly pictures, mansions commanding beautiful scenery, exquisite decoration, jewellery, books, etc. The satisfaction which a person derives from the possession of these goods does at times exceed even the enjoyment of income which he may receive from his investments.

Above all, the death duties are the best methods, it is properly argued, for making the differentiation between earned and unearned income. The differentiation provided in the income-tax laws is never adequate. This concept of death duties as a sort of deferred income-tax on unearned income was in the minds of taxation authorities in the U. K. even when the death duties were first levied. The income-tax, again, cannot distinguish between incomes of different types excepting to a minor extent between earned incomes and interest and dividends received on deposits and stocks and shares. For instance, persons having an income from Government Securities are treated almost alike with those making their income from normal business and for the matter of that even with those earning their income from risky and speculative undertakings. All these persons have to pay practically the same income-tax although the person receiving a definite amount of income from Government Securities is in a far more advantageous position of earning the income with the minimum of trouble, while a person doing normal business takes risks and has to be up and doing. Entrepreneurs and those who take risks in starting ventures, etc., have to earn their bread and income literally by the very sweat of the brow and being *qui vive*

all the 24 hours. In an ideal tax system, such a non-differentiation is not possible. While unfortunately, an ideal tax system is not possible, one can try to come near the ideal as far as possible. Estate Duty can, to a certain extent, minimise these inequalities since greater the risk on investments, larger is the ratio that income would bear to the capital and, as in the levy of tax on property, such persons would have to pay a lesser duty than those with assured incomes from their investments. The greatest quality of death duty is that of economic and social justice. The distribution of wealth to the extent possible and mitigation of inequalities of wealth to the greatest possible extent are the merits of these taxes.

As the functions of the State began to expand, it has come to identify itself more and more with the well being of the people and has assumed ever expanding responsibilities in regard to Education, health and social security schemes. For that purpose an ever increasing source of revenue has become necessary for the State. That there can be no objection to placing resources in the hands of the Government provided it is for the good of the people and the State is a national -state has been emphasised centuries ago by the great poet Kalidas of India. He has commented years before modern Economics was born that "as the sun draws moisture from the earth, in order to give back in the shape of rains, for fertilizing the land, and producing the sustenance of the people, so the King levies taxes for utilising them for the good of the people." Modern authorities have in their own way laid the dictum that such appropriation of accumulated wealth for furtherance of social activities on the part of the State is all for the good.

The impact on the economic and social life of the country, particularly from the point of view of greater equality between classes resulting from the levy of any death duties, has so rivetted the attention of some economists that they have begun to justify the levy of such duties on the score of and, in fact, want them to be imposed for purpose of specific social security measures of the State. A number of German and Italian writers on public finance have taken this line. So have a few American economists. In fact, in some of the German, U. S. and Canadian States, the revenues derived from such duties have been deliberately provided for certain social security services, as for example, schools, hospitals, etc. In Switzerland, social insurance is directly linked up with the revenue derived from death duties. The purists and theorists among economists, however, hold with Findlay Shirras, who considers that "the earmarking of this tax for a specific purpose, perhaps may win the support of those who cling to the fallacy and may have some psychological value,

especially in times of high taxation, when the owners of estates think that an extravagant and rapacious government is squandering the proceeds of their fortunes on large civil service establishments."

Direct and Indirect Taxation

In a progressive country, the tax system has to be so devised that it is progressive, least hits the poor people and, at the same time, induces the furtherance of economic and social developments of the country. The eternal conflict in the minds of the Finance Ministers in regard to the claims of direct and indirect taxes has for its basis these postulates. The tendencies in all advanced countries have been to rely more and more on direct taxes. It has so happened, however, that certain countries like the United Kingdom have reached such a high level of industrialisation and also achieved a greater measure of distribution of wealth that it is no longer possible to relegate the indirect taxes to the background. Following are the figures of the percentage of direct and indirect taxes in the United Kingdom :—

	Direct	Indirect
1938-39	56%	44%
1944-45	64%	36%
1947-48	48%	52%
1948-49 R. E.	50%	50%
1949-50 B. E.	50%	50%

It may be noted that the percentage of direct taxes, which rose from 56% in 1938-39 to 64% in 1944-45, has steadily declined after the war years. Naturally reverse tendency has been evident in regard to indirect taxation. Following are the figures in regard to the percentage of direct and indirect taxes in India :—

Year	Direct Tax	Indirect Tax
1937-38	21%	79%
1938-39	22%	78%
1939-40	20%	80%
1940-41	30%	70%
1941-42	38%	62%
1942-43	60%	40%
1943-44	65%	35%
1944-45	65%	35%
1945-46	53%	47%
1946-47	47%	53%
1948-49 R. E	48%	52%
1949-50 B. E.	45%	55%

The same tendencies noticeable in the United Kingdom are felt here also, although we compare industrially with her very poorly. The direct taxes contributed 22% of the total tax revenue in 1938-39 and rose to as much as 65% during the peak war years 1943-44 and 1944-45. Since then, they have declined. The reverse tendency, as is to be expected, is witnessed in regard to indirect taxes. Any further great increase in indirect taxation would however definitely press on the poor in India. On the point of equity, therefore, a case could be made out for the imposition of death duties, which would again give the lead to direct taxation.

Distribution of Wealth in Certain Countries

We have already dealt at some length with the distribution of wealth in a more equitable manner, which every progressive State has to attempt, and shall now try to show as briefly as possible how and in what manner the worldly goods are possessed by different classes in certain important countries. As regards the conditions in the United Kingdom, a White Paper issued by the Chancellor of the Exchequer in 1944, gives some interesting figures. In 1938, so far as private incomes are concerned, about 4% accrued to 8,000 income-receivers with more than £10,000 a year each. Approximately 12% accrued to 1,05,000 income-receivers getting more than £2,000 a year and represented about 1% of the population. One fourth went into the pockets of 8,00,000 income-receivers with more than £500 a year who represented 7% of the population. The number of persons paying income-tax rose in the United Kingdom from 3,000,000 before the war to 9,000,000 by the end of 1946. Messrs. Vithal Babu and Gadgil in their book on the subject write that "While those income receivers upto £1,000 who bulked 89% in 1938 had a total income of 72%, only 11% of the tax payers had 28% of total; while those income receivers upto £1,000 who bulked 89% in 1946 had a total income of about 66⅔% while the remaining 11% of the income tax payers of the upper brackets had 23⅓% of the aggregate income. These figures crystallize that though the number of income tax payers trebled and though the aggregate income tax doubled, inequality of incomes has not increased remarkably."

In the U. S. A., in 1935-36, 4 million families exceeding a little more than 14% of the total had incomes less than $500. Approximately 12½ million families numbering 41% of the total had incomes less than $1,000. About 19 million families or more than 64% of the total had incomes less than $1,500. Over 25 million families or 87% of the total had incomes less than $2,500. About 1 million families or 28% of the total had incomes in excess of $5,000. 270,000 families, slightly less than 1% of the total had incomes in excess of $10,000. According to President Truman, increase in incomes between 1941 and 1946 was over 60% for the lowest 40% of

families and only 20% for the highest 20% of families". The following is yet another set of figures which relates to the year 1946 :—

Percentage Distribution of families by income levels in 1946.

Civilian money Income classes (1946 dollars)	Percentage of families	Cumulated percentage of families
Under 1,000	12·8	12·8
1,000 to 1,999	15·4	28·2
2,000 to 2,999	19·5	47·7
3,000 to 3,999	18·4	66·1
4,000 to 4,999	13·0	79·1
5,000 to 7,499	13·0	92·1
7,500 and over	7·9	100 0

In the United Kingdom as well as in the U. S. A., while the aggregate income has increased, inequality, at any rate, has not increased as a result of war conditions.

In Canada, in 1938, so far as the net National income tax was concerned the share of salaries, wages and supplementary labour income was about 62% of the national income at factor cost, the investment income amounted to 18% and the net income of individual enterprises stood at 20%. In 1945, salaries, wages and supplementary labour incomes totalled 52%, military pay and allowances 11%, investment income 19% and net income of individual enterprises 18%.

In the Commonwealth of Australia, before the last war, 60% of the tax payers having incomes only of £200 or less contributed to the Exchequer barely 2% of the total revenue. 8% of the total tax payers contributed 50·8% of the revenue and they were in possession of incomes over £1,000. In 1942-43 the peak-war year for Australia, persons receiving incomes of £200 and less were exempted from income tax with the result that, although their number had increased to 13% of the total, their contribution to the public Exchequer was only 0·7%. 73% of the tax-payers had incomes ranging between £201 and 500 and their share of contribution to the aggregate revenue came to 18·6%. Approximately 33⅓% of the tax payers had incomes above £1,000 and their contribution to the public revenue amounted to 31·6% of the total. It is stated that the figures for later years show a far better change in regard to distribution.

Let us look at the picture in India. The *Times' Trade and Engineering Supplement* of April 1939 gave the following figures :—

Number of Households		Incomes Rs.	
6,000	Over	1,00,000	a year each
270,000	Averaging	5,000	,,
250,000	,,	1,000	,,
3,50,00,000	,,	200	,,
Remainder	,,	50	,,

These figures are not sufficiently indicative of the distribution of wealth between the various classes. We may also look at the following income returns for the year 1937-38 :—

	Families.		Range of Income. Rs.
About	701,000	Below	1,000 a year.
,,	263,000	Between	1,000 to 1,500 a year.
,,	148,000	,,	1,500 to 2,000 ,,
,,	104,000	,,	2,000 to 3,000 ,,
,,	79,000	,,	3,000 to 5,000 ,,
,,	58,000	,,	5,000 to 10,000 ,,
Less than	10,000	,,	10,000 to 12,500 ,,
About	17,000	,,	12,500 to 25,000 ,,
,,	5,300	,,	25,000 to 100,000 ,,
,,	352		100,000 and over ,,

For the year ending 31st March 1947, the following are the figures of income-tax assessees and their ranges of income :—

Range of Incomes Rs.	Assessees
2,000 to 5,000	2,39,647
5,001 to 10,000	1,00,990
10,001 to 15,000	33,749
15,001 to 25,000	23,730
25,001 to 1,00,000	17,900
Above 1,00,000	2,985

Concerning distribution of national income in India, Messrs. Jather and Beri, the well-known writers in Indian Economics, state :

"The learned professions and the bigger land-owners enjoy a very much higher income than the cultivators or industrial labourers. The petty traders and shop-keepers have incomes of a medium size. Among the urban classes probably half of the total income belongs to one-tenth of the people. Among those with incomes exceeding Rs. 2000 a year, 38% have only 17% of the total income, while about 1% possess 10% of the total income. The inequality of distribution is equally evident among the agricultural classes as is indicated among other things by the distribution of agricultural holdings. For instance, in Bombay, out of 22 lakhs of registered holders of land, 10 lakhs have each a holding below 5 acres in size *i.e.*, 48% of the land holders possess only 9% of the cultivated land, while 1% of the land holders possess 16% of the total land, the results of the large classes of the landless agricultural labourers whose economic position is definitely lower than that of the holders of land.

"The result of this calculation is that more than a third of the wealth of the country is enjoyed by about 1% of the population, or, allowing for the dependents, about 5% at the most; that slightly more than another third, about 35% of the annual wealth produced in the country, is absorbed by another third of population, allowing for dependents; while 60% of the people of British India enjoy among them about 30% of the total wealth produced in the country."

While the poor have not become poorer, the distribution, on the other hand, has also been somewhat more lopsided than before. The inequality between the various groups of income does require Governmental consideration and action.

SECTION THREE

Yield of the Tax.

Coming to the yield of the tax, we find the tax occupying an important position in the economics of the world. Following is the yield of Death Duties in the United Kingdom :—

Years :	1938	1944	1946	1947	1948	1949	1950
Yield : (£ millions)	78	107	119	163	172	177	176

The total yield and revenue of Great Britain in the year ending 31st March 1948 is shown as £1799 million and estimates for 1948-49 and 1949-50 are £2058 million and £2086 million respectively. The figures show the income from this source between 8 and 10% of the total inland revenue. Of the total tax receipts, the percentage is, no doubt, less. The percentage, however, was much higher in the pre-war years and the decline in percentage during wartime is to be attributed mainly to the emergency measures of war finance.

In the U.S.A., the gift tax—tax on gifts—is a fairly steep tax and has been levied to avoid evasion of death duties. The death duty and gift taxes are generally taken together when computing the yield. Following are the revenues from death and gift taxes as well as the total revenues of the States in 1945 :—

(in million $)

	Death & Gift taxes	Total Revenue.
United States	135 7	4,778·4
New England	16·0	288·2
Mid. Atlantic	54·8	1,129·4
E. N. Central	26·0	940·8
W. N. Central	6·6	400·0
South Atlantic	8·6	544·6
E. S. Central	3·0	244·3
W. S. Central	4·6	431·1
Mountain	2 6	169·0
Pacific	13·4	630·9

The following figures are the Federal revenue from this head :—

(in million $)

Year	Estate & Gift Taxes
1938	417
1939	361
1940	360
1941	407
1942	433
1943	447
1944	511
1945	643
1946	677
1947	779
1948	788

An appraisal of the following figures shows the increasing importance that death duty has come to occupy in the fiscal economy of Canada :—

(In $ 000)

Year :	1913	1929	1933	1937	1939	1941	1943
Quebec	1,605	5,294	2,755	11,992	12,056	12,202	6,624
Ontario	1,146	6,610	8,081	20,214	11,500	11,677	13,320
Manitoba	268	1,034	424	402	875	735	341
Sum total of all Provinces	3,611	15,849	12,745	36,689	27,850	27,377	24,391
Dominion of Canada :	...	...	...	...	...	6,957	15,020
						34,334	39,411

The following figures give the revenue derived from estate duty by the Commonwealth of Australia :—

Year	Revenue (in thousand £)
1938-39	1,915
1942-43	2,696
1943-44	2,761
1944-45	3,090
1945-46	3,880
1946-47	4,019

An even better appreciation of the position occupied by death duties in the public finances of the countries would be available during the pre-war years.

The place which the death duties occupied in some of the important countries of the world during the pre-war years is as follows .—

GREAT BRITAIN

Year	Yield of Death Duties In Million £	% of Total Tax Receipts
1913-14	27 4	16·7
1925-26	61·2	8·9
1937-38	89 0	10·5

AUSTRALIA

(In £ 000 Australian)

Year	Amount of Death Duties	Total Tax Revenue	Percentage of death duties to Total Tax Revenue
1933-34	1,511	56,409	2·7
1936-37	1,793	62,773	2 9
1937-38	1,873	69,048	2·7
1938-39	1,915	74,036	2·6

UNION OF SOUTH AFRICA

(£ 000)

Year	Amount of Death Duties	Total Tax Revenue	Percentage of death duties to Total Tax Revenue
1933-34	816	28,533	2·8
1935-36	850	30,538	2·7
1936-37	1,251	32,762	3 8
1937-38	1,037	32,908	3·1

CANADA

($ in 000)

Year	Amount of Death Duties	Total Tax Revenue	Percentage of death duties to Total Tax Revenue
1937	35,757	854,799	4·1
1938	32,508	849,128	3 8
1939	27,519	887,873	3 1

JAPAN

(In 000 Yens)

Year	Amount of Succession Tax	Total of Ordinary Taxes	Percentage of death duties to Total Tax Revenue
1931-32	30,170	1,314,912	2 2
1932-33	30,216	1,287,039	2·3
1933-34	25,595	1,391,419	1·8
1934-35	27,173	1,342,931	2·1

Structure of the tax systems (National & Local) of Selected Countries as measured by the percentages of total tax revenue raised from various taxes.

	Income Taxes,	Property Taxes.	Inheri-tance Taxes.	Business Taxes.	Gen. Sales Taxes.	Excises.	Customs duties.	Miscela-neous.	Total.
GREAT BRITAIN :									
(National (1932) ...	30,9	.1	7.1	2.2	...	16 1	14.9	...	10.3
Local 1929-30) ...	...	19.7	...	...	...	...	...	...	19.7
UNITED STATES :									
National (1933-34) ...	4.4	...	.4	6.7	...	8.5	3.1	...	23.1
Local (Incl. States) (1932) ...	0.9	7.5	1 6	5.6	.2	10.8	...	...	76.9
CANADA :									
National (1932) ...	9.9	...	...	...	9.6	7.9	16.8	.2	44.4
Local (Incl. Prov.) (1931) ...	...	40.6	3.0	4.2	...	7.8	...	...	55.6
FRANCE :									
National (1933) ...	20.1	...	...	11.9	13.0	18 4	9.5	...	72 9
Local (1929-30) ...	...	11 7	...	2.2	...	3.5	...	9.7	27.1
GERMANY :									
National (1930-31) ...	7.1	3.3	.6	6 5	5.2	13.6	8.0	...	44.3
Local (Incl. Prov,) (1930-31) ...	17.8	23.5	.9	8.9	2.3	3.2	...	...	55.7
ITALY :									
National (1932) ...	16.0	3.2	.7	12.7	5 3	27.2	13.9	.2	79.2
Local (1931) ...	...	8.8	...	2.0	7.7	...	...	2.3	20.8
SWEDEN :									
National (1931) ...	16.4	...	...	4.8	...	6.1	30.1	.2	37 6
Local (1929-31) ...	37.9	3.0	...	.3	...	.8	...	.4	42.4
JAPAN :									
National (1232) ...	7.9	3.5	1.7	9.8	...	24.2	6.2	...	53.3
Local (Incl. Prov.) (1929-30) ...	2.7	22.6	...	15.0	...	...	...	6.4	46.7

SECTION FOUR

The principal forms of death duties are Estate Duty, Legacy Duty and Succession Duty. All these are levied on the occasion of transfer of the property of the deceased at the time of death. The estate duty is payable upon the amount of the entire estate left by the deceased at the time of his death before distribution, varying according to the size of the estate but levied irrespective of the share, which the inheritors receive. Legacy duty is imposed on all bequests of personal estate by will and upon all successions to personal estate in the case of intestacy. The tax paid by the legatee is determined by his relationship with the deceased. It is payable by the beneficiary unless, in the case of bequest, the will provides that the legacy should be free of duty, in which case the duty is payable by the estate of the testator. This duty is not payable on movable property in Great Britain, when the deceased person is not domiciled in Great Britain or when the net value of the estate does not exceed £2,000. The succession duties are "charged not upon the whole corpus of an estate but upon the interest which a person derives from the property left to or devolving on him on death". This duty is payable under every transfer on death by which a person becomes entitled to transfer "gratuitously". In the United Kingdom, it is chargeable on all free hold and lease hold property situated within the country and on all personal property not liable to legacy duty passing under will or intestacy or under some other disposition.

Steep Progression.

The taxes are highly progressive. Most of the economists have been and are in favour of steep graduation. The proposal of the Italian economist, Rignano, is often quoted in all books on death duties. According to him, the tax should be graduated with relation to the "age of the fortune", which in other words means the number of times the estates have changed hands by inheritance. The greater the age, heavier is the rate. The estates are to be divided in two parts. The first one consisting of inherited property by the deceased and second one of the wealth earned by him during his life time, through his own efforts. The first part is subjected to a very steep tax and the second part treated more lightly and indulgently. Dr. Dalton, the well-known British economist, suggested a variant of the Rignano Plan. He agrees with the principle of graduation according to the relative age of the estate but suggests, in order to avoid wasteful expenditure and increased gifts *inter vivos* a supplementary levy at a fixed rate should be imposed in addition to the usual death duties. The Supplementary levy would, however, ensure that in

return "the beneficiary would receive from the estate a terminable annuity the value of which would be apparently based upon the annual value of the securities, etc." This, in short, means, while the heir would not suffer in regard to income, the State would be assured of capital on his death. According to his own words, his scheme is :

> "Suppose that A, who received nothing by inheritance, acquires by work and saving property of value a, which he leaves by will to B. Then the tax will be 1/3 a and B will receive 2/3 a. Suppose that B by his own work and saving, adds a further amount b to his inheritance of 2/3 a, and leaves the whole by will to C. Then the tax will be, as to the 2/3 a, two-thirds and, as to the b, one third. Therefore the total tax will be 4/9 a+1/3 b and c will receive 2/9 a+2/3 b. Suppose that C, by his own work and saving, adds a further amount c to his inheritance and leaves the whole by will to D. Then the tax will be, as to the c, one-third. Therefore the total tax will be 2/9 a+4/9 b+1/3 c, and D will receive 2/9 b+2/3 c. And so on indefinitely, each person's addition, if any, to his inheritance being wiped out by taxation in the course of three transmissions.

The Minority Report of the Colwyn Committee, considered yet another variant of the scheme. It is assumed here that there are three different rates amounting to the entire capital during the third transfer. After the third transfer, the whole balance passes to the State. The rates assumed are 30% on the 1st, 60% on the 2nd and 100% on the third transfer. The following is an illustration :

A inherits nothing and accumulates from his own business &c., £ 100,000.

First Transfer

On A's death the State takes duty at 30% (*i.e.*, £ 30,000), leaving £ 70,000 to be inherited by B.

B increases this by his savings to £ 200,000.

Second Transfer

On B's death the State takes duty.

at 60% on £ 70,000	... ...	(*i.e.*, £ 42,000)
at 30% on £ 130,000	... ...	(*i e.*, £ 39,000)
		£ 81,000

Thus C inherits	... ...	£ 119,000
C increases this by his savings to	...	£ 250,000

Third Transfer

At C's death the State takes duty.

at 100% on £ 28,000	... ...	(*i.e.* £ 28,000)
at 60% on £ 91,000	... ...	(*i.e.* £ 54,600)
at 30% on £ 131,000	... ...	(*i.e.* £ 39,300)
		£ 121,900

All these schemes suffer from many disadvantages and in actual practice would be found very difficult to work unless it be under a totalitarian socialist economy. The rates or progression are fairly high even as they are in the various countries of the world. Under the Finance Act, 1946, estates of about £ 2,000 have to pay estate duty in the United Kingdom. Following are the rates in operation since 1946 in the U.K. :—

Principal value of Estate		
Exceeding £	Not Exceeding £	Rate per cent of duty.
2,000	3,000	1
3,000	5,000	2
5,000	7,500	3
7,500	10,000	4
10,000	12,500	6
12,500	15,000	8
15,000	20,000	10
20,000	25,000	12
25,000	30,000	14
30,000	35,000	16
35,000	40,000	18
40,000	45,000	20
45,000	50,000	22
50,000	60,000	24
60,000	75,000	27
75,000	100,000	30
100,000	150,000	35
150,000	200,000	40
200,000	250,000	45
250,000	300,000	50
300,000	500,000	55
500,000	750,000	60
750,000	1,000,000	65
1,000,000	2,000,000	70
2,000,000		75

In the U.S.A., the estate duties are based according to two Acts. According to Schedule I of the Estate Tax (1926) Act as amended with exemption of $ 100,000 it is determined as follows :—

				Per cent.
First $ 50,000 of net estate			...	1
In excess of	$ 50,000	up to $ 100,000	...	2
,,	100,000	up to 200,000	...	3
,,	200,000	up to 400,000	...	4
,,	400,000	up to 600,000	...	5
,,	600,000	up to 800,000	...	6
,,	800,000	up to 1,000,000	...	7
,,	1,000,000	up to 1,500,000	...	8
,,	1,500,000	up to 2,000,000	...	9
,,	2,000,000	up to 2,500,000	...	10
,,	2,500,000	up to 3,000,000	...	11
,,	3,000,000	up to 3,500,000	...	12
,,	3,500,000	up to 4,000,000	...	13
,,	4,000,000	up to 5,000,000	...	14
,,	5,000,000	up to 6,000,000	...	15
,,	6,000,000	up to 7,000,000	...	16
,,	7,000,000	up to 8,000,000	...	17
,,	8,000,000	up to 9,000,000	...	18
,,	9,000,000	up to 10,000,000	...	19
,,	10,000,000		...	20

There is an additional estate tax. The 1932 Act as amended specifies an exemption of $ 60,000 and the rate is as follows :—

First $ 5,000 Net Estate			Per Cent 3 Tax on lower amount	Per cent on Excess
$ 5,000	to	10,000	$ 150	7
10,000	to	20,000	500	11
20,000	to	30,000	1,600	14
30,000	to	40,000	3,000	18
40,000	to	50,000	4,800	22
50,000	to	60,000	7,000	25

60,000	to	100,000	9,500	28
100,000	to	250,000	20,700	30
250,000	to	500,000	65,700	32
500,000	to	750,000	145,700	35
750,000	to	1,000,000	233,200	37
1,000,000	to	1,250,000	325,700	39
1,250,000	to	1,500,000	423,200	42
1,500,000	to	2,000,000	528,200	45
2,000,000	to	2,500,000	753.200	49
2,5000,00	to	3,000,000	998,200	53
3,000,000	to	3,500,000	1,263,200	56
3,500,000	to	4,000,000	1,543,200	59
4,000,000	to	5,000,000	1,838,200	63
5,000,000	to	6,000,000	2,468,200	67
6,0000,00	to	7,000,000	3,138,200	70
7,000,000	to	8,000,000	3,838,200	73
8,000,000	to	10,000,000	4,568,000	76
10,000,000	and over		6,088,200	77

Under the Estate Duty Act, 1941, the rates in Australia are :—

Value in £	Rate imposed
1 to 10,000	3 %
10,001 to 20,000	3 to 6 %
20,001 to 120,000	6 to 26 %
120,001 to 500,000	26 to 27·9 %
Over 500,000	27 9 %

The rates of legacy duty in the United Kingdom from April 16, 1946, are as follows :—

Husband or wife, lineal ascendants or descendants and their wives and husbands	...	2 per cent
Brothers and sisters of the deceased and their descendants	...	10 per cent
All other persons	...	20 per cent

In the case of succession duty, after April 16, 1947, while no legacy duty or succession duty is payable, where the net value of the estate is less than £ 2,000 or where the bequest is less than £ 100, on estates exceeding £ 2,000 legacy and succession duties will be chargeable at twice the former rates unless the bequest is to a charity.

SECTION FIVE

Degree of Relationship, prior wealth, etc., and the tax.

One of the important aspects of inheritance taxes is the discrimination that is exercised in regard to rates based on relationship of the heirs to the deceased. This discrimination has become such a common factor in regard to inheritance taxation that it has come to be looked upon as a fundamental aspect of the same. In a number of countries under death duties, especially succession duties and legacy duties, the rates of taxation are higher when the property passes on to distant relations and strangers. The reasons are not far to seek for such discrimination. The near relations such as sons, daughters, wives, etc., have a right to expect the property to be passed on to them after the death of the owner. To distant relations and even more to strangers, the properties come as a windfall. As only in an orderly and progressive society could property be acquired in a peaceful and legitimate manner the State has come to believe that it has a right to levy a heavier rate of tax on such properties as a price for the privilege granted to the society. It may be also mentioned that successions to properties by distant heirs or by strangers generally occur only in the case of the death of unmarried people. It may, therefore, be considered that these people, fortunate or not, have been lucky enough to escape the several taxes which bear heavily upon married people having families! A higher tax on their property, which is a a windfall as it were for those succeeding to it, is justifiable. The degree of relationship and the discrimination practised depends upon the social and religious laws and usages of the respective countries. In some places, a widow is considered more stranger than children and is taxed on a higher rate. In other countries, the widow is considered merely as trustee for the property, which should ultimately go to the children. Consequently inheritance taxes are higher for widows without children than for direct heirs. On the Continent of Europe, it is stated, that sometime discrimination in regard to rates is practised between children and grand children with a heavier tax on the latter. When the grand children succeed to the property directly, it is considered that it is a double transfer, the property having escaped taxation once. The practice and precept of such discriminatory rates varies widely in different countries in regard to legitimate off springs, step children, adopted children, widows of sons, etc. Greater the blood relationship, lesser the rate of tax.

In a few European countries, yet another discrimination in the rates has been brought into existence, which is based on the prior wealth of the heir. The General Inheritance Tax Law of 1919 introduced, for instance, such a discrimination in Germany. The tax rate on each share rose by 1% for every

10,000 marks when the prior wealth of the beneficiary exceeded 100,000 marks and was less than 200,000 marks. There was a further rise of 1% on every additional 20,000 marks when it exceeded the latter figure. The principle is that the person possessing sufficient wealth himself is in a better position to pay higher rate of tax than the one, who has little or no wealth and succeeds to property. The administrative difficulties this discrimination are indeed very great. There is ample scope for error, evasion and misrepresentation. Under no circumstances, in view of the administrative and other set-ups in this country, could India think of this system of discrimination for levelling wealth.

Death Duties of India.

Between estate duties and succession duties, the choice in case of many economists and financial authorities has been for the former. The Taxation Enquiry Committee, which went into the question in 1925, stated, in their opinion, that "On the subject of the joint family system under the Mitakshara law and the many different Laws of inheritance in India, the Committee, as laymen, speak with diffidence. They are advised, however, that these two conditions generally put an acquisition duty on the lines of the English succession and legacy duties out of question. The joint family is in the nature of a corporation which continues to exist and enjoy the property irrespective of the death of any particular member. Meanwhile the systems of the inheritance, both among the Hindus and among the Mohammedans, recognise a plurality of heirs, and the calculations connected with the division of property among them, and more particularly the minute fractions into which the shares of particular heirs may run, would render the imposition of a succession duty, as distinguished for an estate duty, impracticable. Nor would it be easy, in the medley of laws and customs of inheritance, that exist side by side, to arrive at a uniform classification of heirs and a satisfactory scale of graduation according to relationship which would apply to all communities in India. For these reasons also, a duty somewhat on the lines of the English estate duty appears to be more practicable, and may initially take the form of a transfer or mutation duty on death."

Although the difficulties of joint family system under the Mitakshara law and the plurality of heirs could, to a considerable extent, be solved by suitable laws, the penchancy of the Taxation Enquiry Committee for estate duties in the main is shared even now by a number of economists, publicmen and others in the country. Probably a very large section of Indian commercial classes would, however, prefer a succession duty to estate duty on the score that the former is more in consonance with the Indian laws of inheritance. The Committee of the Federation of Indian Chambers of Commerce and Industry in their communication, a few months back

to the Government, held that a succession duty would be more practicable to work from the point of view of Indian laws of inheritance and perhaps also more judicious in its incidence. They were emboldened to make these remarks because the Finance Minister, Sir Shanmukham Chetty, stated during the Budget Session in 1948 that the Select Committee considering the Bill for the levy of Estate Duty had absolute freedom and, if necessary could convert the Estate Duty Bill into a Succession Duty Bill. As would be seen later, the Select Committee has stuck on in the main to the original Bill and have plumped for estate duty as such. In addition to the difficulties which succession duty would encounter in the country, mentioned by the Taxation Enquiry Committee, there are a few others also. In the case of succession duty, the inevitably long delays, which would creep in the operations of settlement, would lead to greater evasion of the taxation. As the settlements would be more or less immediate in the case of estate duty, evasion cannot be practised to the same extent at any rate. There is also another important point to be considered in India. The progression introduced in a succession duty discriminating against distant heirs and strangers, would be practically futile. Succession in India is generally by nearest relatives amongst all sections of the people.

SECTION SIX

Incidence of the Duties

The study of incidence or ultimate burden of the tax is not merely a matter for speculative delight but also very essential for the framing of any properly developed system of taxation. As to who bears the burden of death duties there are four schools of thoughts. The oldest one is that death duties are without any burden at all. The predecessor is dead, finished and gone, the successors have no natural right to succeed and consequently death duties are only an impersonal form of taxation imposed on the estate. This view has long been given up because it is essentially unsound. Even a tyro in modern economics knows that tax is always associated with burden and incidence on individuals and on part or whole of the community. The other view is that the successors always bear the money burden of the death duty. Upholders of this belief number certain distinguished economists among them. The deceased, being dead, cannot be expected to pay any tax. The only person who could pay the tax, therefore, is the successor, because he inherits the property less the amount of the tax. Who but he is to benefit if the tax is reduced or abolished ? Dr. Dalton argues: "Clearly.....it is on the successor for the predecessor must be dead before the tax can be levied and dead man can pay no taxes."..... Again "the fact that the predecessor may have insured against the tax beforehand is irrelevant to the question of incidence, though not of course to

the wider question of effects." On the other hand, there are quite a number of economists equally distinguished, who do not hold the view and are of opinion that the burden is on the deceased. They hold that Dr. Dalton's argument is based unduly on the time of payment. The view that the deceased bears the burden of tax is shared in the main by the Colwyn Committee also. The estate or property passes on the death to the successor because the deceased has "abstained" during life time. He could have fully exploited his wealth for his personal glory and spent it away to the last coin. His inheritors or successors have no means, legal or otherwise, of preventing him from doing so. The deceased deliberately works and saves in order to provide for his successors and death duties are a definite limitation and tax on his right to dispose his goods after his death. The burden of the duty is, therefore, on him only. The Colwyn Committee, while dealing with the Estate Duty, remark: "the theory that the incidence is upon the predecessor accords with the apparent intention of the legislature.....The estate duty is graduated by the reference to the aggregate value of the property passing, without reference to its destination or to the interest of the beneficiaries." There is yet another view which holds that the incidence falls on both the deceased as well as the successor, jointly. This view is really an escape from the dilemma created by the previous two schools of thought. Strength for this theory is also found from the argument that the deceased, during his life time, has so influenced his heir directly and indirectly in regard to his income and standard of living, it would be difficult to state that either of them did not bear the burden. The intentions, motives and psychology of human beings are always ticklish and controversial subjects. It is safer not to base theories or conclusions on them.

Effect on Savings and Capital

Even more than the question of incidence, the effect of death duties on the twin aspects of savings and capital is of great importance. Unfortunately, here again, there is an initial psychological reaction which the levy of any tax brings and that has certain short period effects of readjustments. There is a view—rather one should say there was a view—that it has a deleterious effect on capital. Upholders of this view hold that "any tax measured by capital reduces capital; the death tax is measured by capital; therefore, it reduces capital". It should be noted that the arguments are fallacious. Death duties are seldom paid out of capital. Taxes, as a rule, even those based upon the capital value, are met out of current income or at least income not yet converted into capital plant. In any case, in this effect, it is comparable to high and progressive income tax. While it undoubtedly reduces large estates, it does not mean any destruction of the existing capital as such. The remarks of the Minority Report of the Colwyn Committee are very relevant in this connection

They are: "Though death duties are assessed on capital they destroy no existing capital; at most they absorb potential capital by diverting, to the payment of the duties, income which would otherwise have gone into new savings. In this they do not differ from Income Tax or any other tax of comparable magnitude. The property sold must eventually be bought by someone who has free income seeking an investment, and the only effect is to divert this income from the creation of a new, to the purchase of an existing, investment. There is no reduction of actual capital."

As regards the effects of death duties on savings, there are divergent views. It is held that it reduces the incentive to save, in a very deterrent manner. Here again, there is a comparison between income tax and death duties. A highly steep income tax itself indeed reduces incentives to savings to a certain extent. The same is true in regard to death duties. The Colwyn Committee, however, consider that "Taking physical and psychological effects together we think that the estate duty is distinctly more damaging to saving than the income tax (although we do not suggest that the difference is great). This result is due in part to the fact that under the existing scale the bulk of the duty is drawn from the largest estates. We doubt, whether the Estate Duty is more damaging than income tax to enterprise. On the whole we are inclined to think it is less so." Professor Pigou, however, holds the contrary view. He was of opinion, in his evidence before the same Colwyn Committee that death duties have no deferrent effects and "are rather a good form of taxation, in that people are probably not discouraged from saving by thinking of the death duties as they are by thinking of an Income-tax on unearned incomes". In his evidence Dr. Dalton was also of opinion that "the prospect of heavy death duties will stimulate those who are waiting for a windfall of inherited wealth to work harder and to save more than they would, otherwise do".

Evasion of the tax.

The problem of evasion is an acute one in the case of all direct taxes and it is even more so in the case of death duties. Even in very enlightened communities and amongst most progressive nations of the world, extraordinary cleverness in circumventing the provisions of the law is always brought into play. As early as 1853, Mr. Gladstone commented on this aspect holding that: "We know that the astuteness of lawyers and the vigilant care for personal interests continually are at work to defeat and escape the operation of the law and this with such extraordinary success that although there has been an immense increase in the personal property of the country, such increase is scarcely traceable in the tables of your legacy duties." According to the well-known authority, J. Wedgewood, about one fourth of the estates in Great Britain is transferred through gifts in the life time of the owners

and, what is more, he holds that "many financiers and solicitors will probably consider this a serious under-statement since evasion of death duties seems now to be one of their principal functions." While appeals to the social consciousness of the tax-payer in general and raising the moral fibre of the country by education and inculcation of higher code of ethics have always their place in the scheme of things, the laws and regulations in the country have to be made as strong as possible and as foolproof and knaveproof as human ingenuity could devise by providing for strict vigilance on the part of tax authorities and severe penalties for infringement of the law. Such evasion as (1) evasion and avoiding by executors and heirs, (2) false declarations of relationships and (3) the omissions and under-valuations of the estates in the tax reports could, however, be guarded against to a very considerable extent by proper appraisals and requiring banks, deposit companies, etc., to disclose the recorded property of the deceased held by them.

Taxes on Gifts.

There is yet another method widely practised for avoiding death duties by making gifts during the life time. As stated, it is very prevalent in the U.K. and U S.A. To overcome this evasion, gift taxes have been levied in a number of countries and they are fairly steep in the U S A. Normally there are four methods of making gifts: (1) gifts in contemplation of death, (2) death-bed gifts or gifts *causa mortis*, (3) gifts that would come into operation at death and (4) gifts *inter vivos* which means in the fullness of life. Generally, all these gifts are made to avoid death duties and the object of gift taxes is to make evasion an unprofitable proposition by levying duties as heavy or at best only slightly less heavy than the relative death taxes. Death-bed gifts and gifts in contemplation of death are as a rule included as a part of the death tax base. The gifts *inter vivos* present a more difficult proposition for all administrators. Even in this mundane world, no one expects to live for ever and death, even by the most robust optimist, is always considered as a definite end, which would meet them at some stage of life or the other. In the case of taxation of gifts, which come into operation on death and their evasion by the formation of evocable and irrevocable trust, many difficulties arise. As regards the period of contemplation of death, generally such a period is defined. In the U.S.A., the statute of 1918 provided for six years and now it is two years. Taxation of gifts *inter vivos* is a regular feature and is styled as a separate gift tax in the U.S.A. for the purpose of preventing huge gaps in the enforcement of death duties. This reaches even those gifts, which cannot be proved to have been made in contemplation of death. The gift tax was first introduced in the U.S A. in 1924, repealed in 1926 and has been again in operation since 1932 as a part of the Federal tax system. The gift tax in 1935 started with 1½% on the amount of the "net

gifts" not exceeding $10,000 and rose upto 52¼% on net gifts in excess of $50,000,000. On date the practice in the U.S.A. is that an individual is allowed to give away as gifts upto $ 30,000 free of tax. In addition, the first $ 3,000 of gifts to the beneficiary in any year is also exempt. Following is the rate of gift taxes in the U.S.A. on date:

A Amount of net gifts equalling.	B Amounts of net gifts not exceeding	C Tax on amount in column (A)	D Rate of tax on excess over amount in col. (A) per cent.
$	$	$	
...	5,000	...	2¼
5,000	10,000	112.50	5¼
10,000	20,000	375.00	8¼
20,000	30,000	1,200.00	10½
30,000	40,000	2,250.00	13½
40,000	50,000	3,600.00	16½
50,000	60,000	5,250.00	18¾
60.000	100,000	7,125.00	21
100,000	250,000	15,525.00	22½
250,000	500,000	49,275.00	24
500,000	750,000	109,275.00	26⅓
750,000	1,000,000	174,900.00	27¾
1,000,000	1,250,000	244,275.00	29¼
1,250,000	1,500,000	317,400.00	31½
1,500,000	2,000,000	396,150 00	33¾
2,000,000	2,500,000	564,900.00	36¾
2,500,000	3,000,000	748,650.00	39¾
3,000,000	3,500,000	974,400 00	42
3,500,000	4,000,000	1,157,400.00	44¼
4,000,000	5,000,000	1,378,650.00	47¼
5,000,000	6,000,000	1,851,150.00	50¼
6,000,000	7,000,000	2,353,650.00	52½
7,000,000	8,000,000	3,878,650.00	54¾
8,000,000	10,000,000	3,426,150.00	57
10,000,000	...	4,566,150.00	57¾

In England, there is no tax on gifts as such. Stringent provisions have, however, been made to prevent large scale evasion. There are exemptions in England such as marriage gifts below £100 in value. Otherwise, all gifts *inter vivos* unless made more than three years before death as well as gifts for public or charitable purposes made less than a year before death are chargeable to estate duty.

In addition to the formation of revocable and irrevocable trusts, there is yet another method of avoiding death duty, which is practised, to a certain extent, in England. This is done by conversion of the estate into a private company. Under the law of private companies, the proprietor is entitled to convert his business and distribute shares, all the while retaining control over a large number of shares. According to J. Wedgewood in his "Economics of Inheritance", "At the present time, a man of property can legally enable his executors to avoid paying the British death duties in any one of the following ways. He can invest it in real estate outside Great Britain, he can leave his native land and acquire a foreign domicile and invest his property in bearer securities or in the registered class of companies registered abroad. He can give it to his family at any period by way of marriage settlements, he can get it without reservation before three years from the date of his death and as regards charitable gifts before one year from death".

SECTION SEVEN

History of Duties in India.

Earlier attempts at the introduction of estate duty in India met with strong and severe criticism from various quarters. First and foremost, the champions of agriculturists were loud in declaring that on whatever else it may be levied, it should not be levied on land as it has always borne a heavy share of burden. One objection that such duties would mean intimate and inquisitive investigations and enquiries before the value of immovable properties could be arrived at was neither new or novel. That objection has been so voiced all over the world. There were objections on the score that the habit of investment in the country is in its infancy and any heavy direct tax would strangle it. It was pointed out that Mohammedan Law recognises many heirs and imposes many limitations on inherited portions and also permits *Wakfs*. The peculiarities of the Hindu Law, in its two main branches, *Mitakshara* Law and *Dayabhaga* Law, have also been two main grounds of opposition. It is held that under Hindu Law, there is no acquisition or mutation of family property at death and it will be, therefore, a difficult, if not impossible, task to correctly evaluate the effects of a co-parcenery in a joint Hindu family at the time of his

death. In other words, all the peculiarities in the Hindu Law which distinguish it from the Christian Law of Inheritance, under which death duties have flourished, have been trotted out.

As early as 1859, India too had the distinction of discussing—at least her masters then discussed it—a proposal for the levy of inheritance tax to meet the expenditure connected with the Mutiny. Mr. Wilson, the first "Finance Minister" of this country opposed the levy on the plea that the land could not afford it and what is more the levy was a failure in England itself! The proposal was often and on considered until about 1865 when Sir John Strachey declared himself totally against it. And yet the Government of India in the very next year thought of a proposal for a succession duty on revenue free lands! A year later, at the suggestion of the Calcutta Chamber of Commerce, the Government of India addressed the Secretary of State on the advisability of tapping inheritance as a possible source of revenue. Although Sir Henry Maine and strangely enough Sir John Strachey were in favour of trying it so far as Bengal at least was concerned, nothing came out of it. Sir Griffith Evans, later on, introduced the subject for discussion in the Viceroy's Legislative Council more than once, but with no success. After a fairly long interval, the authors of the Mountford Reforms included the tax "on succession and acquisition by survivorship" in the schedule of provincial sources of revenue. The provinces, in the early years of the Mountford era, took up the question and, in a number of provinces, Madras, Bengal, Bombay, etc., committees were appointed and bills drafted for the levying of estate duty. The Government of Madras appointed a committee in 1922 to study the problem. The subject was taken up for an exhaustive discussion at the time of the appointment of the Taxation Enquiry Committee in 1923 in the Central Assembly.

The Taxation Enquiry Committee went into the question in a fairly detailed manner and an illuminating note was prepared for the Committee by its Legal Adviser. The Legal Adviser to the Taxation Enquiry Committee stated, in the first instance, that the existing stamp duty paid on probates, letters of administration and succession certificates approximated fairly closely to succession duties. According to him, "These receipts do not constitute fees for certificates for services rendered but are really taxes on succession and it is only an accident that the courts of law constitute the present machinery for their collection. They should not be added to the receipts of courts which are being taken into consideration for determining whether the Government is making a profit in the administration of Justice. For a service rendered by the court in connection with these proceedings, it takes a separate fee on the application under Schedule 2 Article 1 of the Court Fees Act."

After making all proper allowances for all the difficulties to be reckoned with, the Legal Adviser was of opinion that they were in no way unsurmountable. His proposals in brief are : (*a*) that the form of the duty must be an estate duty only in the initial stages to minimise opposition, (*b*) that a reasonable limit of exemption that would suffice to support an ordinary family with average diligence must be allowed; and (*c*) that the scale of the duties must be graduated on the amount of estate passing, irrespective of relationship between the deceased and the heirs. The Taxation Enquiry Committee accepted his suggestions in the main but recommended that the estate duties on the lines of English duties were alone suitable for conditions prevailing in India. They exempted agricultural property but hold that several arguments concerning investment habit were no longer valid. They proposed to proceed cautiously with the following rates with an exemption limit of Rs. 5,000/-

Rs.		Per cent.
5,000	...	Nil
Next 5,000	...	½
,, 10,000	...	1
,, 30,000	...	1½
,, 50,000	...	2
,, 1,00,000	...	2½
,, 3,00,000	...	3
,, 5,00,000	...	4
,, 10,00,000	...	5
Amount in excess of 20,00,000	...	6

The Committee agreed with the Legal Adviser in holding that the share of the deceased persons under Hindu Law should be as if partition has taken place on the day of his death. In regard to the Malabar-*Tarwad* system where no individual can demand or enforce partition, they recommended the levy of an annual tax after the pattern of the Corporation Tax. As these death duties would involve considerable changes regarding personal law of communities, for the sake of uniformity, they recommended that the tax should be levied by the Central Government. Section 137 of the Government of India Act 1935 authorises the Federal Government to levy and collect succession duties other than on Agricultural land on behalf of and for distribution amongst various provinces. A special sur-charge however was to be made for Federal purposes. It was not clear whether the Central Government had a right to levy, an Estate Duty or such a tax. The Government of India referred to the Federal Court in 1944 and it was adjudicated by the Court that the Federal Legislature had

no such powers to make laws providing for the levy of estate duty. Thereupon Legislative Sanction (British Parliamentary Legislation) was taken. As a result of that, an estate duty in respect of property, other than, agricultural land could be levied by the Central Legislature, proceeds being distributable to the provinces according to the principles to be formulated by a Central Act. The Provincial Governments could levy a similar duty in respect of agricultural land. This position has been maintained by the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947. Sir Archibald Rowlands introduced a Bill in 1946 for the levying and collection of an estate duty in British India but, owing to constitutional changes, it lapsed. Another Bill, similar to that, was introduced in 1948 by Shri R. K. Shanmukham Chetty, the then Finance Minister.

The object of the Bill according to the framer is "to impose an estate duty on non-agricultural property to assist the Provinces to finance their development schemes by fortifying permanently their revenues and enabling them to improve *inter alia* the existing social services. In spite of war-time taxation, enormous private fortunes have been made during the war, aggravating the great inequality which already existed. Apart from providing funds for the expansion of social services, there is manifest justification for the measure. It will be a step in the process of reducing the great disparities of wealth which is a prominent feature of Indian economy, and will set the country moving towards a more equitable distribution of the national income." The Bill largely follows the pattern of the estate duty in the United Kingdom, so far as the charging classes are concerned. In the Statement of Objects and Reasons, it is stated "The Estate Duty will be charged according to the principal value of all property which passes on the death of any person, whether by the disposition of the deceased or by a settlement made by others. The Governing principle is that the title of the State to a share in the accumulated property of the deceased is an anterior title to that of the interest to be taken by those who are to share it So far as the machinery of assessment is concerned, the Bill is an adaptation of the provisions of the Court-fees Act, 1870, dealing with probate duties levied in the shape of court-fees. There are two matters which have been left out of the present Bill, namely, the distribution of the proceeds of the proposed duty amongst the Provinces and the rate of duty to be levied. The intention is to distribute the proceeds of the duty (after deduction of the cost of collection) amongst the Provinces. The exact basis of distribution is a question which will have to be considered in consultation with the Provinces concerned. When a decision is reached, the result will be embodied in a separate Central Act. The rates at which the duty is to be levied will also be fixed from time to time by

separate legislation. It is not possible to estimate even approximately, the probable yield of the new duty, as much will depend upon the rates in force for the time being."

The Preliminary Report of the Select Committee on Estate Duty Bill, which was introduced in the Budget Session of 1948, was submitted on the 9th August of that year. The authors of the Preliminary Report state "We, the undersigned, members of the Select Committee to which the Bill to provide for the levy and collection of an estate duty in the Provinces of India was referred, met on the 2nd of August, 1948, to consider the Bill.

"2. At this meeting, the Honourable the Finance Minister who is in charge of the Bill, with the permission of the Chairman, proposed that the consideration of the Bill by the Select Committee be postponed till the next Budget Session.

"3. One of the grounds urged by the Honourable the Finance Minister was that the Bill was intimately connected with another Bill, namely, the Bill to codify the Hindu law, inasmuch as *the application of the Estate Duty Act would be well nigh impossible so long as the joint family under the Mitakshara system continued to be recognised by law as a unit for purposes of taxation.* The levy of any duty on the death of a member of a Hindu coparcenary is foreign to the fundamental principle of the coparcenary under the *Mitakshara* law. No individual member of such family can predicate that he has a definite share in the property. His interest is a fluctuating interest capable of being enlarged on deaths in the family or liable to be diminished by briths. The provisions of the Hindu Code Bill regarding succession or the structure of a joint family would have considerable bearing as to how the duty should be levied on the death of a member of such family, and it was, therefore, urged that the consideration of the Bill should await the passing of the Hindu Code.

"4. The second point urged by the Honourable Finance Minister in support of his proposal was that under clause 19 of the Bill, immovable property situated outside the provinces of India, is exempt and movable property so situated is also exempt in certain circumstances. This would mean the flight of capital to Indian States for investment in immovable and movable properties, unless the States also introduce similar legislation and bring their level of taxation to that prevailing in the Provinces of India. The question of integration of fiscal policy of the States with that of the Government of India has been taken up, but it would be some time before the relationship of the States with the Centre and their fiscal obligations and rights are determined and stabilised.

"5. The Honourable the Finance Minister also urged that the Finance Ministery would like to have further time to scrutinise the provisions embodied in the Bill, as further consideration has shown that certain provisions have been rather hastily drafted and without full examination. The Central Board of Revenue, which is charged with the duty of administering the Estate Duty Act, thinks that it should be given time to revise some of the provisions of the Bill.

"6. We have given anxious consideration to the proposal of the Finance Minister. We realise that to a very large extent the points raised by him were present to the minds of the members of the Legislature when it passed the motion to refer the Bill to the Select Committee and therefore cannot be said to raise questions which are new. Nevertheless the Committee, with the exception of one member Mr. Sidhwa, felt that the arguments advanced by the Honourable the Finance Minister in support of his proposition that the consideration of the Bill by the Select Committee be postponed are weighty and should be allowed.

"7. Accordingly we have resolved not to consider the Bill clause by clause as we were bound to do. We therefore report that we have at this stage no report to make."

The Select Committee's Final Report on the subject was submitted on 31st March 1949. As the Budget Session was coming to a close, there was no time for its consideration. The present Hindu Law makes difficult, as recognised in the Preliminary Report of the Select Committee, the imposition of an estate duty. This opinion, however, seems to have been modified to a considerable extent in the Final Report of the Select Committee on the Bill. It is stated in that Report by the Members of the Committee: "We have also considered the question of estate duty *vis-a-vis Mitakshara* Hindu family. Although we are of opinion that, if the draft Hindu Code is passed by the Central Legislature in the form in which it now stands, it would facilitate the adoption of the proposals contained in the Estate Duty Bill, we feel that the passage of the Estate Duty Bill need not be held up further pending the passing of the Hindu Code We think that amendments to the Estate Duty Bill can, if necessary, be proposed later so as to bring it into line with the ultimate form of the Hindu Code."

Under the *Mitakshara* school of Hindu Law as it stands at present, which prevails over a major part of the country, the property of a Hindu is not his individual property. It belongs to what is called a co-parcenery, which includes father, son, grandson and great grand son. All these have birth right on the property which passes on to those persons, who remain after the death of deceased, and does not pass on to heirs of the deceased as such. Under the *Dayabhaga*,

the property is held by the owner as his personal property with full right and control over it and, on his death, the son takes the property in his hand as his heir or survivor. *Dayabhaga* is practised mainly in Bengal. Under both the schools, discrimination is made amongst the family heirs on the death of the testator and the share depends on their economic status as well. In regard to daughters, the question is whether she is married or not and—or whether she has children or not. In Malabar, the *Tarwad* system prevails, under which no individual member has a right to partition or any right of testation. In the case of Muslims, inheritance of property is ruled by the respective laws of corresponding sects, to which the deceased belongs and not by the law of the sect to which the successor belongs, the two main sects being Sunnis and Shias. It is stated that the Muslim Law is based on the principle of legitim and not on the joint system or survivorship as under the Hindu Law, There is no difference in the Muslim Law between acquired, ancestral, movable or immovable property as in the Hindu Law of inheritance. The right of the heir-apparent or presumptive only arises at the time of the death of the property owner unlike that in the Hindu Law There are two to three classes of heirs in the two Muslim sects and what is more, Muslims are entitled to make a bequest of one third of the estate without consulting their heirs and also gift away a third of the estate as well before the death during the period of "death illness".

The Hindu Code introduces revolutionary changes in the Hindu Law which, apart from the other factors, does facilitate the passing of death duties in a remarkable degree. That is why, in the Preliminary Report, the Members appear to have been carried away with the idea that it is well nigh impossible to apply Estate Duty Act, so long as the joint family under the *Mitakshara* continues to exist. The Hindu code provides for alteration in the present rules of intestate and testamentary procedure and follows the *Dayabhaga* procedure in this regard. Once the Hindu Code Bill is passed, the Courts would not recognise any right or interest in a joint family based on the rule of survivorship. On the date of the enactment of the Hindu Code Bill, Members of the Joint Family property would be considered to have effected a division of the same. The property would be considered as one of "tenants-in-common", the individual members of the family having the exclusive rights on their own property. The widow, son, daughter, the widow of the deceased son, are all given the same rank as the son in the matter of inheritance, the daughter being given one half of the share that goes to the son. The property would be so shared that the widow would obtain equal share with each son and the daughter half as much as the son. The property acquired by a Hindu woman according to this Code would be her "absolute property", the previous conception of "limited property" having been abandoned.

The Select Committee's Bill provides as in the original Bill for an exemption of Rs. 1 lakh of property in regard to the levy of the Estate Duty. As regards the rate, it has been stated that it would be fixed by the annual Finance Act. In this connection, Select Committee report that, "having regard to the limit of exemption in the United Kingdom which is two thousand pounds, the limit of exemption at one lakh of rupees proposed in the Bill is quite liberal and does not require any change. In this connection, we have also considered whether any concession could be given in respect of dwelling house by way of either an exemption or a reduction in valuation or a reduction in the rates of estate duty, and we are of the opinion that much will depend upon the rates of estate duty to be prescribed by the annual Finance Acts and this question would more appropriately come up for consideration at the time the Finance Bill is considered each year."

The exemption limit and rates are likely to prove controversial. In the Taxation Enquiry Committee Report, the limit was Rs. 5,000/-. That is unthinkable now in view of the vastly changed circumstances and inflation. Some hold that Rs. 50,000 should be the limit. There are yet others, who hold that the limit of exemption should be placed at Rs. 3, 4 or 5 lakhs. Probably a good compromise would be that of a limit of exemption of Rs. 1 lakh for each heir. In other words, if the deceased has five heirs, each one should be entitled to a tax free inheritance of Rs 1 lakh. As regards the rates, the rates suggested by the Taxation Enquiry Committee would again be unthinkable. Even now, practically it is on those rates the courts are charging fees for granting probates, letters of administration and succession certificates. There is a general fear that the rate would be a heavy one. To impose any onerous levy to start with or in the peculiar conditions of India for some time would certainly be not advisable. Agricultural land is exempted from estate duty in the Bill. In view of the abolition of *zamindari* and the integration of the States with the Indian Union, there is not much force in such exemption. As regards allocation of the proceeds of the tax, it is going to prove another difficult problem. Provincial claims would simply dance a jig. It is difficult to lay down any scale of percentage as has been done in the case of Income-tax. If population alone is taken as the basis, Bombay would feel sorely aggrieved. A workable proposition could be arrived at by a judicial combination of the two criteria, viz., of population and residence.

The Select Committee stated, in regard to probate duties, that they have considered the question whether probates should be made compulsory for all in order to facilitate administration of estate duty. They think that "these would be too radical a change and that it is not practicable to insist upon these as a preliminary to taxation". They recommend that "when the time is considered ripe,

separate legislation should be introduced for this purpose". This 'jibbing' at compulsory probate is likely to prove the Achilles' heel to this measure and would let in good many possibilities for tax evasion. The present law of probate is very unsatisfactory and is based mainly on religion. The Taxation Enquiry Committee also drew pointed attention to the evils of this system. It is surprising that, when such drastically revolutionary changes are introdued in the Hindu Law, Members of the Select Committee should have fought shy of introducing compulsory probate. A quotation from the speech of Mr. Ginwala in the Legislative Assembly in 1923, in this connection, is worth noting He stated: "I do not see why, when I die, my son, who may inherit Rs. 5,000 has got to pay Rs. 100 or Rs. 150 to the Government, whereas the son of any one of those Honourable gentlemen who may inherit a million, escape entirely if he is a Hindu or a Mohammedan. There is a racial discrimination, if you like. We are fighting for the removal of social distinctions; let us fight on this point."

Prof. Lakdawala has summarised the burden of the court fees, etc., which have to be paid before a probate is obtained, as follows: "(a) The most burdened are the Europeans, the Jews, the Armenians and persons of foreign domicile, whose successors have to pay the probate fees in all cases where the estate left is worth more than Rs. 1,000 (b) Next come the Parsees, who have to obtain probate, etc., and pay the duties in all cases, where a right has to be proved in a Court of Law. (c) Next in order come the Indian Christians, who have to pay probate duties, if the estate becomes a subject-matter of dispute, in case where there is a will. In cases of intestate succession, a duty will only have to be paid to the extent of a debt for which a decree is sought or has to be executed. (d) The position of the Hindus regarding intestate succession is the same as that of Indian Christians. Where, however, a will is made no probate is essential to prove a right in a Court of Law except in very limited cases. (e) The most favoured are the Mohamedans, who need pay no duties except if and to the extent that they wish for a court decree in realizing the debt of the deceased."

SECTION EIGHT.

Certain important clauses of the Select Committee Bill.

Clause 6, which deals with the interest ceasing on death, has been redrafted by the Select Committee as follows:

"(1) Subject to the provisions of this section, property in which the deceased or any other person had an interest, ceasing on the death of the deceased, shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or

arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the *Mitakshara*, *Marumakhattayam* or *Aliyasantana law*.

(2) If a member of a Hindu coparcenary governed by the Mitakshara school of law dies, then the provisions of sub-section (1) shall not apply with respect to the interest of the deceased in the coparcenary property unless the deceased had completed his eighteenth year, or unless, at the time of his death, his father or other male ascendant in the male line was not a coparcener of the same family.

Explanation.—Where the deceased was also a member of a sub-coparcenary (within the coparcenary) possessing separate property of its own, the provisions of this sub-section shall have effect separately in respect of the coparcenary and the sub-coparcenary.

(3) If a member of any *tarwad* or *tavazhi* governed by the *Marumakhattayam* rule of inheritance or a member of a *kutumba* or *kavaru* governed by the *Aliyasantana* rule of inheritance dies, then the provisions of sub-section (1) shall not apply with respect to the interest of the deceased in the property of the *tarwad, tavazhi, kutumba* or *kavaru*, as the case may be, unless the deceased had completed his eighteenth year.

(4) The provisions of sub-section (1) shall not apply to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefits of a charity, or as a corporation sole".

In explanation of this clause, it is stated by the Select Committee that while they accept the principle as stated in the existing clause, in view of the high rate of infant mortality in India, they consider that an exception should be made in the case to the interest in ancestral property passing on the death of a member of a *Mitakshara* family before attaining the age of eighteen years if he has a male ascendant living. They also think that the provisions of this clause in their application to a joint Hindu family should apply *mutatis mutandis* to *Marumakkattayam* and *Aliyasantana* families subject to the modification that the condition regarding a living male ascendant should be omited from the exception, that is to say, in the case of a *Marumakkattayam or Aliyasantana* family the exception will apply to a person dying below the age of eighteen years whether there is a male ascendant living or not for the reason that the male ascendant is not a member of the *tarwad, tavazhi, Kutumba* or *Kavaru* governed by the *Marumakkattayam* or *Aliyasantana* rule of inheritance. The Select Committee have taken note of the many criticism levelled against the original clause and have amended the clause as above in the light of those criticism.

Clauses 7, 8, 9 and 10 deal with gifts, the period before death in which they are made, purposes for which they are made and gifts made in such a manner as to where the donor is not entirely excluded. Clause 10 deals with limited interests disposed of within a certain period before death. The Select Committee have added an Explanation to clause 7 to make it clear that the gift made in contemplation of death has the same meaning as in section 191 of the Indian Succession Act, 1925. In the original Bill, the period stipulated was three or more years before death and one year for gifts made for public or charitable purposes. The Select Committee state that a time limit of six months before death in the case of gifts for public or charitable purposes and the time limit of two years in the case of other gifts should suffice and have, therefore, made suitable changes in the original Bill. Clause 9 has been amended in the Select Committee Bill so that it has been made clear in the main part of this clause that property taken under any gift shall be deemed to pass on the donor's death to the extent that *bona fide* possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise. There has been considerable criticism about the period of three years and one year in the original Bill. Even the amended period of two years and six months would probably be not acceptable to a number of people. Since the Estate Duty has not been introduced in this country upto this time, the period may be well reduced to one year and no limitation be made in regard to gifts made for charitable purposes. One year, as was the case when the Estate Duty Act was enforced in England, is quite enough. It may be held with strong force that absolute gifts to charity by deed *inter vivos* of a public or religious nature, whether directly or through the intervention of trustees, should be excluded from the operation of clauses 8 and 9.

Clause 13 in the Select Committee's Bill, which is the same as in the original Bill, reads that "Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit, shall be deemed to pass on the death of the assured." This clause is rather an unhappy one. Life insurance companies in this country are still in swaddling cloths and any taxation of the policy taken for the benefit of the assignee, nominee or donee, would retard the growth of insurance unless an exemption limit is placed, over which amount alone, the tax should come into operation. The Indian Life Assurance Offices Association, Bombay, in this connection, draw the attention of the Government to recognise "the essential difference between the estate represented by investments and that represented by proceeds of Life Assurance and Annuities. In

the former, the income is enjoyed by the investor during the life-time while the latter is created mostly due to a spirit of self-abnegation and love for near and dear ones." They hold that "if an individual is mulcted of a part of the property accumulated under the dictates of such motives by imposition of an estate duty without granting exemption upto a reasonable amount, the result would be retardation in the insuring habit of moderately well-placed families in India." They further state: "The Federal Estate Tax Law in America provides an exemption to policies of life assurance to the extent of $ 40,000 payable to individual beneficiaries without any stipulation as regards the payment of premiums as contemplated in the present bill. The principle of allowing exemption to life assurance premiums to a certain reasonable limit from assessment to income tax on ground of 'mitigation of taxation of savings' has already been recognised by the Government of India under Section 15 of the Indian Income Tax Act, under which annual premiums of life assurance and annuities upto the extent of Rs 6,000 are exempted from Income tax. The Association submits that the principle already recognised in the Indian Income Tax Act, should also be applied to estate duties and that an exemption should be granted to the proceeds of life assurance policies and annuities from the levy of estate duties, at least to the extent of policies of life assurance for the amount of Rs 1,00,000 or in the alternative to an amount of life assurance policies and annuities represented by an annual premium of Rs. 6,000"

Clause 19, dealing with foreign property, of the original Bill, has been redrafted by the Select Committee. The Select Committee are of opinion that for the purpose of determining the liability of any property to duty under this clause, both "domicile" and "residence", of the deceased or the settler, as the case may be, should be taken into consideration, and that for the said purpose, the expression "residence" should have the same meaning as that assigned to it in section 4-A of the Indian Income Tax Act, 1922. They also consider that property, whether movable or immovable (not being agricultural land), within an Indian State should, as far as possible, be subjected to duty. They have, therefore, provided in this clause that all property, movable or immovabl (not being agricultural land), in an Acceding State is liable to estate duty in any case where the deceased or the settlor was domiciled or resident in any Province of India at the time of death or settlement. The clause in the original Bill was very defective inasmuch as it permitted many foreigners to escape duty although they may earn income in the country. Even the present clause does not fill in all the defects For instance, there is no point now in making the exemption in the case of property constituted outside the Provinces of India in an acceding Indian State.

Clause 28 deals with double taxation and the Select Committee has very much improved on the clause in the original Bill. The Select Committee, in their Report, state that the clause as at present drafted may not be quite fair to India, in that it may enable a foreign country to take an unduly large share of estate duty in respect of movable property in India belonging to persons of foreign domicile. They therefore consider that a provision for the avoidance or relief of double taxation on the basis of agreement entered into by India with other countries on the lines of the agreements entered into between the United Kingdom and the United States of America under section 54 of the United Kingdom Finance (No. II) Act of 1945 will be more suitable than the existing provisions of this clause. They desire that before any agreement contemplated by the clause as redrafted is ratified, it should be placed before the Standing Finance Committee.

Clause 29 deals with certain allowances to be made in the tax for quick successions or deaths, which would normally cause great hardship in any family. The experience of Great Britain has been of great help in this regard. The Select Committee have retained the provisions of the original Bill and these provide for a reduction in duty by 50 per cent when the second death occurs within one year and a reduction in duty ranging between 10% and 40% when it occurs between the second and the fifth year according to the time of the death. On account of the high mortality in India, it is a moot point whether five years' period is not too short a period. In a number of Western countries as well as the U S.A., the period allowed for reduction, if not exemption, from the first death so far as levy of the duty is concerned, is much longer In the U. S. A. for instance, no levy at all is made on the second death if it occurs within five years of the first one. It should be noted that in all the European countries and the U S.A., the expectation of life is very much longer than what it prevails in India. A more equitable thing would be, as in the U. S. A., that there should be no levy at all if the second death occurs within five years of the first death and later on, concessions may be allowed upto a period of ten years of the first death on a graduated scale.

The new clause 30 of the Select Committee Bill is an important one. This clause reads that "Where on the death of a member of a Hindu coparcenary, his interest in the coparcenary property has devolved on his widow, then, if the widow dies within seven years of her husband's death and the interest aforesaid devolves upon the members of the coparcenary or any of them, no estate duty shall be leviable in respect of the passing of the interest aforesaid on the death of the widow, if and in so far as estate duty had been paid in respect of the passing of such interest on the death of her husband. It is held by the Select Committee, about this new

clause 30, that there should be complete exemption of duty in respect of a coparcenary interest devolving upon the members of the coparcenary or any of them upon the death of a Hindu widow if she dies within seven years of the death of her husband and if estate duty had been levied in respect of the same on her husband's death.

Clause 31 provides for exemptions, reductions and other modifications from the tax. It states that "the Central Government may by notification in the official Gazette make any exemption, reduction in rate or other modification in respect of estate duty in favour of any class of property or the whole or any part of the property of any class of persons. This formed clause 30 in the original Bill. It may be criticised that the Central Government should not be vested with any executive authority to grant exemptions, reductions or modifications by notifications or otherwise. Such a power should be exercised by the Legislature alone so that such exemption or reduction could only be granted by the Legislature and that after public debate.

Clause 64 (old clauses 63 and 64) deals with the estate duty as a first charge on the property liable thereto. The Select Committee, in this connection, state that they consider that there should be a first charge for estate duty on all immovable property passing on the death of the deceased (including agricultural land) in whomsoever it may vest on his death, after the debts and encumbrances allowable under Part VI of the Bill. They think that it should be also provided that any private transfer or delivery of such property would be void against any claim in respect of such estate duty. They do not consider that any exemption from this charge need be provided in the case of a *bonafide* purchaser for value without notice, because nobody can legitimately plead want of notice in regard to a charge imposed by the operation of a law. As regards movable property, they consider that there should be a first charge on the movable property, passing to a beneficiary under a will, not being an heir-at-law, to the extent of a ratable part of the estate duty on the lines of section 9(1) of the United Kingdom Finance Act, 1894. They also think that there should be no charge on movable property acquired by a *bona fide* purchaser for value without notice. They consider, however, that the Board should have power to release from charge the whole or any part of any property (whether movable or immovable) in such circumstances and on such conditions as it thinks fit.

Clause 70 empowers the Central Board with wide powers to make rules, which are necessary and convenient for carrying out the purposes of or giving effect to this Act. It is rather undesirable to give the Board such wide powers. The powers given to the Board should be strictly confined to matters of procedure, all other matters being specifically stated in the Act itself or in such rules which are approved by the legislature.

Neither the original Bill nor the Select Committee Bill provides for any secrecy clauses. The argument that the estate of the deceased passing on death and its principal value should be kept secret as otherwise the credit of the successor of the deceased would be endangered is a sound one. Somewhat analogous to secrecy clauses in the Indian Income-tax Act should be provided for in this Act as well. Such provisions are found in the other countries as well. Section 54(1) of the Canadian Act provides "no person employed in the service of His Majesty shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under the provisions of this Act or allow any such person to inspect or have access to any written statement furnished under the provisions of this Act". It is necessary that similar provisions be made in this Bill also.

The major changes effected by the Select Committee in the original Bill are however few and relate mainly to clauses, 6, 12, 19, 20, 28, 49, and 64. One important new clause—clause 30—has been incorporated in this Bill.

SECTION NINE

The question whether the present is the opportune time, in view of the general economic situation in the country for the enactment of the Estate Duty Bill could, of course, be viewed at from different points of view. The Federation of Indian Chambers of Commerce and Industry, in their communication to Government, on the subject hold : "Apart from the general deterioration that has occurred in the general economy of the country, the pace of social legislation, both in the Provinces and at the Centre, has been so rapid that it has put a heavy drain on capital in the country. The introduction of a measure of this nature is bound to increase that drain with the result that there will be greater paucity of capital for industrial and developmental purposes. As it is, capital is not forthcoming readily for investment in productive enterprises. The country has been in the grips of a financial crisis since 1946, when the Stock-Exchange market began te register a gradual decline. That crisis does not show any sign of abatement in spite of the recent efforts of the Government of India to encourage new enterprises and their drive for greater production. In such a situation, it is certainly a matter to be considered very seriously whether the enactment of the Estate Duty Bill will not be a factor, which will further undermine the confidence of investors and impede the efforts which Government are now making for giving a fillip to our economy and in which the industrialists themselves are doing their best to co-operate." There is something to be said for this view point.

In an economically young and backward country, it is better to give the people whatever the pure and unsullied theory economists might hold, some *quid pro quo* for taxation of the type of estate duties. That would minimise the opposition and make people accept the tax with a better grace. If the yield from death duties is set apart for the purpose of building up old-age pension schemes, as was done in England, probably that would appeal to the people most. While steepness and high progression in direct taxes is welcome, there must be also corresponding amount of relief to the lower ranges of income. The present Income-tax is very defective in this regard. Only during the last three years, there has been a slight differentiation between the earned and unearned incomes. As in other countries, income-tax in India should provide an exemption for wife as well as children. The granting of relief on income-tax should be taken up either simultaneously with or soon after the passing of the Estate Duty Bill. Otherwise, the country would be having all the steepness and progression without the ameliorative relief to the community, resulting in great hardship, and even certain amount of injustice.

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