(d) Terminal tax on goods carried by sea.

15.50 We gather that although no terminal tax is levied on cargo, port dues on ships and wharfage on cargoes are charged by major ports under the provisions of the Indian Ports Act, 1908 and Major Port Trust Act, 1963 respectively. The Ministry of Shipping and Transport has pointed out that the shippers in India are already complaining that port dues and other service charges collected at the ports are very high and should be reduced. The Ministry feels that the existing charges on cargo are already substantially high in India, compared even to neighbouring countries. It, therefore, does not favour imposition of any further tax on cargoes carried by ships.

15.51 The Fifth Finance Commission was of the opinion that a terminal tax on goods carried by sea need not be levied.

15.52 We are impressed by the consideration that shippers in India, as pointed out by the Ministry of Shipping and Transport, are already complaining that ports dues and other service charges collected at the ports are very high. Further-more, only a few States are in favour of levying terminal tax on goods carried by sea. This is understandable when it is remembered that under Article 269 the tax is divisible only amongst States within which it is leviable, and, therefore, unless a State has a port it would not have a share in the tax. For these reasons we do not think that there is scope for raising revenue by levy of terminal tax on goods carried by sea.

(e) Terminal tax on goods and passengers carried by air.

15.53 After considering the views of the Ministry of Tourism and Civil Aviation, Air India and Indian Airlines, and the likely yield from such a tax, the Fifth Commission did not recommend the levy of a terminal tax on passengers carried by air, whether on domestic or international traffic. It did not also think that the levy of such a tax on cargo carried by air would be advisable at a stage when this mode of transport of goods was not sufficiently developed. The Ministry of Tourism and Civil Aviation has, in its representation to us, opposed the levy on many grounds, which are all too familiar and need no repetition. Though a number of States are in favour of levying a terminal tax on goods and passengers carried by air, we are of the view that such a tax would not be practicable. Apart from other considerations, both for a terminal tax on passengers and goods carried by air, a distinction would have to be made between domestic and international traffic. A terminal tax on passengers on international routes might adversely affect tourist traffic. Nor would a terminal tax on air cargo, both domestic as well as international, seem to be desirable at this stage of the development of the country when transport of cargo by air forms a small proportion of the carriage of cargo by all modes of transport taken together. For these reasons, we are not in favour of a terminal tax on goods and passengers carried by air.

III — TAXES ON RAILWAY FARES AND FREIGHTS

(a) Taxes on railway fares

15.54 A tax on railway passenger fares was initially levied under the Railway Passenger Fares Tax Act 1957, which came into force with effect from 15.9.1957. The tax was chargeable as a percentage of the fares. The tax was subsequently repealed by the Government of India from 1st April, 1961 in pursuance of a recommendation of the Railway Convention Committee, 1960 to the effect that the levy of the tax had reduced the scope for raising railway passenger fares. The States were, however, compensated by a fixed lumpsum grant in lieu of a tax on railway passenger fares.

15.55 The Fourth Finance Commission noted the almost unanimous view of the States that the fixation of the grant at a specific level had deprived them of a potential elastic source of revenue. In their memoranda submitted to the Fifth, Sixth and Seventh Finance Commissions, the States urged that either the tax on railway fares be revived or the quantum of the grant in lieu of a tax be increased and fixed as a percentage of the railway passenger earnings. Taking note of the various views urged before it, both by the States and by the Ministry of Railway administration, the Fifth Finance Commission finally came to the conclusion that there was no scope for reimposition of the tax on railway passenger fares in the circumstances then obtaining. It, however, suggested that this question be reviewed by the Government of India, if and when the railway finances showed sufficient improvement.

15.56 The Sixth Finance Commission noted that almost all the States had forcefully drawn its attention to the inequity involved in the replacement of a tax on railway passenger fares by a fixed grant. It

15.43 Having regard to the various views placed before us, we feel that a tax on goods carried by railway might distort the relativity between railway and road freights. Further, apart from the administrative difficulties involved, there is no doubt that such a tax would restrict the scope for raising rates of freight on goods carried by rail. The levy of a terminal tax would also have an economic impact in that it might push up the prices of goods. Therefore, the balance of advantage appears to be not in favour of levying such a tax.

(b) Terminal tax on passengers carried by railway

15.44 There already exists, under the provisions of the Terminal Tax on Railway Passengers Act, 1956, a terminal tax on passengers carried by railway from or to certain places of pilgrimage or where fairs, melas or exhibitions are held. The proceeds of the tax are collected by the Ministry of Railways and credited to the Consolidated Fund of the concerned States. The Act permits new stations being added to the list as also enhancement of a terminal tax during specified periods. Although this tax is levied under Article 269 of the Constitution, the Act itself restricts the levy of the tax to places of a particular category, and the Central Government has not used its powers to levy a general terminal tax on passengers carried to other places. As a precondition to the levy of a terminal tax, or, to its enhancement, the Act requires a parallel tax to be levied on passengers travelling by road.

15.45 The Fifth Finance Commission tried to make some estimates of the likely yield from such a tax, and was of the view that the yield from the tax might not exceed Rs.5 crores per annum. Considering the administrative difficulties and the inconvenience involved in collection, and the need to levy a corresponding tax on passengers travelling by road, that Commission did not think the levy of this tax to be worthwhile.

15.46 The Ministry of Railways, the views of which we obtained, has said that collection, accounting and reconciliation of the amounts to be passed on to the States would be a cumbersome process. It has added that a general extension of the levy of a terminal tax, if resorted to, would increase the volume of accounting work, necessitating additional staff and other administrative infrastructures. The Ministry thinks that with the cost of collection to be retained by the railways the resultant gains to the State Governments would not be commensurate with the all-round effort that such a tax would involve. Further, it has argued that the extension of the Terminal Tax on Railway Passengers Act, 1956 to cover all passengers would restrict the scope for increase in railway fares and adversely affect railway finances.

15.47 As already stated, a terminal tax on passengers carried by railway to and from certain notified pilgrim centres is at present being levied. However restrictive and limited in scope the tax may be, it is nonetheless a terminal tax under Article 269(1)(c). Therefore, a strict interpretation of paragraph 8 of our terms of reference could be that since a terminal tax on passengers, albeit restricted in nature, is already being levied, a general terminal tax on passengers carried by railway would lie beyond our terms of reference. In any case, not many States have expressed themselves in favour of a terminal tax on passengers carried by railways. There is no doubt that the levy of such a tax would involve accounting and administrative difficulties, which may be out of proportion to the likely yield from such a tax. We do not therefore recommend such a levy.

(c) Terminal tax on passengers carried by sea.

15.48 We understand that most of the passenger services by sea are operated by the public sector shipping companies from Indian ports, and are heavily subsidised by the Government for various socio-economic reasons. These services cater to the needs of the people living in far flung and backward areas like the Andaman & Nicobar and Lakshdweep islands as also to carry pilgrims during the Haj season. We gather from the Ministry of Shipping & Transport that the fares of passenger services have been kept very low in the interest of the poor travelling public and are subsidised. The Ministry of Shipping & Transport does not therefore consider desirable the imposition of a terminal tax on passengers carried by sea from Indian ports.

15.49 The Fifth Finance Commission estimated that even if a terminal tax were levied at Rs.2 to Rs.5 per deck passenger and Rs.10 to Rs.15 per saloon or cabin passenger, the yield was not likely to exceed Rs.50 lakhs. That Commission therefore did not think that the imposition of such a tax on this mode of transport would be justified. We agree with the Fifth Commission. Considering the kind of clientele, the places to which the services are operated and the limited revenues that might flow from such a measure, we do not consider imposing a tax on passengers carried by sea worthwhile.

15.34 In their memoranda to us, twelve States did not express any views about this duty while eight states opposed imposition of succession duty on the ground that the incidence of such duty and the existing estate duty would be on the same person or property. Two States, however, namely, Bihar and Rajasthan, have pleaded for the levy of a succession duty on a graded scale.

15.35 We also obtained the views of the Ministry of Finance on this question. That Ministry too is of the view that succession duty and estate duty are essentially similar in nature, and, that there would be no special gain in levying succession duty. We are of the same view, and do not consider that there is scope for raising revenues from succession duty in respect of property other than agricultural property.

II — TERMINAL TAXES ON GOODS OR PASSENGERS CARRIED BY RAILWAY, SEA OR AIR

15.36 We wish to summarise the views of the States before proceeding to deal with the specific taxes falling under this category.

15.37 Only thirteen States have commented on the scope for raising revenues from terminal taxes on goods or passengers carried by railway, sea or air. Of these, three States namely, Andhra Pradesh, Bihar and Karnataka are in favour of levying a terminal tax both on goods and passengers carried by railway, while Madhya Pradesh favours such a tax only on goods carried by railway. Rajasthan, on the other hand, has suggested the levy of such a tax on passengers only. As for terminal tax both on goods and passengers carried by sea, again only two States i.e. Andhra Pradesh and Karnataka are in favour of it. Madhya Pradesh favours such a tax only on passengers carried by sea. Thus, the majority of States, not taking into account those which had no comments to offer, are opposed to the levy of a terminal tax on goods and passengers carried by railway, or, by sea. However, a large number of States are in favour of levying a terminal tax on goods or passengers carried by air.

(a) Terminal tax on goods carried by railway

15.38 Although octroi duty, which is similar to terminal tax, is being levied by local bodies in many States on goods entering their territorial limits for consumption, sale or use therein, a terminal tax on goods carried by railway has not so far been imposed by the Government of India under Article 269 of the Constitution.

15.39 While examining the scope for levying such a tax, the Fifth Finance Commission consulted the Railway Board, which was likely to be affected directly by this levy, and which would also have been the agency for its collection. The Railway Board argued that in the event of a levy of terminal tax on goods carried by railway it would be necessary to ensure that the States also simultaneously imposed a parallel tax on goods carried by road so that the relativity between rail and road freights was not disturbed. The Railway Board also pointed out that certain articles of common consumption would have to be excluded from the purview of the tax, and, if these exemptions were granted, the levy of the tax on the remaining commodities might not be financially worthwhile.

15.40 The Fifth Finance Commission believed that a terminal tax levied on goods carried by railway would be administratively inconvenient, as it would involve collection of tax at different rates according to the destinations, and also separate accounting of receipts to be transferred to each State for different local areas therein. It, therefore, observed that it would be far similar for municipal bodies to make suitable revisions in their rates of octroi or terminal tax or, preferably, impose some tax or duty on the sale or consumption of the goods entering their territorial limits.

15.41 We also sought the views of the Ministry of Railways. In its memorandum submitted to us, the Ministry has stated that there would be considerable accounting difficulties in respect of terminal tax on goods as this tax would have to be related to the weight and volume of the consignment. Moreover, apart from the administrative difficulties involved in collecting the tax and allocating the proceeds to the States, the levy of such a tax would also limit the scope for the Ministry of Railways to raise the rates of freight on the carriage of goods.

15.42 The Department of Economic Affairs in the Union Ministry of Finance is of the view that a terminal tax is more or less a form of octroi. It has also added that the Ministry has been advising State Governments to abolish octroi. In its opinion, terminal taxes are an ineffective and irksome means of raising revenues, and the scope for this tax is limited considering the existing duties and sales tax on various items.

comments in their memoranda to us on the scope for enhancing revenues through revision of these duties. Most of these States are in favour of enhancing the excise duty on toilet preparations. Only Andhra Pradesh and Karnataka have suggested that the excise duty on medicinal preparations may be increased, though Karnataka has said that this should not be done in the case of life saving preparations.

15.27 Since the rates of excise duty on medicinal and toilet preparations were increased as recently as in 1982, we do not think that there is at present scope for enhancing this duty.

15.28 To sum up, we are of the opinion that scope for raising the rates of duties exists only in respect of bills of lading, letters of credit and policies of general insurance. As we are not in possession of the requisite data to enable us to suggest specific increases in the rates of duty, we leave it to the Union Government to keep in view our recommendations in this regard and make appropriate revisions.

Part II

TAXES AND DUTIES UNDER ARTICLE 269

15.29 It is for the first time, after the Fifth Finance Commission, that the terms of reference of a Finance Commission include the scope for raising revenue from taxes and duties mentioned in Article 269 of the Constitution but not levied at present. This question has been referred to us by paragraph 8 of the President's Order.

15.30 Article 269 mentions the following duties and taxes that may be levied and collected by the Government of India but which shall be assigned to the States :

(a) Duties in respect of succession to property other than agricultural land;
(b) Estate duty in respect of property other than agricultural land;
(c) Terminal taxes on goods or passengers carried by railway, sea or air;
(d) Taxes on railway fares and freights;
(e) Taxes other than stamp duties on transaction in stock exchanges and futures markets;
(f) Taxes on the sale or purchase of newspapers and on advertisements published therein;
(g) Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-state trade or commerce.

Clause 2 of Article 269 further prescribes that the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that duty of tax is leviable in that year and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

15.31 Of the seven taxes and duties mentioned above, those at (b) and (g) namely, estate duty in respect of property other than agricultural land, and taxes on inter-state sale and purchase of goods are already being levied, and, hence, are outside our purview, as we are required to consider only those, taxes and duties which are not being levied at present.

15.32 In response to our invitation to States calling for suggestions, if any, relating to our terms of reference, we have received comments from them on the scope for raising revenues from the taxes and duties mentioned in Article 269. As the Union Government has no share in the proceeds of any tax levied under Article 269 of the Constitution and the entire proceeds are to be assigned to the States, we have given very careful consideration to the view of the States in coming to our conclusions.

I — DUTIES IN RESPECT OF SUCCESSION TO PROPERTY OTHER THAN AGRICULTURAL LAND

15.33 Clauses (a) & (b) of Article 269 relate to succession duty and estate duty respectively. These duties are referred to in entries 88 and 87 respectively of the Union List. Though these two duties are mentioned separately, in essence they belong to the same category. In this connection, it would be pertinent to recall the observations of the Fifth Commission that the incidence of both these taxes is on the same object, namely, property passing on the death of the owner to his or her successors. The only difference is that the levy of succession duties would be on parts of an estate passing on to each of the successors, while that of estate duty would be on the value of the whole estate, though all persons succeeding to the estate or parts of it would be liable for the duty. The Fifth Commission took the view that , as estate duty was already being levied, there would be no particular advantage in levying succession duties also.

Companies showing the date on which the transfer was executed. The Reserve Bank of India does not favour any increase in the existing rates arguing that this is likely to affect transfer of shares and retard the growth of new issues of shares. It feels that enhancement in rates might act as an impediment to the private sector in mobilising resources. It would also, according to the Reserve Bank of India, defeat the object of encouraging diversion of funds from non-productive investments to productive investments in shares and securities. The Reserve Bank of India thinks that any increase in stamp duty would be a retrograde step in the development of the capital market. We see the force of these arguments and are, therefore, not inclined to suggest any enhancement in the rates of stamp duty payable on transfer of shares.

(i) Debentures

15.21 Recent years have witnessed the growing importance of debentures in raising funds for working capital as well as for long term requirements of the private sector. Government has been encouraging companies to offer higher rates of interest on non-convertible debentures and to raise funds through this instrument. Efforts are also being made to develop a secondary market for debentures to facilitate their easy availability for purchase or sale. In the circumstances, we agree with the Reserve Bank of India that any increase in the rate of stamp duty on debentures would hinder the growth of the debenture market in the country, apart from increasing the cost of borrowings to the companies. We do not, therefore, see much scope at this stage for increase in the rates of stamp duty on debentures.

(j) Proxies

15.22 Proxies are normally given by share holders when they are not able to attend the general body meeting, but are interested in exercising their right to vote. The present rate of stamp duty on proxies is 30 paise. Though the rate of stamp duty is low, and there is perhaps scope for increasing it, this would be of very little significance from the point of view of enhancing revenue. We do not, therefore, see much point in raising the rates of duty on proxies.

(k) Receipts

15.23 The present stamp duty on receipts for amounts exceeding Rs.20/- is a flat 20 paise. Receipts for amounts upto Rs.20/- are exempt. As receipts are insisted upon as a matter of course for proof of payment, the Reserve Bank of India feels that the rate of stamp duty on receipts should not be increased. The Life Insurance Corporation of India has also pointed out that it has to bear the stamp duties on receipts, and that any increase in stamp duty would increase its expenses. We have received some suggestions that the exemption limit be raised, and, above that limit the rate be graded according to the amount involved.

15.24 A receipt is perhaps the commonest document in general use and, also the most frequently executed both in the commercial and non-commercial world. We do not think it would be advisable to raise the rate of stamp duty on such a document, or make the calculation of such a duty complicated by having graded rates.

II — DUTIES OF EXCISE ON MEDICINAL AND TOILET PREPARATIONS

15.25 We turn, next, to the duties leviable under entry 84 of the Union List which reads as under : "Duties of excise on tobacco and other goods manufactured or produced in India except :-

(a) alcoholic liquors for human consumption;
(b) opium, Indian hemp and other narcotic drugs and narcotics;

but including medicinal and toilet preparations containing alcohol of any substance included in sub-paragraph (b) of this entry".

15.26 The Medicinal and Toilet Preparations (Excise Duties) Act, 1955 imposes duties on medicinal and toilet preparations. The Act provides for the levy and collection of a duty of excise, as specified in the schedule to the Act. The Act is administered by the Department of Revenue which has not offered any comments to us about the scope for raising the rates of duties. The Department has, however, reported that a suggestion to increase the rate of duty in respect of ayurvedic, unani and other indigenous systems of medicines and homeopathic preparations is under consideration of the Union Government in consultation with various States and Union territories. Only ten States have offered

Bank of India that there is some scope for increase in the rates of stamp duty on bills of lading, as the existing rates seem rather low; and, since this duty is levied at a flat rate, there is no adjustment to the increase in price levels that have taken place in recent years. Bills of lading in respect of inland navigation should, however, continue to remain exempt as before.

(e) Letters of Credit

15.14 A letter of credit is a primary document for financing sale of goods. Banks issue letters of credit by which they agree to accept bills drawn on them, subject to their being in accordance with the terms of credit. The stamp duty on letter of credit is at a uniform rate of Re.1. It has not been revised since June, 1976. The Reserve Bank of India has said that there is some scope for revising the rates of stamp duty payable on letter of credit without any adverse impact on trade or commerce. We are also of the same view.

(f) Life Insurance Policies

15.15 Life Insurance business is the monopoly of the Life Insurance Corporation of India. We understand that stamp duty payable on insurance policies is not collected from the policy holders but is borne by the Corporation itself. The expenditure incrurred by Life Insurance Corporation on Stamp Duty paid on life policies is estimated at Rs.151 lakh in 1980-81 and Rs.178 lakh in 1981-82. The rate of duty is 40 paise for every thousand rupees of insured value.

15.16 In its memorandum submitted to us, the Life Insurance Corporation has said that any increase in stamp duty on policies would increase the management expenses which, in turn, affect the premium rates and diminish the valuation surplus, 95 per cent of which is allocated to the policy holders by way of bonus on the with-profit policies. The impact of an increase in the stamp duties payable on life insurance policies would fall on the Corporation alone. The Government wants to encourage extension of insurance to rural and urban areas, and, as the Life Insurance Corporation through its life cover mobilises the savings of the community on a large scale, any increase in stamp duty will raise the cost of insurance to the policy holders. No doubt an increase in stamp duty would benefit the States, but, at the expense of policy holders. In view of this consideration, we are not in favour of any enhancement of rates on stamp duty on life insurance policies.

(g) General Insurance Policies

15.17 The general insurance business in the country is handled by the General Insurance Corporation and its four subsidiary companies. We understand that stamp duty for all classes of insurance, except marine insurance, is borne by the insurance company. Stamp duty on marine insurance is borne by the insured. The General Insurance Corporation of India and its four subsidiary insurance companies spent about Rs.85 lakhs in 1980 and Rs.95 lakhs in 1981 on stamp duties on fire and other classes of insurance policies. No record of stamp duty is kept in respect of marine insurance.

15.18 The General Insurance Corporation, in a memorandum to us, has submitted that, as a public sector undertaking the entire proceeds of the Corporation and its four subsidiary Companies go to the Central Government. Apart from dividends, income tax is also paid to Government. Besides, 75 per cent of the investible surplus is required to be invested in Government securities, and socially oriented investments. Consequently, the Corporation says, there is no justification for increase in the rates of stamp duty on general insurance. The Corporation further says that it provides insurance to the weaker sections of society by devising suitable forms of policy such as Janata Personal Accident Insurance, Grameen Accidents Insurance, hut insurance, etc. The Corporation has even suggested that the Government might consider reducing or waiving stamp duties on general insurance altogether so that the premium can be reduced on such categories of policies.

15.19 The Reserve Bank of India has said that the considerations that apply to policies of general insurance are quite different from those relevant to life insurance, and that there is scope for raising stamp duty on policies of general insurance. In its view this is also unlikely to affect the business of insurance companies. We concur with this view and think that there is some scope for raising rates of stamp duty on general insurance, including marine insurance.

(h) Transfer of shares

15.20 The existing rate of stamp duty on transfer of shares is ad valorem. There is no scope for undervaluation as all the transfer deeds executed by sellers bear the stamp of the Registrar of

of stamp duty on bills of exchange, promissory notes, transfer of shares, debentures and receipts. It, however, says that there is scope for increases in stamp duty on bills of lading, letters of credit, policies of insurance and proxies, as the duty currently payable on these instruments is low and levied at flat rates. However, for want of adequate data the Reserve Bank of India has not been able to quantify the likely revenue that might flow from the revision of rates on these instruments.

(a) Bills of exchange

15.7 The rates of stamp duty payable on bills of exchange very according to the usance and the amount of the bill. Bills of exchange payable on demand do not attract any stamp duty. The Reserve Bank of India thinks that bills of exchange play an important role in trade and industry. In its opinion, any increase in stamp duty on bills of exchange would be misconceived as it would adversely affect commerce which, in turn, would have repercussions on the economy as a whole. Of the nationalised banks which have responded to our request for comments, six are in favour of an increase in stamp duty while five are opposed to it. Seven States, which alone have offered their comments on this issue, have expressed themselves in favour of increase in stamp duty on bills of exchange.

15.8 After considering the views received by us, we are inclined to agreė with the Reserve Bank of India that if the stamp duty on bills of exchange is increased, it is likely to be detrimental to the growth of trade and industry. We, therefore, do not think that it would be desirable to raise the rates of stamp duty on bills of exchange.

(b) Cheques

15.9 Stamp duty was payable on cheques prior to 1927, but was withdrawn in July 1927 on the recommendation of the Royal Commission on Indian Currency. Reimposition of stamp duty on cheques has been considered time and again, but has not been revived on the ground that it would retard spread of the cheque habit and, in consequence, the development of banking in India. The Taxation Enquiry Commission also did not favour levy of a stamp duty on cheques. The Reserve Bank of India has pointed out that the reasons earlier adduced by the Taxation Enquiry Commission still hold good; besides, reimposition of a stamp duty on cheques would adversely affect the deposit mobilisation effort of the banking system. In their comments sent to us, only two nationalised banks have favoured the reintroduction of stamp duty on cheques, while four have opposed this. All the seven States, which have given their comments, are in favour of a stamp duty on cheques.

15.10 We find much force in the arguments against reimposition of a stamp duty on cheques. Moreover, some exemptions may have to be given; for instance, cheques issued by small account holders may have to be exempted from the levy of a stamp duty. This would entail a considerable amount of administrative work disproportionate to the revenue that may be earned. We do not, therefore, think that there is any scope for reimposition of stamp duties on cheques.

(c) Promissory Notes

15.11 A promissory note, when payable on demand, is chargeable under stamp duty according to its amount, or, value, subject to a maximum duty of 25 paise. Promissory notes, when payable otherwise than on demand, are subject to the same duty as bills of exchange. The stamp duty on bills of exchange and promissory notes is ad valorem. This takes care of the increases in prices of goods or services paid for by the instrument. The Reserve Bank of India sees little scope for increase in the existing rates of stamp duty on promissory notes. The nationalised banks are, again, divided in their views; seven are in favour of increase in the rates of duty while three are against. All the seven States, which have expressed their views, are in favour of increase in the rates of duty.

15.12 A promissory note is a document in very common use in trade and commerce. It should not be subjected to an excessive stamp duty as that would be counter-productive. We think the existing rates are adequate and the fact that the duty is paid ad valorem in respect of promissory notes, payable otherwise than on demand provides adjustment to inflation.

(d) Bills of lading

15.13 The current rate of duty on bills of lading is 25 paise regardless of the amount involved. Bills of lading in respect of inland navigation are, however, exempt from duty. We agree with the Reserve

CHAPTER XV

TAXES AND DUTIES MENTIONED IN ARTICLES 268 AND 269 OF THE CONSTITUTION

Part I

DUTIES UNDER ARTICLE 268

15.1 It is for the first time that the scope for enhancing revenues from the duties mentioned in Article 268 of the Constitution has been referred to a Finance Commission. We have been asked to do this by paragraph 8 of our terms of reference.

15.2 Article 268 lays down that such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected (a) in the case where such duties are leviable within any Union territory, by the Government of India, and (b) in other cases, by the States within which such duties are respectively leviable. Further, the proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State. The duties mentioned in Article 268 fall under entries 84 and 91 of the Union List in the Seventh Schedule to the Constitution. We shall deal first with the duties mentioned under entry 91, and, thereafter with those mentioned under entry 84.

I - Stamp duties

15.3 Entry 91 of the Union List empowers the Centre to fix the rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. These documents are normally executed in the course of transactions in banking, industry, trade, and commerce. The inclusion of these documents in the Union List enables the rates to be kept uniform throughout the country.

15.4 The levy and collection of stamp duty on Central instruments is governed by the Indian Stamp Duty Act 1899, which was last amended in 1976. The rates of stamp duty on certain instruments namely, bills of exchange, promissory notes payable otherwise than on demand, letters of credit, transfer of shares, proxies and receipts were revised in June 1976.

15.5 Apart from obtaining the views of the States regarding the scope for enhancing revenues by revision of stamp duties on the instruments mentioned above, we also invited the comments of the Department of Revenue, and the Banking Division of the Ministry of Finance, Reserve Bank of India, Life Insurance Corporation, the General Insurance Corporation, and the nationalised banks. Though we shall recall the views expressed by them while dealing with the individual instruments, it may not be out of place to briefly sum up their comments.

15.6 After examining the matter in the light of the comments received by it from the different State Governments, and the recommendations made by the Law Commission in its 67th Report (March 1977), the Department of Revenue has opined that there is scope for increase in the rates of stamp duty atleast in certain cases. The Department of Revenue also consulted the Department of Economic Affairs before conveying its views. The Department of Revenue has, however, cautioned that the question of determination or revision of rates of stamp duties involves various aspects including pragmatic and legal considerations. The Department of Economic Affairs in the Ministry of Finance has merely agreed with the views expressed by the Reserve Bank of India. The Reserve Bank of India has said that any decision to raise stamp duties on instruments falling under entry 91 of the Union List should be taken only after considering its likely impact on the economy, the revenues likely to be derived, and the cost of administration including printing, vending, etc. It is not in favour of reimposing stamp duty on cheques, as it considers this a retrograde step. (Stamp duty was being levied on cheques prior to 1927, but was later withdrawn in order not to impede the growth of banking habit among the people). As for other instruments, it does not regard as desirable any increases in the existing rates

observed that in providing for a tax on passenger fares under Article 269, the framers of the Constitution had presumably intended to give the States access to a modest share in the growing revenues of the Ministry of Railways, and that this objective had been thwarted by substitution of railway passenger fares tax by a fixed lumpsum amount of grant. That Commission felt that the repeal of the passenger fares tax and its replacement by a fixed grant was not quite in accordance with the spirit, if not the letter, of the provisions of Article 269 of the Constitution. It, therefore, urged the Government of India to redetermine the amount of grant payable in lieu of a tax on railway passenger fares in accordance with what the States would have got if the tax on railway passenger fares had continued in its original form.

15.57 The Seventh Finance Commission appreciated the force of the arguments put forth by almost all States, that a fixed grant was not an adequate compensation for a tax on railway fares as it did not take into account the considerable buoyancy in the earnings of the Indian railway brought about by rapid increases in passenger traffic. On the other hand it also appreciated that the railways also served certain socio-economic purposes, and that as the largest departmental undertaking, the Ministry of Railways should be enabled to operate at a profit so as to be in a strong financial position. That Commission, therefore, suggested that the Government of India should specifically refer the question to the Railway Convention Committee to consider the question of increase in the grant payable to States. None of the previous Finance Commissions, however, recommended reimposition of the tax.

15.58 In its memorandum to us, the Ministry of Railways has said that the levy of a tax on passenger fares, if continued, would have undoubtedly placed severe limitations on the capability of the railways to generate internal resources, since a percentage of every fare increase in the tax-inclusive fare would have been unavailable to it for meeting the developmental needs of the railways. Over the years, this would have resulted in severe strains to the finances of the railways. The Ministry has argued that the revival of the tax would be a retrograde step as it would adversely affect the finances of the railways.

15.59 While intimating his views Shri H.C. Sarin, Chairman, Railway Reforms Committee, has explained that the Railway Passenger Fares Tax Act, 1957 was repealed because it had reduced the scope for increase in railway fares. Reimposition of a similar tax would, therefore, in his view, be a retrograde step and would adversely affect railway finances. He also remarked that the railways were poised for phenomenal growth in traffic, and, in the years to come, large sums would be needed for investment to enable the railways to move the projected traffic. Shri Sarin concluded that, as the railways would have to depend increasingly on their international finances and could not hope for any substantial budgetary support the scope for the railways to raise revenue should not be reduced.

15.60 In their memoranda to us, the majority of States are in favour of reimposition of a tax on railway passenger fares, because they are dissatisfied with the quantum of grant that is at present being given to them in lieu of a tax. As will be seen from Chapter entitled "Grant in lieu of Tax on Railway Passenger Fares", we have recommended an increase in the grant payable to the States in lieu of tax on railway passenger fares from Rs. 23.12 crores to Rs. 95 crores per annum. We think that this should end the grievances of the States.

15.61 However, in order to answer our terms of reference we have still to say whether there is scope for imposition of a tax on railway passenger fares. We recognise that the Ministry of Railways will need enormous funds for further development during the forecast period. But, we are not convinced that the mere imposition of a tax on railway fares will drastically curtail the scope for raising the fares. Many States have imposed a tax on bus fares but that has not prevented the fares being raised. Besides, as against the needs of the Ministry of Railways we have also to balance the needs of the States. Therefore, taking all aspects into account, we would say that there is scope for levying a tax on railway fares, but, it is obvious that no such tax should be levied so long as the present arrangement by which the Centre gives a grant to the States in lieu of such a tax continues to exist.

15.62 Shri A.R. Shirali has some reservations on this issue. He is of the opinion that the question of re-imposition of the tax has to be examined on merits. Needs, whether of the railways or of the States, cannot be the only consideration; other means are available to take care of these. The very fact that we are recommending the distribution of the grant in lieu of the repealed tax on the basis of collection and not needs is relevant. It would be a different matter if any quid pro quo was involved. This does not appear to be the case and the analogy of the tax on passengers carried by road transport does not seem apt. Purely on merits, it would appear that the provision for levy of the tax is a relic of the days when the railway set-up was different. Perhaps, it has little relevance or economic justification in the present circumstances.

(b) Taxes on railway freights

15.63 The Fifth Finance Commission was of the opinion that the freight structure should be consistent with the objectives of the economic policies of Government. It saw no advantage in the levy of a tax on railway freights, having regard to the then financial position of the railways and the movement of large number of commodities like foodgrains, coal, coke and ores which may, for reasons of policy, have to be exempted from such a tax.

15.64 The Ministry of Railways has represented to us that the type of traffic that moves by rail consists predominantly of essential commodities like foodgrains, coal, raw materials for industries and similar other items, and that any enhancement of freight on these articles would have severe repercussions on the economy as a whole. It has pointed out that if in spite of these considerations, additional revenues were raised which were to become unavailable for the railways' developmental needs and were to be passed on to the States, the finances of the railways would come under greater strain than at present. It has also invited our attention to the findings of the Rail Tariff Enquiry Committee which had remarked that owing to continuing adverse trends in the finances of the railways, maintenance inputs and provision for depreciation reserves had been receiving reduced allocations. The Committee was strongly of the view that any opportunity for raising additional revenues through the railways should be allowed to be utilised for the development of the railways itself. It felt that it would be imprudent to consider any steps which would result in diverting a share of the additional earnings for purposes other than the railways' own rehabilitation and developmental works.

15.65 In its comments, the Ministry of Finance has said that the freight structure should be an instrument of economic development of the country and must be consistent with the larger economic policies of the Government. It adds that a tax on freight, being a multipoint tax, is bound to add substantially to the costs of production and to increase the inflationary pressures in the economy. It has also endorsed the views of the Ministry of Railways and the Rail Tariff Enquiry Committee by saying that any further resources raised through the railways should be available for the developmental needs of the railways alone.

15.66 Only eleven States have commented, in their memoranda to us, on the scope for a tax of this nature. They are, by and large, in favour of imposition of such a tax.

15.67 We think that, even if a tax on railway freights were levied, a large number of commodities might have to be exempted. Moreover, if a tax on railway fares is fraught with administrative and accounting difficulties, it is obvious that these would be even greater in the case of a tax on railway freights. Besides, the inflationary effect of such a tax cannot be ignored. We therefore see no scope for raising revenue by the imposition of a tax on railway freights.

IV — TAXES OTHER THAN STAMP DUTIES ON TRANSACTIONS IN STOCK EXCHANGES AND FUTURES MARKETS

(a) Taxes on transations in Stock Exchanges

15.68 Stock exchanges in India are regulated by the Central Government under the Securities contracts (Regulation) Act 1956, which came into force in February 1957. Stock exchanges help in mobilising the savings of the community and channelling them into industrial securities. Stock exchanges also serve as a market place for purchase and sale of securities, and through these operations they ensure liquidity of investments in securities. Except transactions that take place between brokers, documents are used for allotment, issue and transfer of shares and debentures, and also for sale and purchase of securities. All these documents are subject to stamp duties. Under entry 91 of the Union List, the Central Government levies stamp duties on the transfer of shares and on debentures, whereas States levy stamp duties on certain instruments relating to shares and debentures like letters of allotment of shares, transfer of debentures and the like under entry 63 of the State List.

15.69 We invited the views of the associations of major stock exchanges. They are unanimous in their opposition to the levy of a tax on transactions in the stock exchanges. They have pointed out that stock exchanges play a crucial role in mobilising capital required for the growth of industry and that a tax on their transactions would have serious repercussions on trading in securities. They have also argued that such a tax would run counter to the Government's attempts to develop primary and secondary markets in industrial shares and debentures, to diffuse large holdings and to broad-base investments.

15.70 Only ten States have given their views regarding the imposition of this levy. Of these, six States are in favour of levying a tax on transactions in stock exchange and four are not in favour of such a levy.

15.71 The Department of Economic Affairs of the Ministry of Finance has, in a note to us, also opposed any such levies. It has explained in detail the functions of the stock exchange and the vital role played by jobbers in stock exchange transactions. In its view, any tax on transactions or on the turnover of exchanges would primarily hit the jobbers' operations, which would virtually drive away this highly specialised class of operators, and this could result in malfunctioning of stock exchanges. That Department of the Finance Ministry has also emphasised that the efforts of the Central Government, in the last few years, to develop a broad-based capital market in the country would be set at nought, as the tax on stock exchange transactions would adversely affect liquidity of investments, cripple the capital markets and discourage investors.

15.72 There can be no doubt that the development of stock exchanges in the country is at a formative stage. In this context the opposition of the stock exchanges and the Ministry of Finance to the levy of a tax on transactions in stock exchanges gathers greater force. The Central Government is also attempting to nurture the growth of stock exchanges. In these circumstances it does not seem advisable to us to recommend any such levy.

(b) Taxes on transactions in Futures Markets

15.73 Forward contracts are regulated by the Forward Contracts (Regulation) Act, 1952. The Act is primarily concerned with the regulation of forward contracts other than non-transferable specific delivery contracts in notified commodities other than securities, though it provides for the regulation of non-transferable specific delivery contracts if considered necessary by Government.

15.74 Futures transactions are contracts for sale and purchase of goods at a future date. Although the contracts are for delivery of the commodities concerned, they are primarily entered into for the purpose of settlement of the price differences over a period of time. The justification for such contracts lies in that they provide an insurance against adverse price fluctuations to the manufacturers, processors, stockists, etc. Future trading on an appreciable scale cannot be conducted except on an organised basis. Organisations known as Commodity Exchanges, consisting of bodies of merchants or trade associations provide a clearing house and trading space where members and brokers enter into future contracts by open bidding. The Commodity Exchanges frame rules and regulations to cover trading in such contracts. Futures trading in commodities like foodgrains and pulses is at present prohibited and permitted only in respect of four commodities; namely jute goods (sacking bags) at Calcutta; pepper at Bombay and Cochin, turmeric at Sangli and gur at the nine centres of Hapur, Muzaffarnagar, Rohtak, Delhi, Bhatinda, Ludhiana, Amritsar, Kanpur and Gwalior. Currently, no tax is levied by the Government of India on transactions in futures markets. Among the State Governments, only Maharashtra levies a stamp duty on futures transactions in turmeric and pepper.

15.75 The Fifth Finance Commission felt that the rate of tax on transactions in futures markets would necessarily have to be very moderate. Considering the small yield from such a tax it did not consider the imposition of the tax worthwhile. It further observed that such a levy would be justified more as a regulatory measure than on considerations of raising revenue.

15.76 We obtained the views of the Union Ministry of Civil Supplies on this question. That Ministry has stated that the question of levy of taxes, other than stamp duties, on transactions in futures markets was considered by it. But looking to the limited scope for a tax on transactions in futures markets, the extent of revenues likely to be raised and the administrative costs and difficulties involved, it did not think it advisable to impose such a tax.

15.77 Of the six States which have given their comments only three have favoured the levy of a tax on transactions in futures markets. We are, however, not persuaded that a tax on futures markets would result in any substantial revenue for the States or be commensurate with the administrative effort that it is likely to entail. We do not, therefore, find any scope for the levy of such a tax.

V — TAX ON THE SALE OR PURCHASE OF NEWSPAPERS AND ON ADVERTISEMENTS PUBLISHED THEREIN

(a) Tax on sale or purchase of newspapers

15.78 The question of levying a tax on the sale or purchase of newspapers and on advertisements published therein was examined by the Taxation Enquiry Commission in 1953. The Commission thought that a sales tax on newspapers would result in a degree of hardship out of proportion to the

revenue raised, particularly to newspapers with small circulation, in which category most of the newspapers published in regional languages fell. The Commission also felt that sales-tax on newspapers or a tax on advertisements in newspapers would not be worthwhile, considering that such measures might lead to fairly vocal protests.

15.79 The Fifth Finance Commission, after considering the views of the State Governments and the Ministry of Information and Broadcasting concluded that a tax on sale of newspapers would certainly be passed on to the readers and thereby adversely affect newspaper readership in which India already lagged behind many other countries. Having regard to the meagre revenue of not more than Rs.3.5 crores which was likely to result from a 10 percent tax on newspapers with a circulation of more than 15,000 and the likely adverse effect on the newspaper readership, that Commission did not favour imposition of sales tax on newspapers.

15.80 The Ministry of Information and Broadcasting, in a memorandum to us, has stated that the prices of dailies and periodicals have, in the recent past, been increasing on account of rise in prices of materials and services. It has added that the lower, and, the lower-middle income groups are finding it difficult to subscribe to newspapers; it would, therefore, neither be in the interest of the newspaper industry nor the public to levy a tax on sale or purchase of newspapers.

15.81 The Department of Economic Affairs in the Ministry of Finance has advanced the following arguments against imposition of a tax on sale and purchase of newspapers: first, that the impact of the Palekar Tribunal Report and the ad valorem customs duty of 15 per cent on imported newsprint had resulted in increase in the price of newspapers; secondly, that the Prime Minister had written to the Chief Ministers of the States requesting them to exempt newsprint from the levy of sales tax, and that the response of the Chief Ministers was, by and large, favourable; therefore, a levy of the sales tax on newspapers would be viewed unfavourably; thirdly, that as newspapers were now exempt from excise duty, it might not be proper to impose another levy by way of sales tax; apart from this the levy and collection of sales tax would also involve administrative difficulties; and finally, that any such levy might be construed as an anti-press measure. States are divided on this issue. In their memoranda to us, nine States have indicated that they are in favour of such a tax, while five have expressed themselves against it. No comments have been furnished by the remaining States.

15.82 We are given to understand that according to a calculation made by the Department of Expenditure in the Ministry of Finance in October, 1981 the total annual value of the sales of newspapers and periodicals having a circulation of more than 15,000 was Rs.250 crores. This was based on the assumption of an annual growth rate of 7 per cent over the circulation figures of newspapers given in the "Press in India-1977", and the assumption of an average price of 50 paise per newspaper and Re.1 per periodical. We have attempted to estimate the likely value of the sale of newspapers and periodicals by updating both the figures of circulation and the prices of the journals. According to this calculation, the annual value of sales of newspapers and periodicals might be of the order of Rs.400 crores. Even if a 5 per cent ad valorem tax is levied on the sales of newspapers and journals, the likely revenue from this measure would amount only to about Rs.20 crores per annum. We have no doubt that a tax on newspapers would be passed on to the readers. We feel that in a country where the newspaper reading habit is not sufficiently developed and widespread, a tax on newspapers would be a retrograde step. Taking all these factors into account, we do not recommend a tax on the sale or purchase of newspapers.

(b) Tax on advertisements published in newspapers

15.83 The Fifth Finance Commission, which considered this issue, felt that advertisement revenue formed an important source of income of newspapers, which in some cases might even be as high as 50 per cent to 75 per cent of the total income. It, however, felt that though the burden of a tax on advertisements would fall mainly on the advertisers and advertising agencies and not on the publishers, such a tax might adversely affect the finances of small newspapers. It therefore added that it would be desirable to exempt small newspapers and periodicals from such a tax, even if it were levied. That Commission also recognised that the burden of the tax might indirectly fall on the Government of India and the State Governments; nonetheless it considered that this was a source of revenue which offered some promise. For want of data, however, that Commission did not make any estimate of the likely revenue but opined that there was scope for such a levy. It suggested that the Government of India might examine the question of its levy, rate structure, exemptions to be given and other relevant matters.

15.84 The Ministry of Information & Broadcasting has stated to us that a tax on advertisements published in newspapers could be levied without directly affecting the economies of newspapers, if it were stipulated that the advertisers would be responsible for paying the tax, and the newspapers or periodicals publishing the advertisements would not have to share any part of the tax. It has, however, suggested that suitable exemptions should be considered, for instance, in favour of small and medium newspapers, advertisements by individuals and those in the classified columns.

15.85 The Ministry of Finance has estimated that the revenue from advertisements to newspapers and periodicals might be of the order of Rs.400 to 500 crores per annum. This, in its view, offers good scope for raising sizeable revenues by a tax on advertisements. Moreover, the Ministry does not envisage any administrative problems and difficulties in the levy and collection of such a tax, unlike a sales tax on newspapers and periodicals. It has, however, pointed out that the companies which advertise in newspapers and periodicals would claim a deduction in respect of the tax paid by them, and, hence, the receipts from corporation tax would go down to that extent. This however, in its opinion, need not inhibit imposition of such a tax.

15.86 Of the fourteen States which, in their memoranda to us, have given their views on this tax, twelve are in favour of such a levy with suitable exemptions to small newspapers.

15.87 We agree that such a levy does have potential for exploitation. We are, however, of the opinion that a tax on advertisements, if levied, should be borne by the advertisers themselves and not passed on to the newspapers and journals. We hope that suitable steps would be taken to ensure this. Suitable exemption could also be considered for advertisements inserted in small newspapers and periodicals. We, therefore, consider that there is scope for raising revenue from such a levy. We, however, leave it to the Government of India to work out the extent and modalities of such a levy as we do not possess sufficient data or information to make specific recommendations on this issue.

15.88 To sum up, after a detailed consideration of all the taxes and duties mentioned in Article 269 of the Constitution, but not levied at present, we have come to the conclusion that: —

(a) There is scope for levying tax on railway passenger fares, but, no such tax should be levied so long as the present arrangement by which the Centre gives grants to the States in lieu of such a tax continues to exist; and

(b) there is scope for raising revenues by levying a tax on advertisements published in newspapers and journals.

CHAPTER XVI

GENERAL OBSERVATIONS

16.1 In this chapter we will call attention to some of the difficulties we encountered, and make suggestions as to the ways in which these can be avoided.

16.2 Article 280(1) of the Constitution requires that a Finance Commission be constituted at the expiration of every fifth year or at such earlier time as the President considers necessary. The following table indicates the periods covered by each of the Finance Commissions set up so far, together with the corresponding period covered by the Five Year Plans:—

Finance Commission	Period covered	Five Year Plan	Period covered
First	1952-57	First	1951-56
Second	1957-62	Second	1956-61
Third	1962-66	Third	1961-66
Fourth	1966-69	Three Annual Plans	1966-69
Fifth	1969-74	Fourth	1969-74
Sixth	1974-79	Fifth	1974-79
Seventh	1979-84	Annual Plan	1979-80
		Sixth	1980-85
Eighth	1984-89	Seventh	1985-90

The recommendations of a Finance Commission have an important bearing on the resources position for the Five Year Plan. It was in recognition of this fact that the Third Finance Commission was asked to give its recommendations for a 4-year period to cover the remaining period of the Third Year Plan. The Fourth Finance Commission was asked to report for the 5-year period 1966-71 but its recommendations were terminated after three years when it was decided to treat 1966-69 as a period of three Annual Plans and take up the Fourth Plan covering the period 1969-74. The period covered by the recommendations of the Fifth and Sixth Finance Commissions coincided with the Fourth and Fifth Plans respectively.

16.3 The Seventh Finance Commission made recommendations for the period 1979-84. While it was still in the course of its proceedings, the Fifth Plan was terminated in 1977-78 and the concept of a Rolling Plan was adopted. This disrupted the synchronization between the period for which the Finance Commission was to make its recommendations and the Five Year Plans. With the subsequent decision to treat 1979-80 as an annual Plan period and to reformulate the Sixth Plan for the period 1980-85, the synchronization of the recommendations of the Seventh Finance Commission with the Five Year Plan was still not restored. This has had its inevitable effect on our work and has given rise to several problems.

16.4 The non-synchronization referred to above has now been continued for another plan period because our terms of reference require us to make recommendations for the five-year period 1984-89, which overlaps the last year of the Sixth Plan and the first four years of the Seventh Plan. Some of the difficulties we had to face stem from the fact that our recommendations will relate to parts of two Plan periods. For example, in making our recommendations, we are required under paragraph 5 of the President's Order to take 1983-84 as the base year even though it is not the last year of the Sixth Plan and then:

(a) to assess the revenue resources of various States for the five years ending with the financial year 1988-89 on the basis of the levels of taxation likely to be reached at the end of the financial year 1983-84 and the targets set for additional resource mobilisation for the Plan;

(b) to provide for adequate maintenance and upkeep of capital assets and maintenance of Plan schemes completed by the end of 1983-84; and

(c) to make an assessment of the non-Plan capital gap of the States on a uniform and comparable basis for the five years ending with 1988-89.

All these matters raised difficult issues for which no simple solutions could be found.