4.00 P.M

THE COMPANIES (AMENDMENT) BILL, 2000

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI ARUN JAITLEY): Madam, I move:

> "That the Bill further to amend the Companies Act, 1956, as passed by the Lok Sabha be taken into consideration"

Madam, I am extremely grateful to you for giving me this opportunity to table the Companies (Amendment) Bill, 2000 before this hon. House. At the very outset, I must state that on Monday, this Bill was passed by the Lok Sabha and about 40 amendments which had been suggested by the Standing Committee have been incorporated in this Bill. I am extremely grateful to the Members, and particularly, the Chairman of the Standing Committee, who very expeditiously and very thoroughly examined this Bill and suggested several changes to it which were unanimously accepted by the other House.

In 1996, the Government of India had constituted a Committee to go into the question of suggesting a comprehensive Company Law Bill. Suggestions were made and a report was received in August, 1997, which was referred to the Standing Committee on Finance because the comprehensive Bill ran into several hundred clauses. Last year, in 1999, the first part of the Bill was incorporated by way of an Ordinance, initially; and then approved by both Houses of Parliament, The 1999 Bill which has now become an Act had several major provisions; *inter alia,* it referred to a provision for sweat equity for employees, a provision for buy-back of shares, simplification of nomination facilities for legal heirs and representatives of deceased shareholders, enforcement of uniform accounting standards, and most important, the creation of an investor education fund. The suggestion was that unclaimed dividend lying with various companies as also interest whteh was unclaimed on various deposits in companies would go into the creation of an investor education fund.

(The Vice-Chairman (SHRI SANTOSH BAGRODIA) in the Chair.)

Similarly, Sir, the Companies (Amendment) Bill, 2000 has several important provisions. But the three most important provisions relate to transparency in corporate governance, improving the standards of corporate governance and" also creating provisions for investor protection. I will just,

briefly, outline some of the major amendments which have been included in this amending Bill. The definition clause has several important additions. The most important being the new definition of the word 'dividend' as also the new concept of employees' stock option, which has been defined in the Companies Bill. Dividend, Sir, now means and includes interim dividend. A large number of companies are declaring interim dividend, in addition to the regular dividend that they declare, and a legislative sanction to that has been provided for. The employees' stock option, i.e., giving of stocks to employees or directors of the company or officers of the company has been specifically provided for in the Bill. There is a specific amendment relating to a minimum share capital being provided, for both private and public limited companies. This amendment has a dual purpose. The first being that a minimum one lakh rupees will be the capital for a private limited company and five lakh rupees for a public limited company. So, the practice of people registering companies without any investment -- and such companies may become fly-by-night operators -- is to be discouraged. Secondly, on the Register of the Registrar of Companies today, a very large number of defunct companies which are doing no business are just registered. Therefore, a disincentive has been created so that those companies could be taken off the register which are defunct companies and which are not doing any business.

Similarly, Sir, a very important amendment relates to deletion of certain obsolete clauses like managing agents and treasurers. These were abolished long ago, but provisions relating to them continue to occupy the statutory space. Therefore, an amendment has been suggested for deleting various provisions which deal with managing agents and treasurers. Earlier, Sir, the transfer of a registered office of a company from one State to another required the prior approval of the Regional Director. Now, since a large number of vanishing companies have come into existence, it has been noticed that they transfer their registered office even within the State itself. As the size of some of the States is very large, this also requires the prior approval of the' Regional Director, in case there is a shift of registered office within the State, from one place to another.

The provision relating to some private companies being deemed public companies, after a passage of time, has been considered unnecessary, and it has been accepted by the Standing Committee that these provisions may be deleted.

Sir, a very important amendment relates to certain provisions which are related to the various market activities of the companies. These functions are now proposed to be transferred to the SEBI. The several penalties, in terms of fine, have been enhanced to almost ten times for the defaults which some of the companies may make.

Clause 19 seeks to add section 58AA. This is a very important provision relating to protection of the interests of small investors. The Companies Act now recognises the institution of small depositors. Once a company fails to pay back their amounts, it is obligatory for the company to inform the Company Law Board within sixty days. Once it informs the Company Law Board within sixty days, the Company Law Board is expected to pass the orders within 30 days, which is extendable by a maximum of 30 days. So, a complete remedy for the smail depositor, from the CLB, shall be there within a period of 90 days, which can be stretchable to 120 days. If these orders are violated, there are several deterrents on a company, that if you are not paying the small depositors, then, you can't collect further deposits. If you Collect further advances from banks and financial institutions, you are to pay back the small depositors first. There is also a penalty which has been provided for in the amendment.

Sir, additionally, there are other amendments relating to ensuring corporate democracy. Clause 80 amends section 192. Earlier, the voting at an AGM of a company was done either in person or by proxy. Now, the Bill creates an enabling provision that the Central Government may notify a category of resolutions which can be voted upon by postal ballot also. The definition of postal ballot has been extended by the Standing Committee so as to include electronic voting also.

Similarly, Sir, the payment of interim dividend has been made mandatory within a period of five days of its declaration. This is on the suggestion of the Standing Committee. There is also a default clause. In case, knowingly, the dividend has not been paid, then certain sections come upon the Directors of the company who are involved in the process of non-payment.

Clause tot provides for Director's Responsibility Statement, that is to say, the Directors of all categories are now expected to -file annualty a Director's Responsibility Statement that the accounts of the company have been personally gone through by them. They can't say that they have filed the accounts without applying their mind. They are, personally, to ensure

that the accounting standards have been maintained in the approval of the accounts of the company.

Similarly, Sir, special responsibilities have also been cast on the Auditors of the company. If certain adverse comments have been made, those adverse comments may go to the AGM of the company and they would be in bold print or in italics so that they are not concealed in some fine prints behind. The shareholders know, at least, what are the adverse comments that the auditors have made in relation to the company.

Similarly, Sir, a provision has been made with regard to certain Directors who default in relation to one company; their responaibilrty fays on other' companies on which they continue to be Directors. The Audit Committee, in order to ensure that the financial affairs of the company are maintained at the highest level, has been given wider powers. Even though the audit committee is constituted by the Board of Directors, its findings have been made binding on the Board of the company. In case the Board disagrees, the findings would go to the AGM of the company. These are the several amendments, amongst various other amendments, which I am not elaborating. Very comprehensive provisions have been suggested first by the Bill when it was tabled in the House, and thereafter, several additions have been made by the Standing committee. I may add, Sir, that the first instalment, if I may use the phrase, of the 1997 draft Bill had already beeo legislated by this House last year.

Second is that several amendments relating to the investors protection, adding transparency and maintaining higher standards of corporate governance which are internationally accepted standards today have been introduced by virtue of this BiH. There is one last limb which remains which we have not brought up along with these amendments which relates to an issue, as to the forum in which the commercial corporate disputes are to be settled. There have been several suggestions which have been made by the Standing Committee. The report is already with us. There was also a parallel committee relating to the functioning of certain Jostitutions such as the BIFR and the setflement of corporate disputes, forum such as the Company Law Board. The Committee headed by Justice Eradi has also made some suggestions. Taking a comprehensive vew with regard to the remaining suggestions which really relate to the Tribunal of the Company Law Board, the Government shall be bringing a Bill, If necessary, within a reasonable future date, as far as the third aspect is concerned. Sir,

these have been very well-meaning amendments intended to good corporate governance. I would appeal to the hon. Members here, that these having been approved also by the Standing Committee, I commend this for the acceptance of the hon. House.

The question was proposed.

संसदीय कार्य मंत्री तथा सूचना प्रौद्योगिकी मंत्री (**श्री प्रमोद महोजन**) : उपसभाध्यक्ष जी, इस पर चर्चा शुरू करने से पहले मेरी सदन से प्रार्थना है कि सदन का समय पांच बजे समाप्त होता है। यदि सदन उचित समझे, यह महत्वपूर्ण बिल है, समिति ने भी इसे देखा है, दूसरे सदन ने भी इसे देखा है, इसे पास करने के लिए अगर ज्यादा समय सदस्यों को बैठना पड़े तो हम बैठ सकते हैं। इसे आज ही सदन पारित कर दे तो बड़ी कृपा होगी।

SHRI RAJU PARMAR (Gujarat): We can sit late and pass this Bill. *(Interruptions).*

SHRI NILOTPAL BASU (West Bengal): Sir, I would like to have one clarification. Sir, some amendments were given in the morning but these amendments are not being circulated. . *(Interruptions)...*

SHRI MD. SALIM (West Bengal): At least the one amendment which I have given notice of, has not been circulated. . *(Interruptions)...*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Your point is that these amendments have not been circulated. . *(Interruptions)...* I will check with the office. ... The office will have to check it. . *(Interruptions)....*

श्री प्रमोद महाजन : सलीम जी, वह तो आप आफिस से चैक-अप कर सकते हैं।

श्री मोहम्मद सलीम : हां, सरकार से कोई शिकायत नहीं है।

SHRI PRAMOD MAHAJAN: Once a decision has been taken with regard to passing of this Bill, we will also help you in finding your amendments. *(Interruptions)....*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): I will let the hon. Member know about it. *(Interruptions)...*Shri Rahman Khan.

SHRI K. RAHMAN KHAN (Karnataka): Mr. Vice-Chairman, Sir. I rise to speak on the Companies (Amendment) Bill, 2000 whfeh has been passed by the Lok Sabha. Sir, this is an important piece ofttegislation. As the hon. Minister has said, there are 5,32,580 companies as on date involving a total paid up capital of Rs.2,72,865 crores. Hence the legislation

which we are going to pass for the administration of companies in the country is a very important piece of legislation which affects the life of every citizen of this country in one way or the other. The hon. Minister has rightly referred to a comprehensive legislation which was promised in this House and in the other House. The reason for not completing or bringing a comprehensive legislation has not been given. Why is this legislation being brought in a piecemeal way, first, through Ordinances, then second instalment, third instalment, fourth instalment, etc.? The reason has to be given to the Parliament as to why this legislation is being brought in a piecemeal way. Mr. Vice-Chairman, Sir, the hon. Minster has said that there are very important issues which have been addressed in this Amendment Bill.

Yes, though amendments look to be huge, nearly 200 amendments are there in this Bill but strictly speaking, there are about 30 amendments, which need to be debated. The rest of 200 amendments are only consequential or increasing the penalties, wherever it is there. So, I would not like to go into the other details. I would like to confine myself to legislations. Fourteen new sections have been added and there are 16 existing sections, which have been amended. Mr. Vice-Chairman, Sir, the hon. Minister said that there is some change in the definition clauses. I agree with him that there is need for certain definition. But one thing I would like to say is that while framing the definition of an officer, a statutory auditor is also included as an officer. An officer is one who comes under the control of the Board, the shareholders appoint the statutory auditor. His independence is affected by including the auditor as an officer. That was not the intention of the Standing Committee. I do not think that was the intention of the Government also. If an auditor is an officer, you can bring in other clauses to regulate the statutory audit. But to bring the audit that is an independent authority within the definition of "officer", is not correct and not judicious. Internal auditor, yes, but statutory auditors are also included in "officers". That is the amendment which I have moved. I would like the hon. Minister to look into it. Then, "deemed public limited company"has been removed. Some more explanation has to be offered as to why this provision has been withdrawn.

[THE VICE-CHAIRMAN (SHRI MD. SALIM) in the Chair.)

A deemed public limited company was a private limited company; if they attained certain level of transactions, they have to be treated as public limited companies. Now that you have removed this "deemed public limited

company", a private limited company will remain a private limited company, irrespective of the size of the company. Mr. Vice-Chairman, Sir, I would like to say here that now about the accountability aspect of private limited companies *vis-a-vis* public limited companies. So many sections of the public limited companies are exempted from operation *vis-a-vis* private limited companies. So, in that case there are private limited companies. Now.all the multi-national companies which are going to come here will be-going to be private limited companies because they are not required to have capital and go to the capital market. *So,* in that case, how do we ensure? In any case, {here will be borrowings from the banks; in any case public money 4s involved. So the accountability aspect has also to be looked into and the change from deemed limited to deemed public limited companies needs mere explanation.

You have transferred certain powers from the Registrar of Companies to SEBI because whenever there is a public issue by a public limited company, SEBI has to come into picture. How long will this dual control continue? Sir, SEBI should be given, except registration, the charge of every aspect of it because SEBI is a better organisation to control it rather than the Registrar of Companies. Today, the role of the Registrar of Companies is just like a post office. Now, there are 5,32,000 companies in the country. It is an admitted fact in the Report of the Company Law Board that not more than 60 per cent of the companies are complying with the regulations. So, almost, 80 per -cent of the companies, in spite of having regulations by the "Registrar of Companies, are not filing their returns, are not holding the General Body meetings and are not complying with the Statutory obligations. You- have given a lot of powers to 1he Registrar, starting from sedion24l to 280 and odd under the Companies Act, to take action against the defautfing companies. We would like to know as to how far the Registrar has used these powers to call for information and with regard to search and seizure. All the powers given to the Registrar have been defined from sections -24t to 260 and odd of the Companies Act. Today, if you go to the office of the Registrar of Gompanies, you will see the condition of the office. It is just like a sub-Registrar's office and nothing else. How do you expect that the Registrar of Companies is going to control Rs. 2,72,850. crores of paid up capital of this nation? It is a small office. You cannot get even a document from there and they will not 6e able to tell you whether a particular document has been filed. 1 would like to bring to the notice of the hon. Minister several prosecutions that they have launched. If you take into account the number of companies against

whom you have launched the prosecution then you wHI know that it is not more than 100 or 150 companies. I have got a statement. This is from the Company Law Board. This is, 'Details of investigation- of cases pending as on 31.03.1999.' In this, you have initiated-proceedings under section. 237 (B) to investigate companies. And, these cases are pending since as early as 1973. Sir, in the case of M/s Sudarshan Trading Company, the date of order was 31.12.1973. A court stayed it. For 27 years, the stay has not been vacated and it is still stayed by the court. This is the latest information, from the Company Law Board. Coming to Modi industries, the prosecution and investigation was launched on 12.05.1977 but still the stay has not been vacated. Com'mg to investrrient Finance Company, Karanpur Collieries, the Indian Express Newspaper Bombay Limited, in ail these cases, the prosecution case was filed in 1987 but, so far, no stay has been-vacated.

So far, no stay has been vacated. Still it is pending. Indian Express, Madurai, and Express News -all these cases were filed in 1987. For investigation cases, stay orders were obtained. But no action has been taken by the Registrar. They a/e lying as it is. It was the duty of the Registrar to get the stay vacated and then proceed with these things. What have you done after- 17,16 , or 23years, of investigation? If it is like this, how will the public invest in companies? How will the banks or the financial institutions have confidence in the functioning of the Registrar's office? Out of 11,900 prosecutions launched last year, 11,200 relate to non-filing. Either you ara-not holding the Annual General Body meeting or returns are not being filed. It is hardly 2% of the total default which the Registrars have addressed. Now, I come to Section 68 AA. It is regarding small depositors. It says ' Every company which accepts deposits from small depositors, shell intimate to the Company Law Board any default made by it --their own default— to the Registrar of Companies'. Then the Registrar will take action. The company in default will itself file it. Is this the mechanism of your Department? Are you asking the culprit, the thief to file his own FIRs? So, I think this provision has to be looked into. Then, you have brought out a very good "Citizen Charter." It is very good to look at. "Investigation into the affairs of companies, specially where complaints are received, prescribing cost audits rules and ensuring compliance." I would like to know how far this 'Citizen Charter' is being implemented by the ROC or the public. How far you have publicised it? It is there on paper only. Powers have been given to the Registrar. If that is the case, why have you gone in for the Voluntary Disclosure Scheme? Now, you have

allowed all companies who have .been defaulting for the last 20 years, to make a certain payment and get themselves relieved. Today, we would like to know whether you have collected the Rs. 100 crores which you were expecting. If you have collected, I would like to know whether you are going to use that amount in modernising the offices of the ROC. You should inform the Parliament , Fifty per cent of the problems are from the vanishing companies, what you call, fly -by - night* companies. They are in collusion with the Registrars. Otherwise, if they had been vigilant, no company would have escaped.

Mr. Vice-Chairman, Sir, while considering all this, the one thing which I would like to bring to your notice is that there is no provision of tribunals in the Bill. There should be Tribunals to have the disputes settled. There is no provision of Tribunals in the Companies Act. You are depending only on prosecutions. Sir, prosecution is not going to solve this problem, because 33,000 prosecution cases are already pending in the courts, and they will not see the light of the day. You should have a permanent mechanism within the legislation so ^s to have this prosecution or adjudication or something within the Department itself. Then, there are certain issues which are not being covered. For example, the issue related to winding up of proceedings. There was an assurance given in the Parliament that the liquidation and the winding up proceedings will be simplified, and the long process of winding up or liquidation will be addressed to. A "Committee was also appointed to look into this. We would like to know as to what has happened to the Report of the Committee on Winding up and Liquidation. Then, I would like to say something on Nidhi companies. We do not find anything about these Nidhi companies. Sir, why I am saying this is because this is a very grey area. We are taking the small depositors for a ride; blade companies, Nidhi companies and all these are included in it. There was a Committee, namely, the Sabanayagam Committee. It has submitted a report. What action the Government is going to take on that report is to be clarified. Then I would like to say something on cost audit. The purpose of cost-audit is to control the costing in different sectors. Now, the cost-audit has become a ritual. There is no comparative analysis of the cost. Now, for example, for a particular industry, a cost-audit is ordered. It may be either for sugar or textile or for any other industry. For example, the Government has notified around 682 companies which have to get their production cost audited and manufacturing cost audited. It covers companies like textile, sugar, soaps and detergent, shaving system, paper, airconditioner, milk,

food, jute, cables, fertilisers, Chemicals, cement, bulk drugs, engineering goods, bearings, etc. Now, I would like to know whether the Company Law Board has compiled the costing of the different companies or not. If the costing in x company is Rs. 100 and the costing in 'y' company is Rs. 200, have they found out as to why this difference is there? Otherwise, what is the purpose of cost-audit? Why have you introduced this? Who is monitoring it? Which is the Department in the Company Law Board which is monitoring these things? Then you said about the postal ballot. No doubt, it is a good thing because it was also there in the general body meeting, But, at the same time, the postal ballot can also be misused.

We know that in the election of the Presided of America, postal ballots and other things are playing havoc, i am not opposed to postal ballots for giving an opportunity. But a proper procedure has to be laid down.

Then, you have mentioned about Audit Committees. It is a good piece of legislation. There is need to have Audit Committees. But the Government has differed with the Standing Committee's recommendation. The Standing Committee has said that the Audit Committees are created by the Board and that, therefore, they are accountable to the Board. This is a point that has to be debated. You give to two or three Directors the overall power over the Board of Directors. So, the Standing Committee has differed with the Government's view.

Another important thing that has been brought out is about the appointment of auditors under section 227. It has been fixed that an auditor individually can audit no more than 20 companies, and, if a partnership firm is there, not more than 20 companies per partner can be audited. When "deemed public company" was removed, they have also said, "Exclude private limited companies from these 20 companies. The audit profession is saying, "Don't exclude these. Keep this tab." Why? Because, now, you have taken away "deemed public limited companies." So, even multinationals can be private limited companies, and they can remain private limited companies. Now, people prefer large companies to be private limited companies. So, what is demanded is that, including private limited companies, per auditor, it should not be more than that. There is a difference between the legal profession and the accounting profession. A person has to go into the accounts of the company and take personal responsibility, by certifying the audit. There is a limit to which a person can

take the responsibility. He cannot employ hundreds of assistants and certify any number of companies. That is why a well considered legislation was brought- Even if there is a big firm, the maximum number of audits that can be conducted by it is:

The number of partners x 20.

You have removed this, will mention the consequences, Mr, Vice-ChairmanI, Take, for example, a big group having several private limited companies. Sometimes, big groups will have 20, 30 or 40 private limited companies. They will be changing the funds from one company to another company. It will suit such companies to have one auditor for even 50 or 60 companies. They can have all the companies put together. Here, what the institute or the profession is demanding is that you should have for one. private limited company, one auditor; and for another private limited company, another auditor. Then, there will be transparency.

Anyhow, I have moved the amendment. I request the hon. Law Minister: let us not stand on some prestige. When a professional body that regulates the profession is demanding it, it is in the interest of companies and it is in the interest of transparency.

I want to tell this House that the Enron company is a private limited company. There are several such companies, multinational companies. One auditor cannot audit the accounts of the Enron company completely. So, I would urge upon the hon. Minister to take into consideration this particular aspect.

Regarding the prospectus, I want to say a few words. Today. because of the prospectus, the primary market is suffering. When a public issue is made, many operators are involved in it. The investing public has lost confidence in the primary market. Therefore, most of the companies which enter the market, have failed- to get requisite investment, in the last few years . No doubt, the SEBI has brought out certain guidelines. But what I feel is that the prospectus should be simplified. Today, there is a provision that a company has to issue a prospectus when it enters the market. One has to read the prospectus with the help of a magnifying glass as to what is contained in it. It is impossible to read. As a result, nobody reads it. The public will go by what appears-in the *Economic Times,* what appears in newspapers, what appears in the publity, whether a big hoarding is put up for the public issue or not These are the things

which the public go through. Nobody looks into the risk factor. You say, the risk factor has to be highlighted. As you said rightly, for an auditor's report, everything should be put in bold and italic letters. Here also, there is no need for 20 or 30 pages of prospectus. I think a simple prospectus which gives real issues and makes various parties personally liable is enough. For example, underwriters, managers to the issues, they should be made accountable. Now the managers to the issue who print beautiful booklets and brochures are escaping. Underwriter collects a huge amount. When the company fails, then, they escape. Only the investor would suffer. Of course, a few promoters will be prosecuted. They happily go and get bails. So far, how many people have been prosecuted? How many companies have vanished? The prosecution takes years to materialise. I suggest that underwriters, managers to the issue and brokers also should have a stake in the issue.

SHRI SURESH A. KESWANI (Maharashtra): They should be answerable.

SHRI K.. RAHMAN KHAN: Not only answerable, they should have stake in the issue.

Then, clause 86, equity shares, is not very clear. There are two kinds of equity shares, equity share voting and non-equity share voting. From this clause, it is not clear as to what are the voting and non-voting shares.

I request the Minister to clarify as to how non-voting shares work. It needs a little clarification.

Then, there is clause 252 about minority shareholders' representative. Here also, the Standing Committee is not in favour of this. The provision here says that if they have got 20,000 shares or less than that, then, they may elect a director to the board. There are two views. For the small shareholders, you are giving the postal ballot, right to postal ballot.

THE VICE-CHAIRMAN (SHRI MD. SALIM): You have three speakers from your party.

SHRI K. RAHMAN KHAN: Out of the one hour that we have, I have taken half an hour only.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Whether you will consume the full time or not is another matter. There are three speakers from your party.

SHRI K. RAHMAN KHAN: Here, in small shareholders, sometimes anti-social elements also may come because that is not properly drafted, So, I would like the hon. Minister to kindly clarify as to how this provision would function and what safeguards he is going to have to protect the company as a whole. It is a good provision as well as a dangerous provision. We would like the hon. Minister to clarify this.

There are other speakers also from my party. I would not like to take more time. At the time of passing the Bill, my amendments may be taken up. I have given notices of my amendments. I have already expressed my views on those amendments. I once again request the hon. Minister to consider the amendments. I thank you. Mr. Vice-Chairman, for giving me this opportunity to participate in the debate.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Mr. C. Ramachandraiah.

SHRI C. RAMACHANDRAIAH (Andhra Pradesh): Mr. Vice-Chairman, Sir, kindly first let me know the time allocated to me.

THE VICE-CHAIRMAN (SHRI MD. SALIM): Twelve minutes for your party. That is the time originally allotted. But now, since it is the fag-end of the day, you may take 10 minutes. No problem.

SHRI C. RAMACHANDRAIAH: Sir, Mr. Rahman Khan, the earlier speaker, who happens to be a practising Chartered Accountant, has dealt with, in detail, all the amendments that have been proposed in this Bill. Sir, I presume that because the comprehensive Companies Bill has been referred to the Standing Committee and the final report is yet to come, the Government has made an attempt to bring this Bill in this Session.

Sir, first, I will deal with the proposed amendments to which I want to draw the attention of the Minister. Clause 17 is with regard to shifting of registered office from one place to another within a State. The proposed amendment stipulates that it requires the permission of the Regional Director. I wonder how the Regional Director can be the best judge to shift the office from one place to another. The shareholders, according to their convenience, will judge the viability or the necessity of shifting. So, why should you create one more level of hierarchy to decide? I request the Minister to kindly take note of it.

Sir, with regard to the small deposits, the definition of the depositor in the case of the small deposits, covered in the section is too small. It does not cover the interest of the depositors who has made a deposit of more than Rs. 20,000/-. So, I request the Minister to increase the limit to Rs. one lakh. Thirdly, I come to the question of statutory audit. This aspect has been dealt with by my friend, Shri K. Rahman Khan. There is demand from the Institute of Chartered Accountants of India, which is the-Body representing the professionals in this field, that there are private companies with a huge turnover, and with a very big capita! base, and if the proposed amendment is accepted, the purpose of acquiring a major share of the audits of the public limited companies by most of the companies of the Chartered Accountants will be achieved, and most of the members of the profession, especially, the new comers, the new entrants, will be the losers. Then, allocation of more work of companies to the chartered accountant companies is also not good on the part of the profession because it requires a lot of independence, it requires a thorough check- up so that they can verify and certify the authenticity of the accounts which they are submitting to the General Body. That is why, alongwith Shri Rahman, I too have made a proposal to amend this provision.

Now, I come to the question of audit report. The auditor is competent only to quantify the effect of the financial irregularity and verify the veracity of the statement of accounts. It is pertaining to section 227 (3) (e). He is not the competent authority to comment on the impact of the administration of the company. So, this aspect has to be taken into consideration. The amendment is impracticable and will result in imposing undue responsibility on the auditor. One more aspect, which is very important, is the appintment of director by small shareholders. Sir, it is true that the small shareholders have to be given a representation. I do admit that. But, what for? Do you think that they can exercise their due diligence and provide a good administrative base? My opinion and my experience is that the institutional financiers will play a vital role. The equity market has been institutionalised. The small savings will be mopped up by the institutions and the institutions can act as a good representative of the small investors in this corporate world. Sir, recently, I have read this thing in the California Public Employees Retirement System. They have virtually thrown out the poorly performing managements. This aspect has to be taken into consideration. We should not go by the movements. To what extent, the representation of the small shareholders will strengthen the functioning of the company, the corporate base? Most of the shareholders have a very

limited shareholding. So, there will be a lot of changes. They will be disposing of the shares There will be a lot of changes in the ownership of the shares. This clause seems to be very impractical in terms of implementation.

Now, I want to draw the attention of the Minister to certain aspects which needs to be amended. He should consider these points, at least, in the next Bill. With regacd to the objects of the company, generally, the chartered accountants will prepare the Memorandum of Association and the Memorandum of Articles in a proforma. There will be some proforma.

The other objects are ancillary objects. It is wide embracing. It includes every activity under the sky. The aspect concerning the operative incomes from objectives which were, not included in other objectives, compared to non-operative incomes, should also be taken into consideration. They should" also be treated on a par with the change of objectives and the relevant provision of the Act should *be* amended.

[The Vice-Chairman (SHRI SANTOSH BAGRODIA) in the Chair.)

With regard to naming clause, everybody is aware that most of the MNCs are coming to India after globalisation and liberalisation. The Act prohibits the incorporation of a company with a name similar to the name of an existing company. If you want to incorporate a company, you have to acquire the name of the company from the Registrar of Companies. Most the MNCs companies wanf to have the name of a holding company. This aspect should also be taken into consideration and the necessary amendment should be made, (T*ime Bill)* I am concluding. I am giving only Bullet points. I am not narrating anything.

With regard to holding and subsidiary companies, Section 4 deals with the relationship of an Indian outfit with a foreign company. That provision is very cumbersome and illogical. That needs to be simplified and redrafted to bring the relationship in line with the domestic companies. Keeping in view the majority of the foreign software companies having their outfits in India, there is an imperative need to redraft the provision.

Regarding registration of share capital, it is highly prohibitive. Now the rate of fees that is being-levied for incorporating a company is very high. The Government of India will, I think, definitely agree with me that most companies have to be incorporated in the country. The prohibitive fee has to be considerably reduced.

5.00 P.M.

Regarding registration of prospectus, now the SEBI has been conferred with more powers for regulation of the public issues, implementation of the prospectus, and so on. But one lacuna is there in the Act. Before Issuing the prospectus, the company need no file a copy of prospectus with the SEBI. It is under obligation to file a copy of the prospectus with the Registrar of Companies alone. Sir, that lacuna has to be removed.

Sir, with regard to public issue of funds, a specific provision needs to be incorporated in the Act to regulate the deployment and usage of funds for a public issue. The Companies Act regulates the monitoring of the share-capital. When the shares are issued at a premium, but not at a regular issue, a machinery has to be created to assess whether the share-capital has been utilised for the purpose for which it has been issued to the public. This is a very important issue. To a large extent, jt would prevent the vanishing companies and -the fly-by-night operators.

Shares Without voting fights: As mentioned by one of my friends, Mr. Rahman Khan, this is in vogue in many capitalist countries. The companies require a lot of resources for their expansion and diversification. Without disturbing the existing management structure, the shares can be issued without dilution of the voting percentages.

Sir, with regard to the maintenance of registers, the registers can be maintained on the website. The Act should be suitably amended to enable display of the registers of members, Directors, etc., on the website of the company, in addition to the current mandatory requirements. Each shareholder can be given a password to have access to this information.

THE VJCE-CHAIRMAN (SHRI SANTOSH BAGRODIA): You please finish now.

SHRI C. RAMACHANDRAIAH: Sir, there are only two more aspects.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODMJ: You take only one minute. There is no time.

SHRI C. RAMACHANDRAIAH: There are only two more point, Sir.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): It is not the point that matter. It is the time that matter. You can talk on one point for one hour. So, you take one minute only. You have already taken more time.

SHRI C. RAMACHANDRAIAH: Sir. I am covering the points in single sentence. I will honestly finish in one minute.

Sir, with regard to the Directors' meeting, now, virtually, there is no necessity for the Directors to meet physically. With the inventions that have been made and the information technology, the Directors can confabulate, deliberate and hold the proceedings from the place they reside.They need not go to a particular place and duly convene a meeting. This aspect should be taken into consideration, and it will be more convenient for the Directors.

Sir, there should be some disqualification provision. Whenever a Managing Director or Director, full-time or part-time, of a company defaults in repayment of the deposits to the public or the loans to the banks, they should be disqualified from becoming Directors of other companies. This is an important aspect.

Sir, with regard to managerial remuneration, there is a stipulation. It should not be there because it will dampen the spirit -of the persons whe have got the capability and merit should not be the consideration in such cases. I request the hon. Minister to take all these aspects into consideration when he comes out with further amendments in future. Thank you.

SHRI KA. RA. SUBBIAN (Tamil Nadu): Thank you, Mr. Vice-Chairman, for giving me this opportunity to express my views on the Companies (Amendment) Bill, which has been brought forward by the hon. Minister. We have to appreciate our hon. Minister for having brought this amendment where the definitions of dividend, abolition of deemed private company and public company, etc. have been given. As far as India is concerned, we are not in any way behind to anybody, and as this type of legislation is concerned. We are in the forefront in Company Law which was enacted in 1913; later ft was amended in 1936 and 1951. As far as the Companies Act is concerned, it was enacted in 1956, and there were 17 amendments to it. As my learned friend has stated, the total number of companies in India are 5,32,580 and the paid-up capital is Rs.2,72,865

crores. Now, a private company can be started with a paid-up capital of Rs.1 lakh and a public company can be started with a paid-up capital of Rs.5 lakhs. Originally, it was that two persons could start a public company with a paid-up capital of Rs.7 lakhs. Now, the hon. Minister has deleted all those provisions and a private company can be started with a paid-up capital of Rs.1 lakh and a public company can be started with a paid-up capital of Rs.5 lakhs. Since there is an imperative need to further amend this Act, this amendment has been brought. In fact, it was introduced in 1997 by the then Finance Minister, Shri Chidambaram, and the first amendment was made in 1999. This second amendment is brought, taking into consideration the new Economic Policy announced as early as in 1991, for rapid economic development, which has been taking place globally, liberalisation of economy, access to WTO, etc., to facilitate healthy growth of the Indian corporate sector under the liberalised and highly competitve environment greater flexibility, transparency, disclosure, efficient enforcement, tough penalties, better investor protection and changing economic scenario, taking all these things into consideration, this amendment Bill has been brought. My learned senior colleagues have already made their submissions. So far as this Bill is concerned, from 15 Schedules, it has been reduced to 3 Schedules and from 658 section, it has been reduced to 458 section. The paid up capital has also been increased. So far as the shifting of a registered office is concerned, RD has been given unbridled power. Shifting of registered office from the jurisdiction of one Registrar of Companies to the other Registrar of Companies can be permitted. Mr. Vice-Chairman, Sir, if a registered office has to be shifted from one portion to the other portion in the same building, the management has to approach the Regional Director seeking his permission to shift the office. What criteria he will apply to give or refuse to give permission; how he will invite and deal with objections; where the aggrieved company will appeal, etc., are some questions that have arisen. Absence of express provisions will lead to exercising the power in arbitrary, whimsical and capricious manner. I would request the hon. Minister to add some more power or provision in this clause itself. Shifting of registered office comes under Section 17 A of the Companies Act. If the Regional Director refuses to give permission for shifting of the registered office, whom should the management approach? Should they approach the High Court? Who is the appellate authority? It has not been explained. Secondly, everywhere it is being said that there should be 33 per cent reservation for women. Now a large number of women are entering into the arena of corporate management. I would

request the hon. Minister to consider giving adequate representation to women on the Board of Directors. We appreciate the hon. Minister because two new sections have been inserted, i.e. 58AA and 58AAA. Now if a default is committed by a company, the company will have to intimate the Company Law Board within 60 days from the date of default. Then the period of returning the deposit and also interest has been reduced from 42 days to 30 days. The action will be taken from the date pf receipt of information from the company. The Company Law Board has to initiate action within 60 days. What action the Company Law Board would take in such a case, there is no such provision. Of course, the Supreme Court and the National Commission had held that they have every right to approach the Consumer Court for recovering the amount.

As far as the small shareholders are concerned", there is a provision that if the public limited company's paid up capital is Rs.5 crores and there are thousand shareholders who have shares worth not less than Rs,20,000, then, they can elect one director from among the smart shareholders. But I would like to know what the mode of election would be. Would it be by holding a general body meeting or would it be by exercise of vote that the said director would be elected? I would also like to suggest that in place of one director, the amendment Should be made for appointment of two directors from amongst the smaH shareholders.

Lastly, as regards postal ballot, it has been mentioned that even without attending a general body meeting, a resolution can be passed by postal ballots. Now, if there are 5,000 shareholders, and the ballot papers are received from all of them, then who lis going to have the authority for keeping all those papers? And, supposing, if among the 5,000 shareholders, only 1,000 shareholders have sent their reply, out of which even if 501 shareholders have favoured the resolution, then, the resolution will be deemed to have been passed. Now would it be practically possible to get all the Tesolutions passed by ballot papers? So I request all these things to be considered by the hon. Minister. As far as this Bill is concerned, as a Member of the NDA Government, I support this Bill because several benevolent provisions have been brought in this Bill.

SHRI VEOPRAKASH P. GOYAL (Maharashtra): Mr. Vice-Chairman, Sir, J rise to support the Bill. The Companies Act is the largest Act on the -Jndian statute. And this Amendment Bill deals with hardly 230 to 235 clauses. As I go through the amendments, I find that nearly 200 of them

just refer to raising the fees or penalties. They just multiply the earlier figure by ten or so. Those are very simple amendments. This change in value hardly takes care of inflation and the fall of rupee. Sir, the original Bill pertains to 1913, which was then amended in 1956. In the second part of the present Bill, many of the amendments refer to the managing agency system. That is also a notional thing because it just does not exist. It is to be removed from the statute book. So there is nothing new in these two aspects. Sir, the purpose of the Bill has been very ably explained by the Minister. During the period when this subject was earlier discussed in the House and till now, so many changes have taken place on the Indian scene. The corporate sector has undergone a lot of changes in character, size, volume and variety. The requirements for liberalisation, deregulation, simplification, changing economic scenario and the international corporate market make it necessary to amend the Company Law lest we should be left behind in the days of the economic growth of the world.

In fact, most of the big countries like UK, USA, Canada, European Union, Australia, etc. have already updated their company laws. A comprehensive Companies Bill, 1997 was a reflection of the consensus on this subject. The main principle that pervades corporate governance is the control of business by shareholders, reliable public reporting, avoidance of exclusive powers at the top, finance board composition, strong board of directors, a strong audit process, assessment of risk and involvement of all the shareholders. That is the main principle that pervades the governance of companies. This is what this amendment Bill tries to bring about. It is for these reasons that the passage of this Bill has become necessary What are the highlights? The highlights are: transparency and good corporate governance, investors' protection, stringent penalties, repeal of redundant provisions. As I mentioned earlier, the penalties have been increased. But I think they have become stringent. A punishment of Rs.10/- in 1956 becoming Rs. 100 now does not really make it stringent. Of course, redundant provisions are being repealed, which is a good thing.

I will come to the provisions of the Bill one by one. I won't take much time of the House. I can feel the sense of the House. I will take the minimum time since everybody is probably interested in going home. There are only a few clauses which need to be discussed and which the hon. Minister has also explained.

First is clause 16 which relates to the issue and transfer of securities and non-payment of dividend. It says:

"(a) in case of listed public companies;

in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India; and

in any other case, be administer by the Central Government...

It was an unnecessary work with the ROC. SEBI, being a professional body, will definitely do it much better. Then, as per part (c) of the clause, others still remain to be administered by the Central Government. Then, we come to clause 19 which says:

"Every company, which accepts deposits from small depositors.shall intimate to the Company Law Board any default made by it in repayment of any such deposits or part thereof*.

Now. it is provided that there will be 60 days' time to further explain. Even though, it is sixty days, it will be on a monthly basis. This takes care of expedient disposal. Then, in part (4), it further says:

"No company shall, at any time, accept further deposits from small depositors, unless each small depositor whose deposit has matured, had been paid the amount of the deposit and the interest accrued thereupon".

You cannot become a defaulter and continue to get the privilege of depositing. Further, the terms small depositor' has been defined, which is good, instead of leaving it lose. Then, there is a very important clause here which says:

"Notwithstanding anything contained in section 621 and 624, every offence connected with or arising out of acceptance of the deposits under section 58 (a) or A{a), shall be cognisable offence under the Code of Criminal Procedure, 1973*.

This is very important because it brings the punitive point into it. Every year, it is multiplying by ten, page after page, clause after clause. Then, there is only the explanation about share capital of a company, voting and other shares.

Then, coming to clause 80, i.e., about passing of resolution by postal ballot, it has been very widely welcomed. It is very widely used in the institutions. Our professional institutions have it as a normal practice. There it says, "... a listed public company may, and in the case of resolutions relating to such business as the Central Government may, by notification, declare to be conducted only by postal ballot...' So, it is restricted to be used only in those cases, The postal ballot has further been defined. The other things are managing agents, secretaries and treasurers. They were redundant things; therefore, they have been removed.

Then, there is clause 92 about the interim dividend. It says, "The board of directors may declare interim dividend," -- that is being given statutory authority-- 'and the amount of dividend, including interim dividend shall be deposited" in a separate bank account within five days." So it is not leaving it loose on the companies to do it at their sweet will. They have to do it within five days from the date of declaration of such dividend. It has to be put into a separate bank account.

Then, the words "forty-two days' wherever they occur, have been reduced to 'thirty days'. It is trying to compress in terms of time action left to the companies in the past. There is a safeguard, and it says, "Where a dividend has been declared by a company but has not been paid, or the-warrant in respect thereof has not been posted, within thirty days from the date of declaration, to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to three years..." So, it is making the directors responsible not to just attend the meetings, but also participate in the operations of the company. The simple imprisonment term may extend to three years, etc., etc. "The company will also be liable to pay a simple interest at the rate of eighteen per cent, per annum during the period for which such default continues." Then, it further clarifies on the foreign provisions which is also a very welcome step.

Then, there was a subject of minority shareholders. A provision has been made, not as was being considered in the Standing Committee. Clause 128 says, "In section 252 of the principal Act, in sub-section (1); the following shall be inserted, namely:-

Provided that a public company having-

paid-up capital of five crore rupees or more;

one thousand or more small shareholders,

may have a director...* There was a discussion in the Standing Committee as it wanted to say, "shall" have a director", i think it has been very reasonably brought out in the Bill. It says, "...may have a director elected by such small shareholders in the manner as may be prescribed." it is necessary. Somebody can take one share; somebody may be prompted to buy one share and create problem in the smooth, homogenous and integrated working of the board of directors

It has been provided that it may be elected and small shareholders defined. The section applies to the shareholder holding shares of a nominal value of Rs.20,000 or less in a public company

The number of directorship that one may take has been reduced from 20 to 15. It was a very large number and it is reduced in the right direction.

In clause 132, in section 274 of the principal Act, the following shall be inserted: "Such person who is already a director of a public company which (A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on the 1st of April, 1999, such person shall not be eligible to be appointed as a director of any other public company for a period of five years, from the date in which such public company in which he is has failed to file the annual accounts and annual returns as required. This provides that you can't continuously be a defaulter and remain a director.

Then clause 140, after section 292 of the principal Act, it is proposed to be added that every public company, having a paid-up capital of not less than Rs.5 crores shall constitute a committee on the Board, known as the Audit Committee, shall consist of not less than three directors and such number of directors as the Board may determine. This is a' very important step, which has been named as the Auditing Committee. Innumerable shareholders have no access and they do not have any knowledge of the operation of the company. So, the Audit Committee is proposed to be formed of which 2/3 of the total number of members shall be directors, either managing or whole-time directors, and auditors, internal auditor, if any, and, the director-in-charge of the finance shall attend and participate in the meeting. They will give the benefit of their advice and knowledge there but they shall not have a right to vote. One objection was raised saying that they would interfere and, hence, they are not authorised to vote. The Audit Committee shall have the authority to investigate into any

method in relation to the items specified in the section referred to in it by the Board The Board authorises the auditors to investigate into any matter thai is rejevved to it For this purpose, there shall be full access to information contained in the records of the company. The auditors will have the full access to all information available with the company and external advice also. This would strengthen the auditing process. The recommendation of the Audit Committee on any matter relating to financial management, including the audit report shall be binding on the Board. It is not just to form a committee, the committee has to form its opinion, give its recommendations and the company does not care for it. It is not like that. It is binding on the Board now because the Board has appointed it and the Board has to accept its findings. The chairman of the Audit Committee shall attend the AGM of the company and he shall explain to the shareholders whatever the recommendations are and any clarifications if there are any. He shall give clarification and explanation.

If a default is made in compliance with the provisions of the sections, the company and other officers, who are in default, shall be punishable with imprisonment for a term, which may be extended to one year, and with a fine, which extends to Rs.50,000. Here again, the spirit is that the governance should be transparent and the defaulters must be ready for punishment.

Then we come to clause 171. Every company does not require to employ a whole time secretary. It is said, "Provided that every company not required to employ a whole-time secretary under sub-section (I) and having a paid-up share capital of ten lakh rupees or more shall file with the Registrar a certificate from a secretary in whole-time practice..." His support may be taken and a certificate in a form is taken, "...and within such time and subject to such conditions as may be prescribed as to whether the company has complied with all provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in section 217. It is subject to some conditions as may be prescribed. The rest of the pages refer only to multiplying the penalties by ten and removing the clauses which have become redundant. With these words, I support this Bill wholeheartedly. Thank you

श्री मोहम्मद सलीम : धन्यवाद, उपसभाध्यक्षजी, हमारे जो कानून मंत्री हैं वे आई एण्ड बी में मिनिस्टर होकर आए हैं इसलिए आजकल जैसे टेलीविजन सीरियल्स इंस्टालमेंट्स में होते हैं, उनके इपीसोड्स होते हैं तो उन्होंने भी कंपनीज एक्ट को इसी तरह से किया है। तीन-चार

इपीसोड्स में इसे वे तरमीम करेंगे, अमेंड करेंगे, जबकि सरकार वचनबद्ध थी, पिछली सरकार भी कि एक कंप्रीहेंसिव बिल ले आया जाएगा कंपनीज एक्ट में । हिंदुस्तान में कंपनीज एक्ट जो तिरोधा है, दूसरे तमाम मुल्कों से करीब करीब बहुत पहले, आज से 87 इयर्स बिफोर का एक्ट बना है । कंपनीज एक्ट तो इतना पापूलर था । अपने दादा-दादी के जमाने से मैं सुनता आया हूं । आजकल लोग शेयर और शेयर बाजार बोलते हैं । अब पता नहीं दूसरी जुबान में क्या बोला जाता है मगर बांगला में हम सुनते थे 'कंपनीरे कागज' । जो यह विषय होता था उसमें वे कंपनी के कागज कहते थे, शेयर नहीं कहते थे, चूंकि अंडर कंपनीज एक्ट यह सब था – कंपनी का कागज । खैर, लेकिन अभी..

उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) : वह ईस्ट इंडिया कंपनी का कागज था, वह गवर्नमेंट का कागज नहीं था ।

श्री मोहम्मद सलीम : हां, वहां से चलकर आया ...(**व्यवधान**)... ईस्ट इंडिया कंपनी तो खत्म हो गयी । कोई भी कंपनी का शेयर होता था तो वह शेयर नही कहकर कंपनी का कागज होता था । खैर । यह एक कंप्रीहेंसिव बिल आपने 1997 में डाल दिया – आपकी पिछली सरकार ने । फिर 1999 में आप सेकेंड अमेंडमेंट ले आए । बीच में आर्डिनेंस करके कुछ हिस्सा ले आए । जो जरूरी था – बहुत ज्यादा जल्दी, प्रेशर भी था, दबाव भी था, हालात भी कुछ ऐसे थे, इवाल्विंग इश्यूज थे जिन्हें आपको बहुत जल्दी एड्रेस करना पड़ता । वह किया । अच्छी बात है । लेकिन स्टैंडिंग कमेटी ने एक साथ दोनों बिलों को पारित कर दिया – कंप्रीहेंसिव बिल भी और यह सेकेंड अमेंडमेंट बिल भी और राज्य सभा में भी एक ही दिन में ये दोनों रिपोर्ट आ गयी – जुलाई महीने में लेकिन ला मिनिस्ट्री ने यह कहा कि स्टैंडिंग कमेटी के मश्विरे की रोशनी में वे सेकेंड अमेंडमेंट बिल को अभी ले आए हमारे पास, और हम चर्चा कर रहे हैं । लेकिन जो कंप्रीहेंसिव बिल, जो पूरा था, वह स्टैंडिंग कमेटी की रोशनी के बाद भी नहीं बना पाए । तो सरकार को थोड़ा स्पीडी काम करना चाहिए चूंकि तमाम माहोल बदल रहा है । हम रोजाना टेलीविजन में सुनते हैं, इक्नामिक फोरम्स में सुनते हैं, चैम्बर आफ कामर्स में सुनते हैं कि जो इवाल्विंग इश्यूज हैं उनको इन्हें एड्रेस करना चाहिए । बेशक हमारे कुछ इसमें रिजरवेशंस हो सकते हैं । जो राजनीति की हालत है, उद्योग की जो हालत है । हमारा यह कंपनीज एक्ट 1956 में समय की जो इंडिस्ट्रीयल पालिसी थी , जो रिजोल्यूशंस थे उसके आधार पर वह बना था । हमने दस साल से पूरे नये पैराडिग्म्स शिफ्ट कर दिए हैं – रिफार्म्स के नाम पर, लिबरलाइजेशन के नाम पर, प्रायवेटाइजेशन के नाम पर, और उन्होंने ज्यादा मतलब जगह भी मिले, माहोल में भी कंपटीटिव वर्ल्ड है, ग्लोबलाइजेशन इरा है तो उस जगह पर और भी यह ज्यादा सशक्त अच्छे ढंग से काम कर सके । हम सराहते हैं स्टैंडिंग कमेटी की रिपोर्ट को । प्रणब मुखर्जी यहां हैं । उन्होंने खुद ही कहा था कंपनीज एक्ट के बजाए, चुंकि टर्म्स बदलते रहते हैं, नामेन्क्लेचर भी बदलते रहते हैं इसलिए इसका नाम गुड कारपोरेट गवर्नेंस एक्ट हो । सरकार को वह मश्विरा भी दिया था कि कंपनीज सिर्फ कंपनीज नहीं हैं । हम अक्सर यह सुनते रहते हैं कि नहीं प्रायवेट कंपनीज एक्ट कितने अच्छे से चल रहा है । यह आप हमसे ज्यादा अच्छे तरीके से जानते हैं । लेकिन बहुत से ऐसे प्रावधानों की जरूरत है जो अभी भी ट्रांसपैरेंट हों, और भी इफीशियंट हों, और सिम्पलीफिकेशन भी होना चाहिए बेशक । लेकिन जो एकाउंटेबिलिटी है उसे भी इस्टेब्लिश करना चाहिए । हमारे यहां पिछले दस साल से जब से लिबरलाइजेशन हुआ है, टीवी, रेडियो, अखबारों के जरिये ऐसे इश्तिहार निकलने लगे हैं कि रातों रात आप एकदम से सोना उगलने लगेंगे । प्लांटेशन कंपनियां आ गयीं, फ्लाई बाई नाइट कंपनियां

आ गयीं, उसमें जहां जोर लगा सरकारी मंत्री भी गए, प्रोत्साहन भी दिया, बाकी लोग भी गए लेकिन हजारों जो मिडिल क्लास, लोअर मिडिल क्लास सेगमेंट के लोग थे..।

वह लालच में जो निवेशक लोग गए उनका पैसा डूब गया। रजिस्ट्रार ऑफ कंपनीज़ की लिस्ट में आप देखेंगे तो ऐसे बहुत से नाम हैं जो पिछले दस साल से हाईब्रिड हो रहे हैं। सिर्फ प्रोडक्ट हाईब्रिड नहीं, बल्कि कंपनीज़ के नाम, एक ही ग्रुप, कुछ जर्मन, कुछ फ्रेंच, कुछ जैपनीज़, और भी नाम साथ में हाइफन लगा कर के हाइफनेटेड नाम रजिस्ट्रार ऑफ कंपनीज़ में रजिस्टर्ड हो रहे हैं। एक जाता, तो दूसरा आता है। सेम प्रोमोटर्ज़ होते हैं। घूम-फिर करके फिर वे चले आते हैं। इसलिए इसको और भी ज्यादा ट्रांसपेरेंट करने की जरूरत है। मैं रहमान साहब के मशवरे को मानता हूं, गवर्नमेंट ने यह कहा था कि हम प्रो-एक्टिव गवर्नमेंट हैं, सिर्फ कश्मीर के मामले में प्रो-एक्टिव नहीं, बाकी सब मामलों में भी, जैसा होना चाहिए। तो रजिस्ट्रार ऑफ कंपनीज़ जो है उसे कम से कम एक्टिव तो बनाइये, अगर प्रो-एक्टिव न भी हो तो वहां रिटर्न दाखिल किया जाता है, कंपनी का नाम भी डाला जाता है, लेकिन वह किस अंधेरी गली में घुस जाता है कि बाद में ढूंढने से भी नहीं मिलता। यह भी कह रहे थे कि मॉनिटर करना चाहिए। अभी जैसे फर्ज कीजिए आपका डिफाल्टर्ज़ के बारे में अच्छा प्रोग्राम है। अगर कोई कंपनी डिपाज़िटर की रीपेमेंट करते वक्त डिफाल्ट करती है तो आप कहते हैं कि उनको ही इतने दिन के अंदर रजिस्ट्रार ऑफ कंपनीज को बताना पड़ेगा। वह बतायेंगे, अच्छी बात है, लेकिन रजिस्ट्रार ऑफ कंपनीज़ जब उनके पास रिटर्न जमा होता है तो उसके आधार पर वह डिसीज़न ले सकता है कि आप डिपाज़िटर्ज को री-पे क्यों नहीं कर रहे हैं। आपके जो आब्लीगेशंज़ हैं उन्हें आप पूरा क्यों नहीं कर रहे हैं। उसके लिए अगर आईटी रेवोल्यूशन हो जाता है, जो कंप्यूटराइज़ करके आप कर सकते हैं और उससे एकदम फिंगर टिप्स पर वह मामला आ सकता है। ...(**व्यवधान**)... हां, सब कुछ वेबसाइट में भी जा सकता है। क्योंकि और ज्यादा ट्रांसपेरेंसी होनी चाहिए, एफीशिएंट मैकेनिज्म होना चाहिए टू डिफेंड द इंट्रेस्टस् ऑफ द स्माल शेयरहोल्डर्ज़। मैंने एक उदाहरण दिया और मैं ज्यादा डिटेल में नहीं जाऊंगा, क्योंकि बहुत चर्चा हो चुकी है, लेकिन मैंने पहले ही यह बात कही थी कि पूरे कंपनीज एक्ट को करना चाहिए था। अगर हम उस समय के अनुसार 1956 में एक बार कंपनीज एक्ट को ले आ सकते हैं तो हम आज क्यों इंस्टालमेंट में ला रहे हैं ? अब अमेंडमेंट तो होंगे ही। पिछले 40-42 साल में 13 अमेंडमेंट हुए, तो और भी होंगे। यह तो इवल्विंग है। हर दो साल में होंगे। यह लिविंग एक्ट है, और रेक्वायरमेंट भी होंगे। ऐसा हो रहा है कि कुछ हिस्से में जल्दी करके कर ले रहे हैं। एक फास्ट ट्रैक एक्ट लेजिस्लेशन कर रहे हैं एक स्लो ट्रैक लेजिस्लेशन। यह बड़ा स्पष्ट हो रहा है। इस मामले पर टू ट्रैक आपरेशंज़ हो रहे हैं इन द मैटर ऑफ लेजिस्लेशन और लॉ मिनिस्ट्री के द्वारा पार्लियामेंट को भी बाध्य किया जा रहा है कि हम एक फॉस्ट ट्रैक कर रहे हैं और एक सैकंड ट्रैक आप्शंज़ रख दिए हैं, जबकि स्टैंडिंग कमेटी ने दोनों एक साथ किए हैं। अभी हमने देखा पिछले दस साल में और भी ज्यादा हुआ। द हॉटिग अप ऑफ् दिस बोर्ड रूम बैटल्ज। उसकी जरूरत भी थी। बहुत से मामले बाद में आए। हम सब लोग तो मजदूर और किसान की बात करते रहते हैं। बोर्ड रुम्ज़ के अंदर क्या हो रहा है वह पता ही नहीं चलता है। मैं कंपनियों का नाम नहीं लूंगा लेकिन आप सब को मालूम है, क्योंकि कंपनीज़ में भी बोर्ड रूम बैटल्ज़ जब-जब हुए तो कहां तक वह सिफ्टिंग स्टैंड है वह कुछ-कुछ मालूम हुआ। लेकिन उसके लिए भी जो प्रावधान होना चाहिए था मैं समझता हूं कि अभी भी इसमें कुछ डेफीशिएंसी है। जब आप कंप्रीहैंसिव बिल ले आयेंगे तो उस समय उसको ध्यान में रख करके आपको उसे देखना पड़ेगा।

स्माल इन्वेस्टर्ज़ की जो बात है उसके बारे में आपके डेक्लेयर्ड एम्ज़ एंड आब्जैक्ट्स में भी है, जब आप बिल प्लेस किए थे तो उसमें था कि आपका बिल लाने का परपज़ क्या है। आपके ओरिजनल स्टेटमेंट ऑफ आब्जैक्ट्स एंड रीज़ंस में है To provide for appointment of one director as a nominee of small shareholders who constitute a minimum of 1000 in number and having shares of not more than Rs. 25,000 with effect from यह आप एम्ज़ एंड आब्जैक्ट्स में रखे हैं। आप बिल में क्या ले आए, मैं आपको सुनाता हूं। यह अच्छी बात है। अकसर हम लोग कहते हैं कि स्टैंडिंग की बात आप क्यों नहीं लागू करते हो, लेकिन यहां स्टैंडिंग कमेटी कह रही है कि ड्राप दिस आइडिया। आप नहीं सुने, अच्छी बात है। मैं समर्थन करता हूं कि स्माल इन्वस्टर्ज़ को रखना चाहिए। जरूरत पड़े तो स्टैंडिंग कमेटी को भी कोट कर सकता हूं। खैर, वह बात अलग है। लेकिन आपने जो यहां रखा, जो प्रावधान किया, आपका जो बिल है इसमें, एज़ पास्ड बाय लोक सभा, उसके क्लाज़ 1 टू 8 में है।

यह जो आप सेक्शन 252 को अमेंड कर रहे हैं यह क्लॉज़ 128 में है। पेज नंबर 21 की लाइन 35 आप देखें जिस में आप सेक्शन 252 को अमेंड कर रहे हैं। may have a director elected by such small holders in the manner as may be prescribed. It is an enabling provision, सर, आप समझ सकते हैं कि हम यहां सुबह से शाम सुनते रहते हैं कि इन सब का प्रावधान है, लेकिन जब उसे लागू करने जाएं तो दिक्कत होगी। मंत्री जी , यह एक छोटा सा अमेंडमेंट है कि आप स्मॉल इनवेस्टर्स के इंटरेस्ट की रक्षा करेंगे। इसलिए आप वचनबद्ध हैं और हमारी कांस्टीटुएंसी से ज्यादा वह आप की कांस्टीटुएंसी है। लेकिन आप यहां may की जगह shall लगाइए क्योंकि वह आप के ओरिजनल आइडियाज थे कि एटलीस्ट वन डायरेक्ट स्माल इनवेस्टर्स को रिप्रजेंट करे। तो एक शब्द बदलने से एटलीस्ट जो स्माल इनवेस्टर्स हैं, उन का रिप्रजेंटेशन होगा। आप के मंत्रालय ने स्टेंडिंग कमेटी के सामने जो एवीडेंस दिया है उसमें वह भी स्वीकार करते हैं कि वहां उन का रिप्रजेंटेशन नहीं रहता है, उसे रहना चाहिए। लेकिन अगर आप सिर्फ may करेंगे तो उसका मिसयूज हो सकता है, यूज नहीं होगा और जहां जरूरत पड़ेगी वह किसी को प्रॉप-अप कर के डालेंगे और जहां बहुत ज्यादा जरूरत है वहां नहीं भी डाल सकते हैं। आप उसमें जो-जो सेफगार्ड रखने चाहिए, वे रखिए, लेकिन may की जगह पर shall कीजिए।

सर, यहां मैं एक और बात की ओर आप का और आप के माध्यम से सदन का ध्यान आकर्षित करना चाहूंगा कि मैं ने एक अमेंडमेंट का नोटिस दिया था। इसी एक बात के लिए कि may की जगह shall डाला जाय। उपसभाध्यक्ष जी, समय कम था, इसलिए मैं ने पूरा-का-पूरा ब्यौरा तैयार कर वह अमेंडमेंट दिया ताकि आप उसे जिरोक्स कर के सर्कुलेट कर सकें। सर, रूल 95 में यह कहीं नहीं कहा गया है कि आप को एक या दो दिन का नोटिस देना चाहिए, लेकिन Unfortunately, it has not been circulated. सर, मैं आप का ध्यान आकर्षित कर रहा हूं, रूल 95 कहता है कि मेंबर को ऑबजेक्ट करना चाहिए, अगर कर सकते हैं, लेकिन मेंबर के राइट को हम इनफ्रिंज नहीं कर सकते। मैं इस विषय पर ज्यादा नहीं बोलना चाहूंगा। हम इस बात पर बाद में निपट सकते हैं, लेकिन मुझे जो अपनी कहनी था वह मैं ने सीधे-सीधे आप से कह दी है।

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Earlier also you raised this issue- I draw your attention.

SHRI MD. SALIM: Sir. I am raising it just now.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): No. Earlier also you had raised this issue stating that you had given a notice for this.

SHRI NILOTPAL BASU: Sir, also raised a point...(*Interruptions)...*Just one minute*...(Interruptions)...*I would like to submit one point. Sir, there are umpteen precedents in this House where amendments had been submitted just before the Minister started moving the Bill. They had been accepted and circulated, Even if they are not circulated, a Member is allowed to move the amendment, and if some Member objected to it, the Chair can take a view on that. There is absolutely no provision that a Member has moved an amendment and it is decided extraneously. I do not know. I do not know what should be the role of the Chair*...(Interruptions)...*It is a very serious issue.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGROOIA): For your information, I will read the provision about Notice of amendments to Bill. Under the Rules of Procedure, the ordinary period of notice of amendment to a Bill which is to be considered, including an amendment to refer the Bill to Joint Committee is one day. So, there is a rule. We have to be practical.

SHRl NILOTPAL BASU: Here, we have to go by the precedent-Precedents are as much part of the parliamentary practice, as the rules itself.

श्री नरेन्द्र मोहन (**उत्तर प्रदेश**) : सर, माननीय सदस्य अगर इस तरह बोलेंगे तो एक अमेंडमेंट पर ही पूरी डिबेट हो जाएगी क्योंकि अगर कोई अमेंडमेंट आएगा तो उस पर सदन के अन्य दल भी अपनी बात रखना चाहेंगे । फिर may और shall में बड़ा फर्क होता है ।

SHRI MD. SALIM: I am quoting rule 95. It says, "If notice of an amendment has not been given one day before the day on which the Bill is to be considered, any member may object to the moving of the amendment..." So, the Member has a right. कि हमें पहले क्यों नहीं मिला ? मुझे मालूम नहीं था, लेकिन वह यहां से एक्सट्रीनअसली डिसाइड नहीं हो सकता, रिजेक्ट नहीं हो सकता ।"...and such objection shall prevail, unless the Chairman allows the amendment to be moved." तो चैयरमेन का यह राइट है और मैं इस पर चर्चा में नहीं जाना चाहता, इस पर बहस भी नहीं करना चाहता । सर, मेरा पॉइंट इतना है कि मैं यह अमेंडमेंट मूव करना चाह रहा था और मैं ने अपनी बात यहां पर रख दी ।

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): It has been pointed out. You go ahead.

SHRI NILOTPAL BASU: There are precedents. That amendment can be moved.

DR. L.M. SINGHVI (Rajasthan): Amendments should not be considered, Mr. Vice-Chairman, Sir, unless a notice is.given...*interruptions)...*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): This point is well taken. Now, it is over. This point is over.

श्री मोहम्मद सलीम : यह सिर्फ कम्पनी रजिस्ट्रार की बात नहीं है, जो कम्पनी लॉ बोर्ड है, जो कम्पनी लॉ ट्राइब्यूनल है , उसे भी थोड़ा और कारगर बनाने की जरूरत है, वह ऐक्सपिडिशसली काम कर पाए, इसकी जरूरत है । आप यहां पर सिम्पलीफाई कर रहे हैं, लेकिन आप यहां पर अमेंडमेंट ला रहे हैं कि कोई अगर रजिस्टर्ड आफिस विद इन ए स्टेट भी शिफ्ट करती है तो उसे फिर बाबू के पास जाना पड़ेगा परमिशन लेना पड़ेगा जाना एक बात है, बताना एक बात है । कम्पनी की इकनॉमिक एक्टिविटी जिस तरह से बढ़ती है, आप जानते हैं कि डू पान्ट जो है They shifted their regional headquarter from Geneva to Paris और हम यहां से विद इन ए स्टेट, सिटी के अंदर अगर साउथ से हम नार्थ को जाएंगे या सेंट्रल को जायेंगे तो हमें बाबू के पास जाना पड़ेगा । ये सही दिशा-निर्देश नहीं है । आप जब उसको घटाना चाह रहे हैं तो उसे घटाइए और यह सजेशन एक कम्युनिस्ट कह रहा है कि कितना आसान रास्ता है, कितनी आसानी से आप उसे कर सकते हैं ।

SHRI ARUN JAITLEY: Sir, since this question is being raised by several Members, I think, it will not make much of a debate, if the Explanation is seen. The Explanation says that this provision will apply only in those cases where, in a State, there are more than one Registrar of Companies. If you are moving out of the jurisdiction of one to another, it is only then this will apply. The rationale for this is, a large number of vanishing companies shift their offices from the jurisdiction of one Registrar of Companies, where they are situated, to another; hence, we lose any control over them, or, any knowledge of their existence also.

Earlier, the provision was, for going from one State to another, you required the permission. But, today, in large States, where there are two 'or three Registrar of Companies' offices, you shift out of the jurisdiction of one and go under the jurisdiction of the other. This gentleman does not know where the Company has gone. This was seen in the case of *..(Interruptions).*

SHRI MD. SALIM: This is in Maharashtra.

SHRI K. RAHMAN KHAN: Only in Bombay.

SHRI ARUN JAITLEY: In Chennai and Coimbatore, there are two Registrar of Companies. The Explanation says, this applies in only those States where there are more than one Registrar of Companies, when you shift from the jurisdiction of one to the other, so that nobody vanishes away from the jurisdiction of the Registrar of Companies.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Mr. Minister, with the computers, you can know what is happening all over the world.

श्री मोहम्मद सलीम : इस बिल में बहुत से सैक्शन हैं, 59-60 सैक्शन हैं, उनको डिलीट करने की बात है, उसके बारे में मैं नहीं बोलना चाहता हूं क्योंकि समय कम है । समय के अनुसार जो आप कहीं-कहीं लैवल आफ पेनल्टी इन्क्रीस कर रहे हैं – पनिशमेंट, पेनल्टी, ऐमाउंट, ये जो सैक्शन हैं, उनके बारे में भी मैं कुछ नहीं कह रहा हूं, जो चेंजिस है 20, उसके बारे में मैं कह रहा था । एक तो डिफाल्ट आफ पेमेंट्स के बारे में मैंने कहा और दूसरा है पोस्टल बैलेट्स के बारे में, वह भी बात हो गई है । पोस्टल बैलेट्स के बारे में अभी हम यू.एस. को कापी करना चाह रहे थे, जैसे वहां होता है लेकिन हमारे पोस्टल सिस्टम में और आपकी नज़र में जो सबसे एडवांस कंट्री है, वहां के हालात में बड़ा फर्क है । फिर आप कहते हैं कि पोस्टल इन्कलूड्स इलेक्ट्रानिक मोड, ऐवरीथिंग, लेकिन taking all this into consideration आपको जरा सेफगार्ड करना चाहिए कि मिसयूज़ नहीं हो और particularly, in this era, जब रेगुलर, मरजर,, or, acquisition खूब जोर से चल रहा है, वहां यह बहुत इफेक्टिव टूल नहीं बन जाए, इसे देखना होगा । पोस्टल बैलेट्स के बहुत सैक्शन जो बाहर फैले हुए हैं उनको राइट ऐक्सरसाइज़ करने का एक मौका मिला है और यह एक स्वागत योग्य कदम है लेकिन सेफगार्ड करना चाहिए ताकि मिसयूज़ नहीं हो । क्योंकि हमेशा हम विधान अच्छा सोचकर बनाते हैं लेकिन वह कहीं न कहीं ऐसे लोगों के पास चला जाता है जो उसका गलत इस्तेमाल करते हैं ।

मैं यह कह रहा था कि कम्पनी के कारपोरेट सैक्टर की गवर्नेंस को जब आप अच्छा करने की बात कर रहे हैं तो खास करके अगर हम इफेक्टिव नहीं बनाते हैं तो कुछ नहीं हो सकता । यहां पर कहते हैं कि कहीं भी कुछ डिफाल्ट होगा तो आप उसे डायरेक्टली नहीं करेंगे, काग्निजेंस नहीं लेंगे, वहां से गवर्नमेंट अपने ऊपर जिम्मेदारी ले रही है, गवर्नमेंट जब कहेगी, तब कंपनी लॉ बोर्ड या रजिस्ट्रार उसे करेंगे और हमारे पास ऐसे अम्पटीन नम्बर आफ केसिस हैं कि अगर स्टेट मैनेजमेंट डिफाल्ट हो जाता है तो जो कदम सराकर को या उसके प्रतिनिधि को उठाने चाहिए, वह नहीं उठाते हैं ।

जहां भी आप यह कहेंगे कि कॉग्निजेंस फेल्योर हुआ, डिफॉल्ट हुआ, जब तक आप उनसे कॉग्निजेंस नहीं लेंगे, सरकार के प्रतिनिधि उनसे नहीं कहेंगे तो वहां काम न करने के लिए एक बंदोबस्त हो जाएगा । इस तरह से आपके प्रावधान इनइफैक्टिव हो जाएंगे, उनका कोई असर नहीं होगा । इसलिए आपको इस मामले में पूरी चौकसी बरतनी चाहिए और कहीं न कहीं, किसी न किसी लेवल पर मॉनीटरिंग सिस्टम को और ज्यादा मज़बूत करना चाहिए ।

SHRI RANGANATH MISRA (Orissa) : Mr. Vice-Chairman, Sir, I thank you for the opportunity given to me to speak on this Bill. I would start by seeking some clarifications, but, ultimately, I will support the Bill, subject to certain items. There are four aspects which I would like to present. We were just talking about minority shareholders. I am not on "shall" or "may". My point is, if we elect a shareholder, and if he ceases to be a shareholder, by transfer of his shares, what happens to him? He has no stake in the company, but he continues to be on the Board. So, such a situation should be provided for; on his ceasing to be a shareholder, he should cease to be a Director also. That you have not provided for. Then, we were talking about the Auditor not being an officer. As the definition now stands, reasonably, it should be construed that an Auditor is not included. *...(Interruptions)..* No; kindly listen. With the same definition in the existing law, you have made a proviso, saying that it is not included in such and such section. You have now deleted that. With your experience at the Bar, this will be a contentious issue. They say that the Legislature does not talk without any purpose; it does not talk in vacuum. Something must have been there on the basis of which it has been deleted. My point is, either continue with that, or make it clear. Let ail the five or six sections be continued, "not in such and such sections", as it is occurring now; and if you want to delete it, make it very clear that "Auditor" is not an officer of the company. Kindly have a look at it. Presently, it stands, but not in these sections. A number of sections have been indicated. Do you have the Act or shall I pass on to you the Act, Mr. Minister? Here, it is said, "...Officer ..'; I am talking about that entire clause; and at the end, it is said, "...but not in section such and such." Therefore, the proper way would be to say that an 'Officer' does not include the 'Auditor', but the 'Auditor' should not be an 'Officer', not subjected to the control of the management. The other provision which I would like to refer to is the existing provision which is limiting the number of companies to 20, to a Chartered Accountant. Transparency is the culture now. You are looking for It. But this was adding to transparency. It is said, "That a person who would not be won over, would not be subjected to the control of the management of one corporation, a big corporation with 20, 30, 40 companies." The limit being there, it would operate. Then he would have .enough time to look into it. Since you have been at the Bar, with all your experience, you know that it distributes the work; a limit of 20 has been a fair number. So, it becomes a professional aid, assistance. That should be done. There ,is no point in trying to monopolise, and we are against

monopoly because monopoly takes away transparency. Therefore, if it is distributed, with a limit of 20, it would be good. There is no justification why you should do away with it, particularly when the practitioner and their controlling Board does not want it. Sir, neither the practitioner nor the controlling Board wants it. They want you to continue with the limit of 20. So, continue with the limit of 20. It would be beneficial to the practitioner and to the institution; and, ultimately, to your purpose of transparency.

The other thing I want to mention is that you must have had an irritating experience of finding that some amendment had not been carried out in the book given to you. At the bar, when you are briefed, you must be finding that it is an outdated law that you have been prepared with. You are introducing the Companies Act in three stages now. One has gone, The second one is being gone through. The third one is yet to come. What is necessary is to ensure that finally a printed book with all these amendments is made available. Otherwise, it is really irritating when you refer to a book. That is all I have to say. Thank you.

SHRI B, J. PANDA (Orissa): Mr. Chairman, Sir, I rise to support the Bill.

Sir, it is indeed a great day when hon. Members from the Opposition Benches not only support the steps being taken but also, in fact, insist that we should be going a long way further. In the past, like many other laws in our country, the Companies Act has been draconian. It has put shackles on the engines of out economy, rather than providing them the framework in which we could be internationally competitive. In this environment, Sir,.in the past few decades, we have seen countries racing past us in economic development, not the least of which are in South East Asia, about whose companies Acts several Members have referred to today.

I have personal experience of this, Sir. More than a decade ago, I have had to make repeated rounds of officials in this Department, having to justify my claim to run a company that was less than one-tenth of the size of a company I had already run in a similar field in another country. If all these draconian shackles had been there for any higher purpose, they might even have been justified. If they were for investor protection or if they were for corporate governance, they might' even have made sense. But that was not the case either. In fact, it provided the background in which corporate governance was a non-starter and investor protection was a contradiction in terms.

Sir, in recent times, there has been much liberalisation not only in the Companies Act, as was pointed out by hon. Member, Shri Salim, but also in the economy in general and in many other laws. This has led to a significant and noticeable improvement in the standards of corporate governance. It has led to significant and noticeable measures for protection of minority investors, particularly small stakeholders in companies.

Sir, many hon. Members have gone into the details of the proposed amendments. Many of them are experts in the field. I have only been at the brunt of some of it. I would not like to go into the details. It is already late in the day. I would just like to personally touch upon the theme, the spirit with which these amendments propose to take this liberalisation forward.

As I mentioned earlier, it is a great day when a sense of consensus exists across this House that we need to make these changes and that we need to take these changes even more forward. However, Sir, there is a sense of urgency. As has been reported extensively in the media, in the last several months there has been seemingly a crisis of confidence in the Indian economy. This is the time to set out bur intentions not only clearly but also quickly. It will in no small measure help to increase investor confidence in our economy and in our country. This is the need of the hour,

I too support the call for a comprehensive review of the Act,, even if it comes only three years later, But this is not the time for us to embark upon that venture. We need to push forward these amendments urgently and with purposefulness.

Sir. I would like to conclude by saying that the proposed amendments are no radical departure from the consensus that has developed over the past decade, but rather evolutionary, even conservative, and if I may say so, sensible. They mostly aim at streamlining the Act, taking the consensus forward without making revolutionary changes which, in my opinion will, come in due course. It will have the effect of making not only companies, but the entire stock markets in our country much more transparent. Thank you.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Mr. P. Prabhakar Reddy. Absent. Shri Ram Nath Kovind.

SHRI RAM NATH KOVIND (Uttar Pradesh): Thank you, Vice Chairman. I would like to support the Companies (Amendment) Bill, 2000. We have discussed various provisions of the Bill exhaustively. Therefore, I would be brief in my submissions. Most of the proposed amendments are based on the recommendations of the Standing Committee's report, We know that since many of the functions of the Company Law Board have been transferred to the SEBI, this has necessitated the proposed amendments. We find that most of the offences in the principal Act are punishable with monetary penalty, Those penalty amounts are meagre. But due to inflation, we find that the existing penalty amounts have become insignificant. That is why the proposed amendments have increased the penalty amounts by ten times.

Sir, I would particularly refer to Section 58AA which provides that a defaulting company *suo motu* has to intimate. I quote Section 58AA: 'Every company, which accepts deposits from small depositors, shall intimate to the Company Law Board any default made by it in repayment of any such deposits or part thereof or any interest thereupon.' Then. I come to Section 58AA (3) which says, "Where a company has made a default in repayment of any deposit or part thereof or any interest thereupon to a small depositor,..,' What I want to say is that this provision is silent if a defaulting company fails to intimate the Company Law Board. Here a penalty has been provided if the defaulting company fails in the matter of repayment. If the defaulting company itself does not intimate the Company Law Board, then, the provision is quite silent.

Now, Sir, I come to Section 58AAA. This is a good Section by which the deposit-related violation has been made a cognizable offence. The director of a defaulting company has been debarred for five years from being a director in another company. Sir, clause 75 seeks to amend Section 176 of the principal Act.

This clause is really introducing the philosophy of corporate democracy and governance by introducing the system of postal ballot which includes electronic voting also. Sir, this gives a right to the shareholders. The shareholders can definitely exercise their right sitting at a distant place. They may be exercising this right even when they are abroad also.

Sir, there is a provision regarding director's responsibility statement. Every director is obliged to file an annual statement about his responsibility. But, Sir, this responsibility statement restricts itself to the financial

compliance. There is no responsibility statement with regard to the legal compliance of the various provisions of the Act. I would request the hon. Minister to take into consideration this fact also. This will definitely protect the interests of investors, particularly, small depositors. Sir, clause 134 talks of an audit committee which will go into the matters relating to internal control and financial system. The recommendations of the Committee have been made mandatory. This is a good provision. Clause 126 talks of disqualification of a director, if he fails in the matter of filing annual returns continuously for three years or in the matter of repayment of deposits. And the penalty which is being proposed is that he cannot be eligible to be a director of any other company for five years. This is a salutary provision.

Now, Sir, while concluding, I am of the opinion that the Bill, after its passage, will definitely bring a new era of corporate governance. But, one thing. I would like to point out that the job of compliance of the Act has been entrusted to the Registrar of Companies and the Company Law Board, but the mechanism or the administrative and disposal machinery which is available with these two authorities is not to the tune of the present day. It should be streamlined and strengthened. They should evolve a monitoring system for the strict compliance and, if necessary, we should introduce some penal provisions also.

With these words. I support the Bill. Sir.

SHRI NILOTPAL BASU: Mr. Vice-Chairman. Sir, I just have a suggestion. Already it is 6.10 p.m. \ think the points that have been made by the different speakers are such that if proper justice has to be done to them--though I am conceding that my friend Mr. Minister is very efficient so far as brevity is concerned--it will take considerable time. Therefore, it would be better if we can adjourn now and take up his reply and the procedure of passing the Bill tomorrow. *(Interruptions).*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Please sit down, all of you. One minute. When the LTTE issue was discussed and extended beyond 1 o'clock, it was agreed that we would finish it. Let us finish it. I do not think it will take a long time. All the speakers have already spoken. I have a right to speak according to my party's timing. But I am not using that right. So that time is saved for you.

Mr. Minister, it is now your turn -to reply. Before that, I will only say that the provision about minor shareholders is impractical. Anyway, we will
discuss that later.

SHRI ARUN JAITLEY: Sir, despite the constraint of time, very valuable suggestions have been made by several Members. In fact, one of the questions which was raised by several Members is that we must consider a comprehensive legislation, and a question addressed was: "Why are we not having a comprehensive legislation?" As i mentioned in the opening comments, we have already had the first part of the legislation which has received the consent of both Houses of Parliament, which dealt with several modern concepts of corporate governance, such as sweat equity, buy-back shares, enforcement of accounting standards, investors' education, that is something which we have already done last year, The important aspect which has been held back, is a recognition in relation to the forum in which corporate disputes are to be adjudicated. Shri Mohd. Salim and Shri K. Rahman Khan wanted to know as to what the reason was. Why was it held back for the present? The reason was that the Standing Committee has already made several valuable suggestions in this regard. Those are the suggestions which deal with the parameters of the company legislation. There are several aspects which have, both a direct and an indirect bearing on the subject, which are outside the parameters of company laws. For instance, I will give two illustrations- The entire gamut of law relating to the NBFCs, the plantation companies, their relations to the administration and who would have control. Now, these are the companies in relation to which there has been a concern in the last few years that several depositors have lost a large amount of money. Also, there is this whole question about commercial insolvency and the forum which will relate to commercial insolvency. As far as NBFCs are concerned, there is already a proposed legislation. As far as corporate and commercial insolvency is concerned, there are different forums. Some disputes are settled under the Companies Act, the winding up procedure which Shri Rahman Khan said is a tedious procedure, before the High Court; there are some issues relating to commercial insolvency, which go to the BIFR. There are some issues which go to the Company Law Board, and therefore, an Expert Committee, which also would look at different legislations which have a bearing on this, have already made some recommendations. The Govemment is still in the process of taking a final viewon that, and they have suggested that all these corporate issues should be taken up and referred to a Company Law Tribunal which would really deal with the entire gamut of issues, such as resolution of commercial disputes, interest of small shareholders, the NBFCs and the plantation companies, and also the forum where the question of industrial sickness as also revival could be discussed. Since

these are all affairs which have to be dealt with comprehensively, it is that vital part of the suggestions which was made by the Standing Committee, which has been currently held back, and we will finally take a comprehensive view on that forum, which will really substantially complete the process of reforms in our law relating to corporate governance. There have been several issues which nave been raised, and one of the issues was in relation to corporate governance. Then I come to the issue relating to functioning of the Registrar of Companies offices. Several suggestions were made that these offices have to become more efficient. You cannot have heaps of papers just lying there and the people not have an access to this I must mention the figure which was mentioned by Shri Khan. We have today 5,32,000 companies which are registered with the Registrar of Companies. Almost 50 per cent of these are defunct companies which had not been filing the returns. These companies really exist on papers. In a large number of cases, as I said, 50 per cent of them are not even filing their returns, and. therefore, if we go back to the traditional scheme under the Act, we would have to have an over-sized machinery which would be busy in the process of prosecuting each one of them, and ultimately, those prosecutions would go on for a very long time. We, therefore, came out earlier this year with the Company Law Settlement Scheme for the year 2000. We gave an option to all defaulting companies that please, file your returns which are outstanding, and therefore, by filing them, avail the amnesty; you will have to pay a certain amount of penalty. Rs. 100 crores was the target, and almost a targe number of them, almost 1,30,000 companies-l am giving the approximate figure-- have already availed of the amnesty, and as against Rs. 100 crores, Rs. 136 crores have already been collected. Now, we have announced a second innovative scheme which is the second limb of the CLSS scheme, which is a Fast Track Exit Route, which we are providing to these companies. If you are no longer in business and you have availed of the amnesty scheme, and even if you have not availed of the amnesty scheme, we give you a facility of now paying an additional 25 per cent penalty and asking for an exit route, i.e. deregistration of the companies. That scheme is currently going on, and shall go on till the end of the coming month. The fast track exit route is, don't go through courts; wind up the process; 30 days for a public notice and 7 days for processing the papers; and those companies would be taken off the Register of Companies. And the people would be absolved of those liabilities, because we want to get out of the era where for technical defaults, such as non-filing of returns, a large amount of Governmental

companies should function, it is outside the scope of the present amendment. We have already placed the report, along with the suggestions made therein, on the website, These are available. We are inviting suggestions on these guidelines before we notify the relevant guidelines for the functioning of the Nidhi companies.

Another important issue is related to the role of the Audit Committee. In fact, Mr. Khan mentioned that there was slight divergence, as far as the recommendations of the Standing Committee are concerned; it may not be so, if you see the recommendations of the Standing Committee itself on clause 134. An auditor discharges a function where he has to reflect upon the true and correct state of the accounts of the company. The auditors' report, therefore, has a certain kind of sanctity. There are cases where auditors may adversely comment on issues relating to the company. We have made an amendment that these issues should be highlighted in italics and not in fine prints so that the shareholders at the AGM of the company are aware of the issues. If the auditors give a report, it is no longer possible for the Board of Directors to say, "We do not agree with it. We, therefore, ignore the entire thing'. If the Board disagrees with the Audit Committee's report, they have to refer the issue to the AGM. This was the spirit of the suggestions of the Standing Committee. It is there in sub-clauses (8) and (9) of clause 140 The language is slightly different. But they have been incorporated. A combined reading of subclauses (8) and (9) of the relevant clause shows that the Audit Committee's report has now been given a sanctity. In cases where there are adverse remarks in th-- nctioning of the company in relation to the management of its accounts, a large amount of transparency has been introduced, as far as this amendment is concerned.

There are two issues which are raised by two of our hon. Members, particularly, in relation to the interests of the auditors. I have examined both the issues at lenoth. As far as the definition of the "officer of the company" is concerned, the hon. Member and the former Chief dustice of India has expressed an opinion that, from a bare reading of the definition on clause (30) it appears that the auditors are not going to be part of the officers of the company because the Beard of Directors does not act on the instructions of the auditors. The auditors have an independent function to perform and, therefore, the fears on this issue will not be very real because the definition and the words in clause (30) speak for themselves and are clear so as to exclude the auditors. Therefore, the apprehension need not be there,

machinery is spent on merely prosecuting people. Such companies must be persuaded to go out of the Register. The third part which we have brought in this law is that even if you are an orginally registered company, you must have a minimum, share-holding base, one lakh in the case of private companies and five lakhs in the case of public companies. If you don't have it, you will have to make up for that. And, therefore, all these defunct companies will have to make up for the share-holding base, which will, again, provide them with an incentive to go out, rather than be an excess baggage on the Register of the Registrar of Companies. Now this entire amount which has been collected from this-of course, it goes into the Consolidated Fund of India, and we have requested the Finance Ministry who are in the process of agreeing with us-or a very large amount or part of this is to be used for the reasons of modernisation and transparency for updating all the offices of the Registrar of Companies. There are 22 offices currently operating. If the 22 offices are computerised-the Coimbatore office is the first office which is completely computerised, and we are intending that for the long-term plan for the Registrar of Companies-once they are computerised, the processes, such as filing of returns, inspections, should be all on line so that these offices should operate in a paperless manner, as against the current system; as was rightly mentioned, there are heaps of papers lying there; some people even misuse the excessive of workload which is there on the companies; inspections are difficult. Therefore, a large part of an equivalent amount is intended to be used for this purpose. Another part of the amount-because we are intending to raise some more amount, over and above this Rs.136 crores, because once the companies come up for the exit route, some of them will have to pay a little more—or a small part of the amount is also being used as a corpus for setting up an expert institute for corporate governance in India, which is going to train people and which is going to devise modem techniques, which are world-class techniques so far as corporate governance is concerned.

Sir, having said that these are two of the major points which were raised, I will just turn to some of the broad suggestions which have been made or questions which have been raised. Why should we do away with the entire process of deemed private companies beyond a certain turnover becoming deemed public companies? Since there has been a longstanding demand of both the industry and the expert group which went into this whole question that if you increase a particular amount, if you go in turnover beyond a particular amount, you lose that .status and become a

The second issue that has been raised in relation to the auditors is capping of twenty. Originally, there was a.capping of twenty. That was the maximum number of companies that an auditor could audit. We have, in the interest of the Audtiors' profession, the Chartered Accountants, introduced a liberalised provision and that liberalised provision is that the number of private companies that you audit need not really be part of that 20, so that you can audit 20 plus a number of private companies. It should have been really welcomed by the profession. This fear that merely increasing the cap or decreasing the cap is not going to benefit the profession is something which is not understandable. Ultimately, it is the market forces which will determine the number of companies, the clients the auditors will audit. If somebody is overbusy, the company will look for somebody else. Now, this applies to almost every profession. Today, there may be several such cases,

SHRI K. RAHMAN KHAN: There should be a limitation for an individual because it is an individual who certifies the accounts.

SHRI ARUN JAITLEY: I am quite aware of the argument which has been made. If there is a limitation that an individual cannot do more than "X" number of audit and if he is overbusy, the company will look for somebody who has time to audit.

SHRI NILOTPAL BASU: It will affect their professional efficiency.

SHRI ARUN JAITLEY: This is an issue. It will affect the professional efficiency. There is no such provision. It is so with regard to other professions also. Therefore, to have a fear and say, let not the market forces operate and we must restrict the clauses, may not be real,

SHRI NILOTPAL BASU: If you are trying to improve the efficiency and transparency, it can also affect them.

SHRI ARUN JAITLEY: It is a provision which has been really liberalised in favour of Chartered Accountants, The Chartered Accountants themselves should have no real fear, so far as this provision is concerned.

SHRI * NILOTPAL BASU: When Parliament is making such legislation, we cannot think only about the concerned profession. We have to think about the whole country. The whole objective is to ensure greater transparency.

SHRI ARUN JAITLEY: That is exactly what is being done by this Bill.

SHRI NILOTPAL BASU: You are making a provision by which a particular profession and its efficiency would be adversely affected. It can also be manipulated. We cannot agree to that.

SHRI ARUN JAITLEY: That is precisely what is being done. It is the facility which is being given to the profession of CAs. Sir, two or three questions were raised. I have already answered one question when I intervened. When a registered office is shifted intra-State, i.e. within the same State, the Explanation to the section very clearly says that it would only apply in those cases where the'e are more than one offices of Registrar of Companies in the State. One question was raised with regard to the offences. So far as this Bill is concerned, not only have the penalties been increased ten-fold, the offences have been made cognisable. In an environment of liberalisation when you give additional facilities for the people to perform, you also keep deterrents in place that if they misconduct themselves, they will be held accountable to the law. Lastly, an issue has been raised with regard to the representation of the small shareholders, as far as Boards of the companies are concerned. That is an amendment which has been suggested under section 252 of the principal Act. This provision is an enabling provision. This is a provision which has not been tested in many countries the world over. When the initial Bill was introduced, it had a provision that it would be mandatory to have a nominee of the small shareholders. Thereafter, the matter went to the Standing Committee. Different views were expressed and various apprehensions in favour and against this provision were expressed. The Standing Committee expressed an opinion that probably it was not required. Having taken all these views and also the interest of the shareholders into consideration, an enabling provision has been created in accordance with the procedure which may be defined by the Government; the companies which wanted, would be enabled and permitted to do so because it would otherwise have run contrary to the scheme of the Act itself. The scheme of the Act is that if you are a majority, all the Directors belong to you. So an enabling provision has been enacted -- the experimentation of how it picks up in the first instance would be seen. It would always be open to the legislature on a future date to. reconsider on the basis of its wisdom, how this procedure itself has to evolve, whether on a future date it should be made mandatory or it should .only remain an enabling provision. These are several issues which have been raised. I would like to say that the object of these

amendments which have been brought in is very clear. We have a very well thought-of and well-advised report of the Standing Committee. As many as 40 amendments and changes suggested by the Standing Committee have been incorporated in it, The object is really transparency, interest of the small shareholders to be protected. The interest of the small investors is being protected to the extent that if the deposits are not repaid, there are serious deterrents on the company which have been imposed and also from the point of view of corporate governance, this law becomes a milestone in the direction of a new culture of corporate governance in this country. I commend this Bill to the hon. House. Thank you.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGROD1A): The question

is:

"That the Bill further to amend the Companies Act, 1956. as passed by the Lok Sabha be taken into consideration*.

The motion was adopted.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): We shall now take up clause-by-clause consideration of the Bill. We shall now take up clause 2. There is one amendment by Shri Rahman Khan,

SHRI K. RAHMAN KHAN: Sir, in view of the assurance given by the hon. Minister that this clause does not include auditors, I am not moving my amendment.

Clause 2 was added to, the Bill.

Clauses 3 to W6 were added to the Bill.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): We shall now take up clause 107. There is one amendment by Shri C. Ramachandraiah. Not present. Shri K. Rahman Khan.

SHRI K. RAHMAN KHAN: Sir. the Minister has said that this provision is in favour of the companies. But a statutory body is not in favour of this provision. Hence I would request the hon. Minister to have a dialogue with the Institute of Chartered Accountants. Sir, I don't press this amendment.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): I shall now put clause 107 to vote.

Clause 107 was added to the Bill.

Clauses 106 to 170 were added to the Bill.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): We shall now take up clause 171 of the Bill. There is one amendment by Shri K. Rahman Khan.

SHRI K. RAHMAN KHAN: Sir, I am not moving this amendment.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): I shall now put clause 171 to vote.

Clause 171 was added to the Bill.

Clauses 172 to 231 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI ARUN JAITLEY: Sir, I move:

That the Bill be passed.

The question was put and the motion was adopted.

MESSAGE FROM THE LOK SABHA

THE IMMIGRATION (CARRIERS' LIABILITY) BILL, 2000

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

> 'In accordance with the provisions of rule 120 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to inform you that Lok Sabha, at its sitting held on the 30th November, 2000, agreed without any amendment to the Immigration (Carriers' Liability) Bill, 2000, which was passed by Rajya Sabha at its sitting held on the 24th November, 2000."

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): The House is adjourned till 11 a.m. tomorrow.

The House then adjourned at thirty-four minutes past six of the clock till eleven of the clock on Friday, the 1* December, 2000.