

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Since it is past to five, will you please continue it afterwards?

SHRI RAM NATH KOVIND: Yes, Sir.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Thank you. You will have priority being an overnight part-heard. Now we will go to the next Statutory Resolution. Shri Gopalsinh G. Solanki, your address was quite inconclusive, please conclude it.

THE DEPUTY CHAIRMAN (*in the Chair*)

I. STATUTORY RESOLUTION
SEEKING DISAPPROVAL OF THE
COMPANIES (AMENDMENT) OR-
DINANCE, 1999

II. THE COMPANIES (AMEND-
MENT) BILL, 1999-*contd.*

SHRI GOPALSINH G. SOLANKI (Gujarat): I was mentioning about the particular drawbacks and the advantages of this particular amendment. The first thing is that they have amended about 19 sections. Almost all have been duly inserted. But, so far as the question of giving the rights of nomination to the holders of the shares and debentures and fixed deposits is concerned, I would like to draw the attention of the Minister that in cases of nomination, if the holder dies and the nomination has been made otherwise than in respect of the woman and children, again the question comes under the Succession Act. At the same time, I will quote one instance of an Insurance Company, the Life Insurance Corporation, and draw the hon. Minister's attention to Sections 38 and 39, wherein the nomination for the policy was made in the name of mother, father, or brother, or some other relative. In the event of the death of that particular policy holder, the Court never allows, or the Life Insurance Corporation never allows the disbursement of that amount.

But they ask for the Succession Certificate. In such circumstances, the certificate has to be given to the wife and

children, whoever is there. So, the nomination, particularly, mere nomination is not going to help. Again the Succession Law will come in the way so far as the question of disbursement of the benefits to the other beneficiaries is concerned.

At the same time, as far as the legal complications under the Hindu Succession Act are concerned. I would like to know whether the Minister has taken into consideration this aspect.

Another aspect relates to allowing the companies to buy back their shares subject to certain safeguards. There is a restriction of 25 per cent of the paid-up capital and the fund so utilised should not exceed 25 per cent of the paid-up capital and free reserves. The term "free reserves" is defined in the Bill. I would like to know from the hon. Minister what would happen in the case of invitation of the issues again and again. The restriction of 24 months for further issue of securities, after the buy-back, will apply only to some issues. There is no restriction on the company in issuing other securities during this period. I would like to know from the hon. Minister whether this buy-back is allowed in the case of equities. There is a restriction of 24 months. But during this 24-months period the company may go in for debentures, the company may go in for preferential shares, the company may go in for preferential shares, the company may go in for deposits. It will create confusion in the minds of the investors. There are chances of the investors being cheated. Of course, it is going to remove the hardships. But so far as the investors are concerned, it is not going to help them. I would like to submit that this is an age where the thirst of everyone, whether it is a company or an individual—we are coming to the end of the century—is to become a multi-millionaire overnight without taking any trouble in life. I referred to Kafka last time. He had written a letter. He said that if such a thirst was going to prevail in the world,

there was no possibility of experiencing any green revolution and, ultimately, it was going to result in a bloody revolution. The thirst of human being is not limited. They want to be multi-millionaires overnight. Therefore, I would like to submit that there should be some restriction once the buy-back takes place to the tune of 25%. I do not say that they cannot go in for buy-back of 25% shares again. At the same time, the interests of the investors should be looked into and safeguarded. We have been told that in the case of buy-back one has to amend the article of association. It is not difficult. It can be amended. It is not so hard to do.

There is one good thing in this Bill, which requires to be commended. That is the sweat equity. It is a kind of equity which is enjoyed by the employees of a company.

This equity is enjoyed by the employee of the companies because of some incentives. They have also been given this and it is protected. If they want to sell it to the company only, then the premium and other things will have also to be considered in the interests of the employer. I would like to say something more than that. With all these particular formalities, it has been laid in the amended law that some return has to be filed in a requisite manner. And if they fail to do so, then the criminal action has also to be taken under the company law. It is very surprising so far as the question of cheating is concerned, so far as extortion of money from the common people is concerned that if something contrary to the law is found, the punishment is very less, that is, six months' imprisonment or a fine of fifty thousand rupees only; even after collecting crores of rupees. I would, therefore, suggest to the hon. Minister, just to think on that line also, that some severe, some deterrent punishment should be there. The Bill also benefits, so far as the question of nomination is concerned, so far as the question of investment through the subsidiary company is concerned. It facilitates. There-

fore, I commend the Bill and support the Bill.

MISS MABEL REBELLO (Madhya Pradesh): Thank you, Madam, for giving me an opportunity to speak on this Companies (Amendment) Bill. I feel, the main objective of this amendment is to help the corporate sector to take advantage of the liberalisation and globalisation of Indian economy. We all know that the world has become a global village through the electronic media, through airlines, through internet etc. There is a lot of competition today. Under such circumstances, if our industries have to survive, they will have to be competitive, because there is a global onslaught. We, all of us, sitting here know that India is a signatory to WTO. Because of this fact, goods from abroad, especially manufactured by multinationals will be coming here invading our markets. We will be tempted to buy these goods because of their presentation, because of their quality. In the scenario, if our industries are to survive, we will have to provide all companies some safeguards and some assistance. That is why this Companies Amendment Bill is needed. Madam, we know that the Companies Bill of 1956 is an old-fashioned Bill. For example, there is a cumbersome procedure for transferring shares of companies. You have to fill up a lot of details, affix share transfer stamps and then send it to the company. Sometimes it is lost in the post office. So, there are a lot of hazards. So, this was the reason that the FIIs Foreign Institutional Investors, right at the beginning, were hesitant to invest in India. Now, as we have got this electronic transfer system, they are coming very easily and are investing here. Now, I come to this Bill, Madam. Under this Bill, if I own some bank fixed deposits or debentures or shares, and I die, then these shares could not be transferred easily. A succession certificate must be there. In case particularly of a widow, if her husband dies in harness, it is a nightmare. The nomination facility, which this amendment is bringing, will help the relatives of the

people, who suddenly die without giving any nomination, without giving a succession certificate. They would be able to get these shares, fixed deposits, transferred in their names very easily. They can have liquid money. They could look after themselves very well; otherwise, these families used to be in terrible problems. Therefore, I definitely feel that this is a wholesome provision. I feel that it will help the depositors. It is worthy of welcome.

Now I come to the buy-back of shares. As I said earlier, the world has shrunk and because of that there is a lot of competition. Those companies which have economies of scale can survive. If it is a small company, there is a lot of danger of this company being taken over or bought by somebody, which is known as hostile take-over. Therefore, this provision of buy-back of shares will help the small companies in averting this danger of being taken over by somebody very easily. Similarly, the companies which have got good reserves and sufficient funds, will invest 25 per cent of their funds in the buy-back of shares. In this way, these companies will become strong. If a company is strong, naturally, it can go in for an expansion and it can have more finances from the financial institutions. These companies also can go in for big projects. Once the company becomes strong, the investors who have invested their money in that company, will get more dividend and better returns. Therefore, I feel that it is a very good provision. I support it wholeheartedly.

It is mentioned here that the Central Government will establish a fund—the Investor Education and Protection Fund. Everybody is aware of Harshad Mehta and the securities-scam. We all know what happened at that time. How did it happen? Why did it happen? Media also wrote so much about the shares. Media wrote that you can double your money in three days or you can double your money in one week or in one month. That tempted people so much that they started withdrawing their money from the banks.

They sold their property. They sold their gold and other assets and invested that money in the shares. Ultimately, many of them lost a lot of money. Some of them even committed suicide also. The Investor Education and Protection Fund is a very good provision. With this fund, SEBI will be able to educate people about investment. In India, most of us invest the money in banks. That is a very safe investment. There is no danger or risk involved in it and we get a fixed return. We also know that in the Western countries, most of the people invest their money in the share market because they know that if they invest their money in the share market, the return will be manifold as compared to banks. But if you want to invest the money in the share market, you need to know many things about those companies, i.e. who are the promoters; what type of products they are selling; what is the future of these companies; how these companies will perform in the next five or ten years, etc. You need to watch the progress of these companies. You need to have full knowledge of these companies. The Investor Education and Protection Fund will be able to disseminate information and educate the investors. Of course, one cannot make money without taking risks. This will help in disseminating good information about the companies. I feel that this will help the people a lot. Similarly, it will also help the people to know who are the fly-by-night operators. We all know about the financial institutions which were selling green gold and black gold. There are some plantation companies also and people were depositing a lot of money in these companies. This type of companies are also there which are hoodwinking the people and taking away their hard-earned money. The Government is going to create a very good fund which will help in publishing proper information about the promoters and companies so that people can become cautious and invest their money cautiously and get their money multiplied quickly. So, I feel that this is the other good way

of helping small investors of our country. Then, the fourth point is as regards clauses 17, 18 and 19, namely, inter-corporate investment. I support it; of course, my friends would ask me: What are you doing? Why are you supporting it? Now, with this inter-corporate deposit, they can invest something up to 60 per cent without Government's permission. Today, if any corporate sector unit wants to invest money in some other sectors, they need to take permission. But now this is going to be done away with. It is good. Of course, it may lead to a major scam. There is some danger in it. There is a lurking fear. I don't deny it. But, however, there are financial institutions which have got a stake in this companies, and these financial institutions should be watching the companies while they are investing in other sectors so that they can help them in warding off this danger, and in saving their own money and also the investors' money. Therefore, I personally feel that except for this little danger of some scam taking place, if we are vigilant, we can avert the scam, and companies can invest in other fellow-companies; they can make money if they have surplus funds. Finally, I feel that this particular Bill is only a small measure of giving facility of nomination to depositors who need it, and it also gives safeguards against hostile take-overs of small companies by large companies and even by multi-nationals. I feel that a comprehensive Bill amending the Companies Law should be brought without delay because all these amendments which they have suggested are small-piece measures. These are not sufficient. A comprehensive amendment Bill should be brought before the House without any delay. Thank you, Madam.

THE DEPUTY CHAIRMAN: Now, Shri Jibon Roy. Jibon Royji, before you start speaking, I must tell the House that one hour was given to this Bill, and, accordingly, parties' time is decided. Your party has got four minutes. Please speak in four minutes, because we have to finish the business in time.

SHRI GURUDAS DAS GUPTA (West Bengal): Madam, is it four minutes?

THE DEPUTY CHAIRMAN: Yes, four minutes for him.

SHRI GURUDAS DAS GUPTA: Madam, I understand, one hour is 60 minutes and not 120 minutes. But what I would like to know from you is that as far as I remember, when the business was discussed in the Business Advisory Committee, on two Bills, one on this and another on the Bill on the Urban Land Ceiling, the time given was two hours.....

THE DEPUTY CHAIRMAN: It is written one hour here and I go by.....

SHRI GURUDAS DAS GUPTA: Madam, you may go by whatever be the decision. But I make it clear that some of us have serious objections, and there must be full time for us to make our points clear because we are ready to sit late.

THE DEPUTY CHAIRMAN: No, it is not(*Interruptions*) Gurudasji, please sit down for a minute. When I say,—I mean, I don't want to discuss what happened in the Business Advisory Committee—that some realistic time should be given to discussions, Members say, "No, no, one hour is enough, half-an-hour is enough." I think, if we commit ourselves to some time, it should be a genuine commitment; it should not be an unrealistic commitment.

SHRI GURUDAS DAS GUPTA: I am not for any ingenious commitment. What I am saying is, I may be misplaced, but I still believe that I had made it clear that one these two Bills, we had our objections, and there should be enough time to make our position clear. I am not pleading for any ingenuine patronism from the Chair.

THE DEPUTY CHAIRMAN: Gurudasji, generally, I patronise Members when they want to speak, and the panel Vice-Chairman also do that.

What I am trying to put before you for the future is that you just cannot ask for one hour and then expect the other Members to sit for three hours just because you wanted. You could have made your point very clear in the Business Advisory Committee. I have one hour printed here and I will abide by the time.

SHRI GURUDAS DAS GUPTA: I don't remember that we had made that commitment.

THE DEPUTY CHAIRMAN: We depend not on the Members' memory, but we depend on what is printed on the Paper. My memory and your memory can be failing because of age. But whatever is printed in the Paper is not failing.

SHRI GURUDAS DAS GUPTA: There can be printing mistakes also.

SHRI NILOTPAL BASU (West Bengal): Madam, age cannot be a disabling factor for you.

THE DEPUTY CHAIRMAN: One hour means one hour. I will give you three minutes more because I spoke for three minutes; by 'you', I mean not to you but to the discussion.

SHRI NILOTPAL BASU: Madam will take care. Don't worry.

THE DEPUTY CHAIRMAN: No, no. Sorry. I don't like this kind of irrational acceptance and then coming to the House and haggling with the Chair. It is not proper.

SHRI JIBON ROY (West Bengal): Madam, I would like to be very brief and precise.

THE DEPUTY CHAIRMAN: Yes. Please be brief.

SHRI JIBON ROY: Madam, I rise to oppose the Bill. I do not know whether I should compliment or reprimand the Government. Within a very small time-frame, within one year, it has earned the virtue of running the country through Ordinances. I oppose the Bill not because Government want to give some

concessions to the Indian monopoly houses. Probably, they deserve some concessions now. They were the champions of globalisation; now, they are feeling the pinch of globalisation. I am glad that you are giving them concessions. But the Government should come out with a total review of the situation. After that, you can ask for concessions. This is my request to the Government.

There was a study by the Reserve Bank of India. The study revealed that during 1996-97 post-tax profit of the Indian corporate houses has gone down by 19.6 per cent. During 1997-98, it has further declined by one per cent, because of globalisation. But, on the other hand, during 1997-98, within the first six months, the monopoly houses in India have covered the profit of the whole year of 1996-97. Obviously, they require some concessions.

There is another report and that is by FICCI. They have said that according to a comparative study, the Indian monopoly houses are 16% behind the multinational companies so far as the level-playing field is concerned; therefore, they require some concessions.

Now, of late a complaints is raised, as my colleague was also saying, that hostile take-overs are taking place. During the last three years, sixty Indian monopoly houses have been taken over by the multinationals. Initially, it was a friendly game — TOMCO Vs. Hindustan Levers, Malhotra Vs. Gillette Parle Vs. Coca Cola. It was a friendly game. But, now it has become hostile. I understand that you have to take care of the Indian monopoly houses. But you have to take care of the nation too, you have to take care of the shareholders also. There are hundreds of private companies which floated their shares, swept the money, then fled and went underground; they are not traceable. It is a regular affair that shares are wriggled. Therefore, you have to take care of the investor also. Moreover, we know that corporate house do not pay

taxes. Seventy five per cent of the Indian corporate taxes are being paid by the public sector. They do not want to pay taxes, but they want concessions. So, some reasonable provision should be there so that they pay the taxes also.

Then, there is another study. Three American economists from Florida University have said that every year in the name of under-invoicing and over-invoicing, an amount between \$ 4,420 million and \$ 1,620 million goes to America from India. In the name of under-invoicing and over-invoicing, every year America alone is taking away that much money, after globalisation, the nation is being sold out. You are taking care of the Indian monopoly houses. You please take care of the nation also. This is the appeal.

There was a review of 167 companies in the *Business Standard* that every year the outgo of foreign exchange was more than the earnings. The figure was Rs. 3,015 crores in 1989-90. It has shot up to Rs. 5,645 crores in 1992-93 itself. Within three years, the foreign exchange outgo has shot up by hundred per cent. The country is being looted. So, you are taking much care of the Indian monopoly houses. You do take care. I have no objection. You should take care of the nation also. That is why we wanted the Government to bring forward a comprehensive Bill, Government has introduced a comprehensive bill. You entrusted the job of scrutinising of the Bill to some experts. They have made some recommendations, if it is so, why this piecemeal legislation. The Government has opened the channel for creating non-performing assets. The Government has given permission to buyback 25 per cent of the shares every year. If they buyback shares, there will be great distortion in the debt — equity ratio? Equity ratio will go up, then they will have the right to take loan from banks in the earlier ratio. The Government has given permission for inter-corporate transfer of shares. That means, you are giving them an

instrument to make the companies sick. One of the retired Chairman of the BIFR has said that making the companies sick is the most profitable business in India. To prevent the companies from becoming sick, the Government should make changes in the Companies Act. Here, I would like to give you an example. One monopoly house had three textile companies in western U.P. It took loan from the bank ten times the worth of its assets. Those textile companies were making profit. Then, they transferred the entire money to a tyre manufacturing company. As a result of that, those textile companies became sick. But the management of those companies became richer. The industrialists became richer. Those companies got sick and the bank cannot attach the property of those sick companies because their money stands transferred. Now, by virtue of buyback, you are allowing the companies to buyback their shares. As a result, their equity will go down, and they will take money from the banks. The same thing will happen in the case of inter-corporate transfer of shares. These people are racking up a new business to make profit by making the companies sick.

Madam, it will not stop here. After some time, Monoply houses will demand that after buyback of shares, the shares should not be destroyed, and they should be allowed to sell them. They have already raised such a demand. There is a provision in the Bill for buyback of shares, and those shares should be destroyed immediately. They are saying that this Bill is bad. Infact no buyback has taken place, except in M.T.N.L. They are building up pressure on the Government that buyback shares should not be destroyed. They are demanding that they should be given permission to sell them. Then, what will happen? They are complaining that hostile takeover is taking place, and saying that it should not be there, but friendly takeover should be there. Earlier, it was friendly, but now it has become hostile.

They are demanding buyback and transfer of shares, and inter-corporate transfer of shares. The Government will succumb to that pressure. Then, transfer will take place through discussions, and India would be taken over by other. Therefore, the thing is...

THE DEPUTY CHAIRMAN: Mr. Jibon Roy, you have spoken for 10 minutes.

SHRI JIBON ROY: I, therefore, demand that the Government should not come before the House with a piecemeal legislation. It should bring in a comprehensive Bill. If they are sincere to the nation, if they are sincere to reforms, if they are sincere to globalisation, then they should make an overall review of what its effects will be on the nation, economy, corporate sector, industry and the people. I request the hon. Minister to bring forward a comprehensive Bill in this regard.

SHRI C. RAMACHANDRAIAH (Andhra Pradesh): Madam, I think you for giving me this opportunity. The object that has been stated in this Bill is for the immediate morale boosting effort on the part of the Government, to promote investors' confidence. It is rather surprising as to how this Bill is going to infuse confidence in the investors. Only the cash rich companies, whose fundamentals are very strong, will resort to this buy-back. A very big publicity was given and a number of articles were written in the newspapers. Virtually it is storm in a cup of tea. Neither is it investor-friendly nor is it corporate-friendly. I request the Minister to explain while giving his answer as to how many companies have resorted to this buy-back of shares since the Ordinance was issued. Madam, I have one more thing to say. There is a danger which has to be taken care of. Most of the stocks are being held by the financial institutions in this country and these institutions will definitely off-load their stocks through negotiated deals with influential

promoters. There is an allegation that an attempt has been made by the ITC to acquire the controlling shares through a negotiated settlement. Fortunately, it was scuttled. So, the major companies are going to be the victims unless the Government is very cautious and introduces safeguards in this Bill. Madam, generally by this Bill they will be resorting to a correct perceived valuation of stock prices and single management will be installed to distribute free cash flows and to increase the promoter's equity stake without enlarging the base. The liquidity of the company, which is trying to indulge in buy-back, will be eroded. There are three sources by which this buy-back has been prescribed in the Bill. Among the three, one is that there is a restriction on the proceeds out of the earlier issue. What is meant by this 'out of the earlier issue'? Is it a fresh issue? The linkage between the proceeds and the earlier issue is not clarified. There are still some ambiguities in this Bill regarding debt equity. It was prescribed that post-equity should not exceed 2:1. I want to draw the attention of the Minister that once the 2:1 of the snare is finished, is completed, the equity will go down and the debt will be increased. Then how to finance this buy-back? You have given three restrictions. So, the companies are compelled to approach the banks for financing this buy-back. You said that out of reserves, it can be financed. No company will keep cash as reserve. It should have been invested in the capital assets or the current assets. Unless a company disposed of these assets, they cannot have liquidity. Naturally, the equity will be beyond 2:1. There are companies which are more solvent, with more than 2:1 equity ratio. This debt ratio will be maintained by the companies after the completion of the buy-back. The Government has to clarify it. Before a company indulges in buy-back, the shares have to be fully paid up.

It is not clarified whether the shares, which are going to be bought, are to be

fully paid or the entire company's shares are to be fully paid. There is some ambiguity. There are some ambiguities in the Bill which I am trying to point out. Madam, there is an unnecessary propaganda which has been indulged in this Bill. As I said, only the cash-rich companies, with strong fundamentals, are interested to go in for buy-back of shares. It will be useful for promoting the value of their own state and in promoting the value of their own shares. It cannot boost the investor's confidence because it is merely transfer of shares. How are the additional funds being pumped into the economy? If a company is cash-rich, it will generally plan for expansion or diversion. The companies which are not planning something of that sort, will only indulge in this kind of activities. But how is the economy going to be benefited by this? As per the sources which the Government has stated in this Bill, a company, which is contemplating to indulge in buy-back, has to approach a bank. Now the instructions to the banks are not clear. The bankers are in a total disarray. The banks can finance. The Government has no objection with regard to finance made by banks for promoting more industries or for increasing the production or manufacturing activity but not to finance a promoter to buy-back his own share and to increase the share value of his own share. (...*Time-bell rings*)... Madam, if you permit, I will take some more time. Otherwise, I will conclude. I want to caution the Government. do not try to repeat the performance of the ITC. Many public financial institutions are holding shares in major companies. This off-loading is going to take place by virtue of this Bill through negotiated settlements. The Government does not have a foolproof mechanism to assess and fix the value of a share. So, the Government must be very cautious so that this type of anomalies are not created. It is fundamentally wrong economics. With these suggestions, I conclude. Thank you.

SHRI DIPANKAR MUKHERJEE (West Bengal): You hold them back. You have the power.

THE DEPUTY CHAIRMAN: Now, Mr. Gurudas Das Gupta. You have only two minutes.

SHRI GURUDAS DAS GUPTA: Madam, I depend on your grace.

THE DEPUTY CHAIRMAN: If you ask for more time, you should do it, at least, with a smile but not in anger.

SHRI GURUDAS DAS GUPTA: The point is, I seek to oppose the Bill, lock, stock and barrel. First thing is this. There is a talk going on in the country for many decades that the Companies Act, 1956, needs to be amended. There had been a number of Commissions, consultations, discussions and meetings but the Government has not found it possible or necessary or was not prepared to bring forward a comprehensive amendment to the Companies Act. It is a piecemeal approach and not only is it a piecemeal approach, but it is a cursory approach and this approach helps nobody. My friend, Mr. Jibon Roy, was saying that this is not corporate-friendly. I am saying that this is not growth-friendly. This is delinquency-friendly. This Bill is delinquency-friendly. Madam, let me point out that this buy-back of shares was prohibited by Dr. Singh, being recommended to do so, unanimously, by the Joint Parliamentary Committee set up to look into the irregularities in the shares and security transactions that took place in 1991-92. The Government is going back from that position. But we have not been informed by the hon. Minister or by the Government as to what could be the compelling reason for retreating or for reviving the old buy-back which the Government had stopped, prohibited and prevented because of a unanimous Parliamentary Committee's recommendation. What could be the compelling reasons? It appears to me that the Companies Act is being amended in the way, that it is being done at the

moment as if it has nothing to do to promote growth. It has nothing to contain the forces of recession. It has nothing to do to bring about a respectable picture in the performance of the companies. It has nothing to do to improve the economic situation of the country. It is a total abject, shameful surrender to the demand that has been made by a number of corporate houses and also by the share-brokers of the country. The Government has a peculiar feeling that if the buy-back is not resorted to, the secondary market will not revive. The Budget which has been presented by the Government, or, the economic policy which has been followed by the successive Governments, does look for artificial stimulation of the secondary market, without looking for changing the economic fundamentals and bringing about an improvement in the investment in the primary sector. While the primary sector is starving, the Government, through artificial stimulation, would like to project an artificial picture of India's economy to the foreign investors, and thereby lure them to invest in the country. This is a wrong method. This was attempted in 1991-92 also, and this led to a fiasco. If this attempt is repeated, it will not lead to any appreciable or marginal improvement in the economic situation of the country. Therefore, I only suggest, not from any sense of suspicion, but from having an understanding of the present economic turmoil of the country, that this is an abject surrender to the corporate houses and also to share-brokers, who believe, by bringing about an improvement in the share prices the economy of the country could be made better. Why do I oppose this? I oppose this because of inter-corporate deposits. What is the provision for inter-corporate deposits in the present Companies Act? The present Companies Act permitted inter-corporate deposit to the extent of 25 per cent of the share capital and reserve of the investing company and 30 per cent of the share capital and reserve of the invested company. It is being raised substantially from

25 per cent to 60 per cent, from 30 per cent to 60 per cent. Why is it being raised? It is being raised because 172 applications are pending with the Government. Without clearing the applications for allowing them to make investment, the limit is being changed immediately. What could be the reason? The reason could be, if you permit me, Madam, I would say, there is a smell that we are agreeing to some of the unprincipled suggestions and demands of a number of companies. What could be the considerations, I do not know. 172 applications are pending. It may perhaps be the compelling reason that the Government has brought forward this Bill for enhancing the limit of inter-corporate deposit. Why do I oppose inter-corporate deposit? I oppose inter-corporate deposit because it will lead to unnecessary diversion of funds. When the corporate performance is on the decline in the country, when the recession is unabated, if funds are available with a company, with a cash-rich company, with a better-performing company, it could be invested for research and development, it could be invested for expanding products or diversification of products. If you allow them to invest in other companies, what could be the reason? We have seen in a number of cases, including the ITC. All this has been done as a design to manoeuvre; as a design to take control of other companies; as a design to infiltrate into others, without any economic basis at all. Therefore, I have a suspicion that this increasing of limit all lead to corporate interference, it would lead to corporate delinquency, it would lead to diversion of funds, which is unethical in nature, and would in no way help in the development, growth and advancement of the economy. Madam, so far as the buyback is concerned, why should there be buyback? I would like the hon'ble Minister to explain as to why should there be buyback and wherefrom the multinational companies come. Madam, it is an undisclosed, unannounced, strategy, which the Government has ta-

ken. This is to help disinvestment, since disinvestment has mainly been on paper. Though the Government projected that they would get Rs. 5000 crores through disinvestment, it could mobilise only Rupees 500 crores. It is looking for buyback to finance disinvestment, which means, the cash which companies will be contributing to the exchequer to bridge the uncontrolled budgetary gap. Therefore, there is an undisclosed reason for allowing these companies to go in for buyback. This is one reason. The second point is that, Madam, through buyback, there may be an attempt on the part of the corporate houses to jack up the prices of the old shares, unrelated with the market condition. If the company starts purchasing its own shares, when there may be a decline in the price of its own shares in the market, particularly, in the present condition of recession, that will lead to an artificial jacking up of price. An artificial jacking up of price is done in order to give a respectable picture, a record of its own performance, unrelated with its own economic activity. It is an unethical attempt to jack up its own price to give a better look. This was done during Harshad Mehta's time. This resulted in a FIASCOL. This is being done by the Government. At whose behest it is being done? It is being done at the behest of people who would like to indulge in unethical activities. Government is capitulating to the pressure from outside. Madam, the next question comes; wherefrom the money will come? Maybe, a cash-rich company has it, but the cash is never kept in the cupboard of the Managing Director's house or in the kitchen or in the temple by the corporate houses, because there have been occasions when people could find crores of rupees in the kitchen or in the farm house. ...*(Interruptions)*...

THE DEPUTY CHAIRMAN:
Gurudas Das Guptaji has got a lot of information on where people kept their money.

SHRI GURUDAS DAS GUPTA: No, no. I do not have that much information, as my hon'ble friend Shri Pranab Mukherjee, has, since he had been heading the economic ministries in the Government. He must be knowing as to how the corporate houses are doing their job. Of course, I would like to learn that from him.

THE DEPUTY CHAIRMAN: That was his job to find out and to book them.

SHRI GURUDAS DAS GUPTA: Whether he has been able to book them or not, it is for him to tell us. That is not the point. The point is, in what shape, in what form, the money will be kept. It must be deposited. It must be invested. It may be in the shape of physical assets. It may be in the shape of investments. Therefore, enabling a company to purchase its own shares means, the assets must be turned into cash. Wherefrom the money will come? Wherefrom the financing will come? Is it possible for these companies to make their assets liquid and look for buy-back of their own shares? Is it that simple? Therefore, the question comes —there would be a diversification of funds again. The bank money will be diverted. The loan that the corporate houses may take from the banks, instead of going for productive investment or production, may be diverted. Again, I have a suspicion that it will lead to a depletion of the working capital and it will lead to unnecessary consolidation of the financial position of the promoter. It is irrelevant that it is not having any relation with the contribution of the promoters. It will be quite unrelated. Therefore, in every sense of the term, from all considerations, this is a retrograde step. This will lead to diversion. This will lead to manipulation. This will lead to jacking up of prices. This will lead to corporate delinquency. This will not lead to any improvement in the performance of companies. This will not lead to containing of the recession. This is a cosmetic move, artificial move, which cannot bring about any change.

any improvement in the stock market. This is all being done by a Government which is hopelessly looking for an improvement in the situation, which they cannot bring about, if the economic fundamentals do not change. This will open up a grave form of corporate delinquency.

Therefore, I seek to oppose this Bill lock, stock and barrel.

THE DEPUTY CHAIRMAN: Shri Prem Chand Gupta. Two minutes.

SHRI PREM CHAND GUPTA (Bihar): I will try to be brief.

Madam, first of all, one issue that has always been discussed in this House is that successive Governments have used the ordinance route. When our friends were on this side, they were the ones who always raised this issue that the Government should not issue ordinances.

Well, coming to the main issue now, Madam, since I have a time-limitation, I will go through this quickly. One of the clauses, clause 58A, deals with nomination. Nomination was not permitted in the earlier Bill. But nomination is permitted in this. But here I want to say that it will be prudent to ensure that the instrument in future does not become a power-of-attorney instrument. It will be prudent if this nomination is restricted to spouse, minor children and other blood relations. This is very important. Otherwise, the share certificates, the instruments will be traded on power of attorney or something like that. So, it is desirable that this is done.

Madam, next is section 77 wherein three articles have been suggested or three sections have been incorporated. Section 77A specifies that the company can buy its own shares and securities. For that, they can buy these out of three sources of funds. One is the reserves; the second is the securities premium account; and the third is the proceeds of any shares or other specified securities.

Madam, I want to say here that these funds which are kept in the shareholders'

account or the premium account, are normally used for diversification, expansion, modernisation and R&D. If you are permitting this, these vital sectors of the industry will be ignored. So, I say that those sectors should not be compromised. We must ensure that the funds are not misutilised to buy shares of own securities. Although there are some protections have mentioned by the Government, these are very minor restrictions which are normally met by any promoter, like the buy back being authorised in the articles. Once this Bill is approved, the articles of memorandum of 99 per cent of the companies would be having this clause. So, this is not a protection. One of the protections that they mentioned is:

"Provided that no buy-back of any kind of shares of other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities."

If a sentence saying that "the companies belonging to the same promoters" is incorporated, that would be more desirable.

I would like to say one more thing. In this Bill, certain powers have been retained with the Government. The Section reads:

"Provided that the Central Government may prescribe a higher ratio of the debt than that specified under this clause for a class or classes of companies:"

As Mr. Gurudas Das Gupta has said, there is a debt ratio of 1:2; and, in certain cases, this can be relaxed. I would say that this is not desirable. We would, then, again be leaving the issue in the hands of the bureaucracy. This, I feel, we should not do.

Clause 77A, sub-section (1) says:

"The buy-back of shares can be bought from the existing security

holders on a proportionate basis or from the open market."

Madam, this would lead to a lot of manipulation, as, in our stock-markets, a lot of irregularities take place. That is why we had, in the past, millions of people losing money in the stock market. Therefore, we should ensure that that mistake is not repeated. Since, under this, the companies would have powers to purchase their own securities from the market, we must ensure that the companies controlled by the existing promoters, and the companies where a person has a majority share-holding of the company, are not allowed to buy shares of the company at a premium. Otherwise the funds would be diverted and that would not be desirable. Thank you.

THE DEPUTY CHAIRMAN: Now, for the D.M.K. party, I have two minutes; and there are two speakers. It is the most unrealistic situation. Mr. Duraisamy, you will speak...

SHRI V. P. DURAISAMY (Tamilnadu): Madam, I am going to get an appreciation from you, I would ask only three or four questions and would conclude within one minute.

SHRI NILOTPAL BASU: Madam, he is specially dressed up today.

THE DEPUTY CHAIRMAN: In that one minute, he will be specially focussed. We would see that the camera is focussed on his nice suite and tie while he is speaking.

SHRI V. P. DURAISAMY: Thank you, very much. Madam, by bringing in this amending Bill, the Government wants (1) to promote inter-corporate investments; (2) to allow companies to buy-back its own shares; (3) to make investments; (4) to provide nomination facility to the holder of shares; and (5) to provide, in law, for the establishment of an investors' protection fund.

Madam, I would like to know whether there is any yardstick or estimate

prescribed in the capital market to promote inter-corporate investment. Secondly, if the company is already in a bad shape, how can it offer to buy back its own shares? Thirdly, how can company arrange investors with Government approval? This system will pave the way for more corruption and high-handedness. Fourthly, — it is very important—what is the background for amending Section 372? I support the points made by the hon. Member, Shri Gurudas Das Gupta. I came to know through reliable sources that under section 372, 172 applications were cleared up to the Secretary level. But these applications were lying with the Minister for months together, for his approval. It is a fact. What are the reasons for keeping those applications with him for months together without giving approval? It also demoralises the institution of the Government. The first Ordinance was promulgated on 31.10.1998. The second Ordinance was re-promulgated on 7.1.99. If the Government is interested in safeguarding the public money, the session of the House can be extended for an elaborate discussion. The Ordinance promulgated by the Government is against the spirit of the judgement delivered by the Supreme Court. At the same time, we should also think about the UTI company. What is the fate of the UTI? By selling the shares of the UTI at a lower price, the Government has incurred a loss of more than Rs.6,000 crores.

Madam, I rise to oppose this Bill. I am also requesting other Members of this House to oppose this Bill. What are the reasons for promulgating an Ordinance? The Prime Minister cannot shift the Minister because the Minister can change the law through an amendment. This is true. The roads can be changed, the transport can be changed for some reason, but *..(Interruptions)..*

There is a strong resentment in the minds of the public regarding this amendment. The Government wanted to hide something which compelled the

Government to promulgate two more Ordinances bypassing the Parliament. Our senior leader, former Minister also told us just two days back that this Government, during its rule of eleven months, has cultivated a habit of promulgating Ordinances after Ordinances, bypassing the Parliament. It is against the democratic system. Since my friend, the Law Minister is holding additional charge of the Ministry of Surface Transport, I think, he feels that he is entitled to bypass national highways. *..(Interruptions)...* Anyway, this Bill is not going to help the public. The public money is going to be looted. There is no security for the public money, their hardearned money.

Madam, I once again, oppose this Bill totally. I would request other Members also to oppose it. Thank you.

THE DEPUTY CHAIRMAN: I was expecting if a Member of the DMK party is speaking, then, a Member of the AIADMK cannot be far behind. We saw a slight improvement.

Now, Mr. Margabandu. You have just one minute, without interruptions. *..(Interruptions)...* I do not know whether Mr. Duraisamy was opposing the Minister or opposing the Bill.

SHRI R. MARGABANDU (Tamil Nadu): Madam Deputy Chairman, I thank you for giving me an opportunity to speak on the Companies (Amendment) Bill, 1999. My friend, Mr. Duraisamy, has opposed this Bill. But I am supporting the Bill for the following reasons:

This Bill seeks to give relief to the small shareholders, relieving the small shareholders from the clutches of the monopolistic big shareholders. The second point is transparency. The third is improvement of the industrial relationship. The fourth is preventing the fake companies from looting the masses and share markets. Then, the episode of Harshad Mehta cannot be forgotten.

Madam, these are the days where the common man also wants to purchase some shares in some companies. Hitherto, for the common man, big companies were a dream. But now, they want to purchase some shares. But they are crushed by the big, monopolistic, shareholders. This Bill, by introducing a section for buy-back, tries to help. Section 79A, sought to be inserted, speaks about sweat equity shares. It is an incentive to the worker. He himself becomes the owner. Then he himself will work for the improvement of the company. By this sweat equity, an employee can acquire an interest in the company. Therefore, he will work for the improvement of the company. He will not unnecessarily resort to strikes and other things, demanding higher bonus, salary and other things. Unnecessary industrial disputes will also be avoided in this way. And, there is a saying in Tamil that means, the tiller should become the owner of the land. Likewise, the employee must have a share in the company itself. This way, this section 79A helps to resolve most of the industrial disputes and other things.

Then, with reference to buy-back, in the Harshad Mehta case, the big monopolists wanted to dominate the entire share market and the small shareholders were crushed like anything. By this buy-back scheme of the Government itself, the interest of the small shareholders are being protected.

Furthermore, Madam, there is transparency under this Act. Sub-clause (6) of section 77A gives this transparency. It says, "Where a company has passed a special resolution under clause (b) of subsection (2) to buy-back its own shares or other securities under this section, it shall, before making such buy-back, file with the Registrar and the Securities and Stock Exchange Board of India a declaration of solvency in the form as may be prescribed and verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an

opinion that it is capable of meeting its liabilities...". So, there is transparency imposed upon the Board and the shareholder will know whether it is viable and profitable, etc.

I have some doubt with reference to section 77A (2)(c) Proviso. It says, "Provided that the buy-back of equity shares in any financial year shall not exceed twenty-five per cent of its total paid-up equity capital in that financial year. There is a restriction for a financial year. It should not exceed twenty-five per cent of the total paid-up equity. Does it mean that it is the end of it or they can purchase 25 per cent equity share every financial year? Can they purchase the whole thing in four years? It requires clarity on this aspect also. Madam, I am completing.

Section 77B is also sought to be introduced. It says that the company should not purchase its own shares or other special securities through any subsidiary company including its own subsidiary companies or through any investment company or group of investment companies. It is a welcomeable decision. The other thing is the introduction of section 205C. The introduction of this section is benevolent to the investor in the form of Investor Education and Protection Fund. It protects the interests of the investors from the unclaimed fund. Now, I would like to refer to the insertion of a new section-372A. Some of my colleagues have opposed the insertion of a new section-372A. While transferring the funds from the subsidiary bank, the limit has been increased to 60 per cent. They can transfer it up to 60 per cent. If it exceeds 60 per cent, they will have to take the approval of the investors themselves. So, there is nothing wrong in that. In order to have proper coordination, a new section 210A has been introduced. The National Advisory Committee on Accounting Standards would be there to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for

adoption by companies or class of companies under this Act. So, this is a welcome enactment and through this, the employee can have the benefit, the shareholders can be benefited and the unclaimed money can be utilised for protecting the interests of the shareholders. From all points of view, this legislation is a welcome legislation. I welcome this Bill.

SHRI C.P. THIRUNAVUKKARASU (Pondicherry): Madam, I want to make one submission for which I may be allowed one minute's time.

THE DEPUTY CHAIRMAN: He has already taken more time than he was allowed. All right.

SHRI C.P. THIRUNAVUKKARASU: Madam, I am not going to criticise anybody. I would like to refer to the insertion of new section 205C. Section 205(1) says: "The Central Government shall establish a fund to be called the Investor Education and Protection Fund.

(2) There shall be credited to the Fund the following amounts, namely:—

- (c) matured deposits with companies;
- (d) matured debentures with companies."

There proviso is important. It says:

"Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment."

Now, I come to the explanation. It says:

"For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the date that they first became due for payment and no payment shall be made in respect of any such claims."

My submission is with regard to the explanation. It is not taking care of the minors and lunatics. My submission is that there should be a saving clause. If there are sufficient reasons, the Committee should be empowered to condone the delay as per section 5 of the Indian Limitation Act. If this provision is incorporated, the minors will get the benefit. Otherwise, all the money will be taken away by the banking institutions.

THE DEPUTY CHAIRMAN: All right. At least, I accommodated two people in one minute. Mr. Minister.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SURFACE TRANSPORT (SHRI M. THAMBI DURAI): Madam, all the Members have made valuable suggestions in this regard. When I introduced the Bill, I have explained the necessity of promulgating the Ordinance. Why did the Government promulgate the Ordinance and afterwards, what made us to bring so many changes in the Companies Act? It was, in fact, to accelerate the economic growth of our country. That is why we are bringing it. We have to have more investment. (*Interruptions*)

THE DEPUTY CHAIRMAN: Mr. Gurudas Das Gupta, I was very indulgent. I allowed you to speak. Now, there should be no interference on your part. Let the Minister have his say.

SHRI GURUDAS DAS GUPTA: Madam, am I debarred from laughing?

THE DEPUTY CHAIRMAN: You can laugh. But don't speak to him.

SHRI M. THAMBI DURAI: Madam, in fact the United Front Government had brought the Companies (Amendment) Bill. I do not know what prevented them to bring this kind of a Bill before the House. I do not know as to what made Mr. Gurudas Das Gupta laugh. I do not know why he is making such a sarcastic remark.

SHRI GURUDAS DAS GUPTA: Madam, I made no remark. I was just laughing. I was even debarred from laughing.

SHRI M. THAMBI DURAI: If you are laughing in the way in which you like, somebody may misunderstand as to why you are laughing.

THE DEPUTY CHAIRMAN: It should not be delinquent laugh. As long as it is an eloquent laugh, it is okay.

SHRI GURUDAS DAS GUPTA: Madam, it should be an eloquent laugh.

THE DEPUTY CHAIRMAN: That is what I said. Eloquent laugh is allowed, not a delinquent laugh.

SHRI PRANAB MUKHERJEE (West Bengal): It should not be a mischievous laugh.

SHRI GURUDAS DAS GUPTA: Madam, my hon. friend looks at everything as a mischief. What can I do? There is no mischief. It is a hearty, eloquent laugh. I was laughing at the performance of the Minister.

SHRI M. THAMBI DURAI: Okay, Thank you, thank you.

THE DEPUTY CHAIRMAN: At least, he is not making you cry.

SHRI M. THAMBI DURAI: All the hon. Members know very well that this comprehensive Bill for amending the Companies Act, 1956 was introduced in Rajya Sabha on 14.8.97. This Bill is before the Standing Committee. The Standing Committee is going through it. They are taking some time because they are going to change many provisions in the Companies Act. At the same time, because of the representations made by various business organisations and other associations to make changes in the Companies Act, the Government felt it necessary to bring this Bill. That is the thing. I accept that. That is why, we brought this Ordinance; not with any other purpose. Actually, the Bill was drafted on the basis of the considered

recommendations of a Working Group set up by the Government, to recodify the Companies Act, 1956. While drafting it, the comments and the suggestions received by the Government from various corporate experts and professional bodies were kept in mind. Therefore, the measures proposed in the Bill are based on a detailed debate on the issue raised by the public and the opinions of experts expressed on corporate matters. It is not a thing on which the Government can voluntarily bring a comprehensive Bill. The measures contained in the Bill are also part of the comprehensive Bill which was introduced on 14.8.97.

SHRI GURUDAS DAS GUPTA: Madam, I never said that the Government volunteered it. It is involuntary because of the proposed amendment. I never said the Government volunteered it.

SHRI M. THAMBI DURAI: The proposed amendments can be further examined by the Standing Committee on your recommendation. Madam, the Bill contains certain urgent measures to help the corporate sector and boost the economy. That is the purpose. Madam, most of the Members expressed their appreciation. Only some had reservations about this, but most of the Members supported this Bill...*(interruptions)*...Only some people like you had reservations, but, at the same time, you had also supported the comprehensive Bill. You had not objected to it. You would have your objection to a piecemeal legislation. What you opposed, I can understand, but you also appreciated the need for bringing a comprehensive Bill to make changes in the Companies Act. That you have done some Members have spoken about buy-back of the shares, as to how they are going to buy-back. Only the companies which are in sound financial position can buy-back. The purpose is to see that some foreign companies do not come to just take over the good companies. It is only to protect our own industries and companies that we have

brought the Bill. You are also concerned because when some foreign companies are coming, buying the shares and taking away...*(interruptions)*...

THE DEPUTY CHAIRMAN: Jibon Royji, can't you keep quiet? Ten minutes are not enough.

SHRI M. THAMBI DURAI: That also, up to 25 per cent of the paid-up capital they can do. Beyond that, they cannot do it.

SHRI GURUDAS DAS GUPTA: Where is the provision in the Bill that prevents the corporate houses from not taking a loan from the banks to finance the buy-back of shares? Where is the provision? Why is the hon. Minister making such commitment?

THE DEPUTY CHAIRMAN: Now that you have put the question, let him answer...*(interruptions)*. Please sit down.

SHRI GURUDAS DAS GUPTA: Okay. *(Interruptions)*.

THE DEPUTY CHAIRMAN: Let him...*(interruptions)*. No, not everybody. *(interruptions)*. Please sit down. *(interruptions)*) Please let him answer. The question is being articulated to him, Let him answer.

SHRI M. THAMBI DURAI: There is a provision in the Bill. They cannot...*(interruptions)*. The provision is there. They have to place the resolution before the...*(interruption)*.

SHRI R.K. KUMAR (Tamil Nadu): How can they allow? How can they do it? *(interruptions)*

SHRI GURUDAS DAS GUPTA: Where is the provision? *(interruptions)*

SHRI M. THAMBI DURAI: Yes, there is a provision. *(interruptions)*

THE DEPUTY CHAIRMAN: He will tell you. *(interruption)*. Please, let him finish. *(interruptions)*. Mr. Gurudas Das Guptaji, Please sit down. *(interruptions)*. Okay, I will ask him. *(interruptions)*

SHRI GURUDAS DAS GUPTA: Where is the provision?

SHRI M. THAMBI DURAI: There is a provision. And without that, they cannot take the money. *(interruptions)*

THE DEPUTY CHAIRMAN: I will ask him. *(interruptions)*. Mr. Basu, please sit down. *(interruptions)*.

SHRI M. THAMBI DURAI: They have to keep surplus funds. *(interruptions)*.

THE DEPUTY CHAIRMAN: The Minister is directly addressing him, so he is directly answering him. *(Interruption)*

SHRI M. THAMBI DURAI: There is a provision in the Bill. There is a special resolution and based on that special resolution only they can use it. There is a special resolution. *(Interruptions)*

SHRI PRANAB MUKHERJEE: He can mention the clause. *(Interruptions)*

THE DEPUTY CHAIRMAN: You mention the clause. I will also look at the clause. *(Interruptions)*. Read that clause. You are a lawyer, so you would know it better. *(Interruptions)*.

SHRI M. THAMBI DURAI: We have the Escrow fund. I will go through... *(Interruptions)*.

THE DEPUTY CHAIRMAN: Let him complete it. Don't confuse the person. *(Interruptions)*. It should be under Section 77(a). There is a provision. Read it out.

SHRI M. THAMBI DURAI: In Section 77(a), there is a provision. It says: '...a company shall purchase its own shares or other specified securities....'. And further, in the sub-section, it is mentioned: the buy-back is authorised by its Articles; and a special resolution has been passed in the general meeting of the company authorising the buy-back. *(Interruptions)*.

SHRI GURUDAS DAS GUPTA: What is this? Where is the provision? *(Interruptions)*

SHRI M. THAMBI DURAI: One has to follow the SEBI guidelines.

SHRI GURUDAS DAS GUPTA: Where are the SEBI guidelines?

SHRI JIBON ROY: Our question is very simple... *(Interruptions)* There is distortion in the equity capital... *(Interruptions)*

SHRI S. VIDUTHALAI VIRUMBI (Tamil Nadu): Where are the SEBI guidelines? *(Interruptions)*

THE DEPUTY CHAIRMAN: Please, no... *(Interruptions)*. I will not permit this kind of a behaviour. *(Interruptions)*. Just don't... *(Interruptions)*. You are not on a point, of order. *(Interruptions)*. Just, please... *(Interruptions)*. This point of order is... *(Interruptions)*. You have put a question to the Minister. He will answer it, but if you confuse... *(Interruptions)*. Let him answer first. *(Interruptions)*. Let him answer. *(Interruptions)*. I don't like... *(Interruptions)*. The Minister never interfered. Whatever you were saying, he never interfered; he never interrupted. If you have put a question, then let him read the Bill and place the correct answer before the House. Each one of us is concerned about it. *(Interruptions)*. No noise, let him speak.

SHRI M. THAMBI DURAI: When the hon. Member asked a question as to whether there was any provision to protect the shareholders... *(Interruptions)*.

SHRI GURUDAS DAS GUPTA: I said, bank loan.

THE DEPUTY CHAIRMAN: Okay, bank loan.

SHRI M. THAMBI DURAI: Okay, bank loan. I didn't say anything. What I said was that there is a provision to create some kind of a special account where the money could be deposited. From that money they are supposed to purchase the shares. They have to pass a special resolution before doing that. Therefore, there is a safeguard. *(Interruptions)*... That is the safeguard which I have mentioned. *(Interruptions)* ...

THE DEPUTY CHAIRMAN: Just one minute. I will explain. (*Interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: Madam, please allow me.

THE DEPUTY CHAIRMAN: I will allow you. Just one minute. Mr. Minister, I think the concern of the Members is that any company may use the public money from the financial institutions and the banks to buy their own shares to have complete control over the company. This is their fear. You dispel this fear by telling them what the safeguard is.

SHRI M. THAMBI DURAI: Madam, I have said my point. They can purchase the shares from their free reserves or from the securities premium account or from the proceeds of any shares or other securities only. They have to purchase the shares from that only. (*Interruptions*)... What else do you want? (*Interruptions*)... You please tell me. This is the provision. (*Interruptions*)... You tell me what you want. (*Interruptions*)...

THE DEPUTY CHAIRMAN: I think you have not read it. I am going through clause 77A. These provisions are there. I do not want to read it. It is not my job as the Presiding Officer to read out his Bill or legislation. I want him to articulate it. You people are confusing him. Now I think he has answered your question. (*Interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: Madam, it is surplus fund. What is the "free reserves"? The "free reserves" is what is left after subtracting the tax as well as the dividend. (*Interruptions*)...

THE DEPUTY CHAIRMAN: Mr. Virumbi, please take your seat. Mr. Minister, you please continue. (*Interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: The balance cannot be taken as "free reserves". The "free reserves" is totally different from the balance amount. The "free reserves" is what remains after subtracting the tax as well as the dividend

that they have to pay. That is the "free reserves". If there is more surplus, they have to give more dividend. Instead of giving more dividend, they want to keep it with them for buying the shares from the shareholders, which is totally wrong. After buying the shares, they are entitled to take loans by way of debentures. Therefore, it is against the public interest. The Minister should understand what our real concern is. (*Interruptions*)...

THE DEPUTY CHAIRMAN: You read the entire clause 77A right up to the explanation and then you may speak. Let the Minister speak about it. You have put a lot of questions. Let him answer. (*Interruptions*)... Just because he is from your State you cannot harass him.

SHRI M. THAMBI DURAI: Madam, my colleague, Mr. Virumbi, has raised some questions. Whatever the profits that come, all are not given to the shareholders. We are not distributing the profits to the shareholders like that. We keep some reserves also. (*Interruptions*)... But that reserves can be used to buy back the shares. That is there. (*Interruptions*)...

SHRI S. VIDUTHALAI VIRUMBI: Madam, ...(*Interruptions*)....

THE DEPUTY CHAIRMAN: No, I am not allowing. (*Interruptions*).... I am not allowing. (*Interruptions*).... I am not allowing. (*Interruptions*).... I have not allowed you. (*Interruptions*).... I have not allowed you. (*Interruptions*).... Mr. Virumbi, I have not allowed you.

SHRI M. THAMBI DURAI: Madam, regarding section 372, some of the hon. Members said that there were so many files pending and that was why it happened like that.

THE DEPUTY CHAIRMAN: you mean applications.

SHRI M. THAMBI DURAI: Yes, applications, Madam. Some files used to remain pending because we have to get some information from the companies. That is the reason. It is not necessary that we have to keep the file.

(*Interruptions*)... If at all that is the case, why am I bringing this Bill now? (*Interruptions*)....It is to get away from that burden. (*Interruptions*)....Hereafter, I need not.....(*Interruptions*)....

SHRI S. VIDUTHALAI VIRUMBI: Madam, this is also wrong information. (*Interruptions*)....

SHIR M. THAMBI DURAI: I do not know what advantage I am going to get by giving a wrong information. (*Interruptions*)....What is that? (*Interruptions*)....

SHRI S. VIDUTHALAI VIRUMBI: Madam, 170 files are kept with him. This is the information. (*Interruptions*)....

SHRI M. THAMBI DURAI: No, you are misleading the House. (*Interruptions*)....

SHRI S. VIDUTHALAI VIRUMBI: More than 170 files are kept with you without any reason. (*Interruptions*)....

SHRI VAYALAR RAVI (Kerala): Madam, I am on a point of clarification. Is it a Bill by the Government of India or by the Government of Tamil Nadu?

THE DEPUTY CHAIRMAN: It is just like that. I was expecting it. I said that when the DMK spoke the AIADMK was not far behind. If the Minister happens to be from Tamil Nadu.....(*interruptions*)....Enough is enough. Now, Mr. Minister, please conclude.

SHRI M. THAMBI DURAI: Therefore, I would request the House that the Companies Amendment Bill 1998, as passed by the Lok Sabha, which will replace the Companies Amendment Ordinance 1999 (No.1) of 1999, promulgated on 7th January, 1999, be taken into consideration and the Companies Amendment Bill, 1998 be passed...(*Interruptions*)....

THE DEPUTY CHAIRMAN: Please sit down. Take your seat. I know what I should do. There is a Resolution which was moved by Shri Balwant Singh Ramoowalia. It has to be disposed of

first, before I allow the Minister to put his question. Now Mr. Ramoowalia is not here. He cannot withdraw it. So, I will put the Resolution to vote. The question is:

"That this House disapproves of the Companies (Amendment) Ordinance, 1999 (No. 1 of 1999) promulgated by the President on the 7th January, 1999."

The motion was negatived.

THE DEPUTY CHAIRMAN: (*Interruptions*)....

I know. I know. I have been counting it for the last half an hour. Your eyes may be watching; but my eyes are also watching.

SHRI GURUDAS DAS GUPTA: Your eyes may not be that much watchful.

THE DEPUTY CHAIRMAN: My eyes are very much watchful, Mr. Das Gupta. I shall now put the Motion moved by SHRI M. Thambi Durai to vote. The question is:

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

The motion was adopted.

(*At this stage some hon. Members left the Chamber.*)

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

Clause 2 to 21 were added to the Bill.

(*Interruptions*)

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

Mr. Vayalar Ravi, do you want to say something now?

SHRI VAYALAR RAVI: Madam, the Members on this side have raised certain valid questions, especially in case when they want to buy back shares by taking money from a bank. The question which is agitating the Members is that...(Interruptions)

THE DEPUTY CHAIRMAN: Order please. Let him be heard.

SHRI VAYALAR RAVI: Certain provisions have been made. They can buy back shares only by this process. But it does not prevent the company from passing a Resolution with regard to buy back shares by taking money from a bank or some kind of deposits, etc. They can do that. This is the only fear expressed by the hon. Members. We have to think over that, as to what rules, means, are there to prevent such eventualities. We have to prevent such methods as are adopted by the companies. It should be specifically mentioned in the Act. So, according to my observation, the Members on the floor of this House want to get it clarified whether the Minister is contemplating to make any such rules which will prevent any company from misusing this law of buying-back the shares and control the company by using bank facilities. This is the main point. Will the hon. Minister give an assurance on this?

SHRI M. THAMBI DURAI: Madam, Shri Vayalar Ravi has raised the same point which was raised by certain other hon. Members. If we are allowing the companies to buy-back the shares, we are also framing certain guidelines and rules as to how they have to proceed and how they have to buy-back the shares. We are framing certain guidelines. My Ministry is also framing certain guidelines. We have enlisted certain companies. The Department of Company Affairs is looking after it. The enlisted companies and the SEBI will take care of it. If any company misuse any such provision, definitely we will take action. This is my

assurance to the House. Madam, I would also like to say that we will take into consideration all the points raised by the hon. Members. We will see to it that the companies do not misuse the funds and the share-holders do not suffer.

THE DEPUTY CHAIRMAN: Mr. Minister, it is not a question of companies misusing the funds. It is a question of the authority which you are giving to the companies to raise funds from banks, from financial institutions, from companies, etc. so as to have total control. You have to safeguard that. That is the concern which has been expressed by Shri Vayalar Ravi and other hon. Members. As Miss Rebello said, while you are trying to protect the Indian companies from foreign companies, you must also see to it that certain companies should not become so monstrous that they eat up other Indian companies. You have to keep a control over it and even some resolution can be passed. That is the concern which Shri Vayalar Ravi has expressed.

SHRI M. THAMBI DURAI: Madam, we will take this point into consideration.

SHRI B. P. SINGHAL (Uttar Pradesh): Madam I would like to seek one clarification. If a company buy-backs the shares, that means it is already under the control of the company. What is the further control which has been envisaged? Otherwise, it cannot buy-back the shares if it is not in control.

SHRI VAYALAR RAVI: By a resolution.

THE DEPUTY CHAIRMAN: By a resolution, they can buy more shares.

SHRI B. P. SINGHAL: It is already in control.

THE DEPUTY CHAIRMAN: It will have more control over it.

SHRI VAYALAR RAVI: Tata can have a control with five per cent shares. With buy-back of 51 per cent shares, Tata will have absolute control.

SHRI B. P. SINGHAL: What difference does it make? Whether it is 30 per cent or 40 per cent, it will have a control.

SHRI M. THAMBI DURAI: Madam, I will take care of it. I move:

"That the Bill be passed."

The question was put and the motion was adopted.

THE DEPUTY CHAIRMAN: I adjourn the House till 11 a.m. tomorrow.

The House then adjourned at forty-three minutes past six of the clock, till eleven of the clock on Saturday, the 13th March, 1999.
