

that the Committee shall make a report to the House by the first day of the 148th Session of the Rajya Sabha; and

that this House recommends to the Lok Sabha that Lok Sabha do join in the said Joint Committee and communicate to this House the names of members to be appointed by the Lok Sabha to the Committee."

The question was Put and the motion was adopted.

THE COMPANIES (AMENDMENT) BILL, 1987

THE MINISTER OF INDUSTRY (SHRI J. VENKAT RAO): Madam Deputy Chairman, I beg to move:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration."

The Companies (Amendment) Bill, 1987 seeks to bring in certain amendments to the Companies Act, 1956 in the light of the recommendations made by the Expert Committee on the Companies and M. R. T. P. Acts and in the light of the experience gained in the administration of the said Act.

I would like to make a mention of some of the broad considerations kept in view while proposing amendments. Firstly, the functions which are purely of administrative nature and functions which have an element of adjudication have been identified. Some of the powers presently vested in the High Court and the Central Government which call for judicial approach and administrative circumspection are proposed to be vested in the proposed independent Company Law Board. The Board is proposed to be restructured as an independent quasi-judicial body to exercise such functions.

The adoption of the principle of management by exception is reflected in the proposals relating to appointment and remuneration of managerial

personnel. Thus, the requirement of approval for appointment and payment of remuneration to such personnel is proposed to be dispensed with subject to the statutory guidelines included in the Schedule annexed to the Bill.

With a view to ensuring that the annual accounts of Companies reflect true and fair view of the affairs of the company, it is felt that it is necessary to de-link the rates of depreciation under the Companies Act from the rates of depreciation under the Income-tax Act and to lay down the rates in the Companies Act itself. Simultaneously, companies will be required to adopt accrual basis of accounting.

Some of the legislative measures are directed towards protection of the investing public. Provisions relating to intervention of the Company Law Board against non-payment of public deposits; compulsory redemption of preference shares in certain cases; requiring companies to disclose reasons for refusal to register transfer of shares; protecting the rights of the transferee pending mutation of his name in the register of members; compulsory listing of all public issues; and return of application money within the specified time, seek to achieve this objective.

More recently, the number of shareholders of corporate bodies has increased substantially. This phenomenon to some extent has resulted in companies having to incur higher costs for servicing them. Accordingly, it is felt that it is necessary to make provisions with a view to reducing cost and burden on companies without, of course, impairing the interests and rights of shareholders. The more important proposals in this regard relate to requiring companies to attach only an abridged form, of prospectus to the application form. It is also proposed that listed companies may, if they so desire, send only an abridged version of the

[Shri J. Vengal Rao]

balance sheet to the members. However, the right of the shareholder to obtain the full annual accounts *on request* has been provided. Other provisions in this regard relate to requiring companies to hold a poll in general meeting only at the instance of the shareholders having some minimum stake in the company; and further requiring companies to file full annual return only once in six years

Conservation of energy, absorption of technology and foreign exchange earning and outgo are the aspects which have been engaging the attention of Government for some time. A monitoring mechanism has been devised by the proposal for disclosure of particulars relating to energy conservation, technological absorption etc. in the Directors' report.

The Bill contains provisions relating to the three professions concerned with the management and administration of companies. Streamlining the provisions relating to ceiling on number of audits by chartered accountants, imposition of ceiling on number of cost audits and introduction of the concept of 'secretary in whole-time practice' are proposed in the Bill.

Opportunity has been taken to remove certain irritants and loopholes with a view to making the concerned provisions more effective.

As the Hon'ble Members are aware, the Bill was introduced on 31-8-1987. Since, then, it has generated considerable debate and views were expressed on the provisions of the Bill by various chambers of commerce, professional bodies and public representatives concerned with the corporate sector. In the light of these things, the Government feels that it is desirable to move few amendments in order to infuse greater clarity and precision to the provisions

The Government feels that the provisions of the Bill, when enacted, would be a step in the right direction for better management and administration of the affairs of the companies and for protection of the rights of investors.

I now move that the House be pleased to take up the Bill for consideration and pass the same.

SHRI KAMAL MORARKA (Rajasthan): I move:

"That the Bill further to amend the Companies Act, 1956, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. Shri B. Satyanarayan Reddy
2. Shri Virendra Verma
3. Shri Ghulam Rasool Matto
4. Shri Chitta Basu
5. Sardar Jagjit Singh Aurora
6. Shri V. Gopalsamy
7. Shri K. Mohanan

8. Shri Gurudas Das Gupta
9. Shri Dayanand Sahay

Shri Kamal Morarka

with instructions to report on the first day of the next Session."

SHRI SUNIL BASU RAY (West Bengal): I move:

"That the Bill further to amend the Companies Act, 1956, be referred to a Joint Committee of the Houses consisting of 21 members; 7 members from this House namely:—

1. Shri Aladi Aruna alias V. Arunachalam
2. Shri M. S. Gurupadaswamy
3. Shri Samar Mukherjee
4. Shri Parvathaneni. Upendra S. Iyari Atal^ Bihari Vajpayee ».
- Shri N. E. Balaram
7. SKK SShfl «sa R&y

and 14 numbers from the Lok Sabha;

that in order to constitute a meeting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee:

That in other respects, the Rules of Procedure of this House relating to Select Committees shall apply with such variations and modifications as the Chairman may make.

that the Committee shall make a report to this House by the first day of the next Session; and

that this House recommends to the Lok Sabha that the Lok Sabha do join in the said Joint Committee and communicate to this House the names of members to be appointed by the Lok Sabha to the Joint Committee."

The questions were proposed.

1.00 p. m.

SHRI KAMAL MORARKA: Madam Deputy Chairman, at the very outset, I would like to say that this amendment Bill is a very half-hearted one. In the Statement of objects and Reasons, the Government has said that in the light of the recommendations made by the Expert Committee (Sachar Committee) and in the light of the experience gained in the administration of the Companies Act 1956, over the last few years, Government have felt it necessary to bring this amendment. Madam, the Sachar Committee report is a very bulky report.

THE DEPUTY CHAIRMAN: The hon. Member is making his maiden speech.

SHRI KAMAL MORARKA: Madam, the Sachar Committee report is a very bulky one. This Committee was set up in 1977 and the recommendations are from having become very old have not been dealt with in this amendment. But in fact, this amending Bill has got certain features which confuse the investors. The purpose of the Act is to protect the creditors, depository and shareholders

in a much wider sense than those who have a bigger stake in the company which they are managing. Now, Madam, here we find that in this particular amending Bill certain provisions have been made to protect the depositors by way of giving powers to the Mew Company Law Board in respect of fixed deposits. At the same time, a very important right of the investors has been taken away and, that is, to get an annual report on the functioning of the companies. A new feature is being introduced in the Companies Act which was never there before neither in the Companies Act, 1913 nor the Companies Act, 1956, nor the various amendments that have been made since 1956. Only an abridged form of the profit and loss account and the annual report will be sent to the shareholders and on payment of fee he will be entitled to get the full report as he is getting now. If the hon. Minister looks into the representations from various shareholders' associations—over the years he will find that even the existing requirement of information to be provided to the shareholders is not enough. In fact, shareholders' associations have already represented that the information given to them should be much more specific. In companies which have got various divisions, it should be division-wise. There are a lot of other features which they have pointed out, from time to time. Here we find a Bill which has been ostensibly brought to protect these very small shareholders; and depositors which takes away even the existing rights being given to them. It is a very, very serious matter. In corporate functioning, as we have seen over the last few years, I may venture to say that even the Sachar Committee recommendations have become a little out-of-date, because in the last five years especially after this Government has come to power, there has been a sea-change in the operation of the corporate sector. This particular Act which is the main Act governing the administration of the companies in the corporate sector

[Shri Kamal Morarka], cannot be effective, in spite of over 600 sections and a vast army of company law administration officials all over the country. The small depositors and the shareholders will always be left at the mercy of a certain Government bureaucrat or a certain department. For instance, in spite of all these powers which the Company Law Board enjoys, this particular amending Bill says that certain powers will be shifted from the High Court to the Company Law Board. Madam, it makes no difference. The ultimate executing authority is the Government. The Company Law Board will be executing its decisions through the Government. Now, I want to know, if the Company Law is effective, then, how we have got massive cases of duping? The investors are totally taken for a ride. M/s. Sanchayita and M/s. Peerless are cases which come to my mind. These are cases where the number of people affected are in thousands and in lakhs. I do not think that this particular Bill in its present form will take into account the real problems of the investors. Therefore, my amendment is that we should refer it to the Select Committee.

The hon. Minister Just now said that the Bill was introduced on 31st August 1987 and since then, a lot of representations have been received from trade and industry, which have been taken into consideration to further amend the amending Bill. Madam, I want to know why should we bypass the process of the Select Committee which will do this job much more thoroughly. I can only recall to memory that in the time of Jawaharlal Nehru, all acts which were complicated, like the Companies Amendment Acts or the Companies Act or all such Acts were invariably referred to the Select Committee by a motion brought forward by the Government itself. Now this process, I find, for some reasons has been bypassed. Why should Chamber*

of Commerce go on representing separately and how do the Members know, how does Parliament know? The Chamber of Commerce would appear before the Select Committee. The Select Committee would know what exactly are the various view-points and definitely a more thorough view could be taken of the Act.

Now, I want to go specifically into few clauses apart from this abridgement of the annual report which is a very serious matter affecting the common man. Now, there are certain things which are quite contradictory. For instance, on small and medium size companies the policy of the Government is that even in the corporate sector, we will give encouragement to small scale industries, small entrepreneurs, new entrepreneurs. It is my submission. Madam, that unless the law is made effective, the administration will remain loose. Now the law, as it is today, applies to over one lakh companies. It is not possible to administer small companies which have a share capital of Rs. 1 lakh, Rs. 5 lakh or Rs. 10 lakhs effectively. What the nation is concerned with is where public money is involved. Public money is involved in a big way in companies having a large share capital, capital over Rs. 10 crores or Rs. 5 crores which today get the same treatment as small simplicitor companies. It is my submission to the Minister. Madam, through you, that the law should be amended in a manner that the small companies should have very minimal formalities whereby the Company Law administration does not have to waste time on them. Only then the law will become effective in the case of large companies where we will be able to protect the shareholders, creditors and depositors. Now my submission is even in the case of wholtime managing director in this amending Bill, they have said, companies having a share capital of more than Rs. 25 lakhs will have to have st

managing director or a whole-time director. This is wholly uncalled for. This should be for the companies which have a share capital of over Rs. 5 crores where we can think of these positions, the perks and the salaries the company can afford. Small and medium size companies, if they are family-owned companies, if they are closely held companies, we should not burden them with more and more formalities which do not help us in any way to achieve the objective of this Bill. The four specific things where I would like to draw the attention of the Minister are: it has been provided in this Bill that private limited companies, who accept fixed deposits will be deemed to be public companies. Now I see an amendment has come that this will not apply to companies getting deposits from relatives. But I venture to say that there are small family companies which can raise deposits from their own friends and associates. Why should they become public companies? They are not getting money from the public in the wider sense. If they are getting loans, they are small loans from commercial banks against securities. By bringing or by roping in all these companies, really what we are doing is that we are not applying the law to these companies but allowing law to become ineffective in the case of big companies and this is precisely what is happening. For instance, in Bombay or Calcutta, the big public corporations, big companies which deserve to be closely monitored whether they are following the Companies Act or not. This cannot be done however great our desire may be with a limited number of staff and even we probably can go on increasing the personnel in the Company Law Department. But the administration of the Act cannot be effective unless we do an ABC analysis and see that only those companies where public money is really involved are closely monitored and there is a saving. I am worried against this whole concept where we

, go on providing penalties for infringement. Penalty should act as a deterrent. How far are we able to deter the large companies from violating the law? Here I see a very strange amendment that in case Government has not approved the Managing Director's appointment, the Managing Director will be fined Rs. 500 per day for the number of days that he refuses to vacate the office. I do not understand this logic. The law should be that Government has not approved the Managing Director's appointment and the Managing Director should therefore have vacated the office from the moment Government has disapproved of it. But to provide a penalty of a few hundred rupees in the event of his continuing in office for the period when Government has disapproved the appointment is very strange. According to me, the whole Companies Act should be looked at afresh. There should be a Select Committee or the honourable Minister can only have to bring a motion for a Joint Committee of both Houses. Nothing will be lost if this Bill is not passed immediately. The Bill should be made thorough. Probably the time has come when we should have a Companies Act, 1988 which need not have 600 sections. A Companies Act with 100 or 200 sections can be much more effective in curbing most of the bad practices taking place today. And the corporate sector should be involved in suggesting ways and means by which this can be done in a systematic manner. This is my humble submission.

Then I go to my next point. What is the general tenor of most of the amending Bills? Interestingly, after 1956 we had the amending Bill of 1960 there were two Bills in 1964, the general tenor of the Bill was known, whether it was restricting the corporate sector or it was liberal or for what purpose. But this particular Bill is a little different in the sense that after the present Government came to power

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power, it announce! policies which were very liberal to the corporate sector. Liberal does not mean that they can break the laws. Liberal mean—that the Government lays down the framework of the industrial policy and within the framework of that policy Government wants to give the corporate sector a little leeway to operate. But here I find under Section 70 or Section 372 a whole new definition is given to intercorporate deposits. Including deposits within the meaning of "loan" not only creates trouble for the corporate sector, —* humbly submit—it is violence to the English language. By no stretch of imagination can a deposit be termed a loan. We are making deposits in banks. They cannot be called loans. We are not giving loans under intercorporate deposit. To include it under the term 'loan' is an atrocity and it will only affect the small and medium entrepreneurs. The bigger companies can get enough loans from companies, from Government institutions. In spite of our talk of socialism and decentralisation, it is always the bigger companies which get the larger cake out of the Government resources and it is the small and medium people who are hard hit by this provision. While ostensibly it is meant to protect the small man, the people who are really hit by the tenor of this Bill, are the small and medium entrepreneurs. The MRTP and FERA companies are not affected by this Bill at all. I do not suggest that there should be any restrictions put on MRTP or FERA companies which are not realistic. What I submit is in the scheme of things the Industrial Policy Resolution from the time of Jawaharlal Nehru which Government still professes, is a relevant document, feel in terms of fulfilling those objectives there should be "restrictions only on 'MRTP' and FERA companies. Small and medium companies should be outside the orbit of these restrictions. Only then will the "Company" Law administration be

effective; otherwise, this series of amendments only add to the plethora of amendments that we have been adding from year to year. We have two sets of companies; those who want to violate the law with impunity and those who want to follow the law, follow the law, in letter and spirit. It is to the latter category, that those who follow the law of the land, that you should give any leeway.

I come to another provision. In the Statement of objects and Reasons one of the objects mentioned is "reducing unnecessary cost or burden by requiring companies to attach only an abridged form of prospectus to the application form..." I would like to know specifically from the honourable Minister which section of companies has represented that the cost of printing the balance-sheet is prohibitive and they want to reduce it. I submit that in the annual report presented today there is a whole section dealing with listing of employee; getting salaries of over Rs. 3000/. And I find that over the years this figure of three thousand is not increased. In this amending Bill there is some provision resulting in large companies having thousands of staff employees and they are listing those employees which itself takes up thirty or forty pages of the balance sheet. Merely deleting that provision can bring down the cost of printing and that will not affect the small investors in any way. Instead of doing that, they have taken powers now, suggest that it should be deleted altogether. A small shareholder is not interested in who is employed and what salary he is getting. He is only interested in knowing whether a Director's relative has been employed and that was the original purpose. This was inserted in the sixties when it was found that the wives or relatives of the Managing Directors of companies were on high of the salaries. So, a provision was inserted at that time, three thousand

i rupees was a very high salary. It was said that with regard to people drawing above three thousand rupees, details should be given. Today, the law should be amended to the effect that if the Directors' relatives or those connected with the company are employed by the company, details should be given. Probably, after this provision, nobody's relative will be employed because it will come to the adverse notice of the Government. But abridging the whole balance sheet to reduce costs is not good. We are seeing larger corporations, instead of just giving information as required by the Companies Act, printing fancy balance sheets, colour photographs, offset printing, printing on its paper, etc. Certainly, they are not worried about the cost. It is a strange thing that, the Government is worried about reducing the cost, unless we are talking about the balance sheets of the public sector companies - which is a different matter. But, as for the private sector, the companies "which are doing so take pride in printing colour balance sheets and it cannot be their representation and in the name of reducing costs you cannot bar vital information from *via*. So, he cannot say—it is a very vague submission of the honourable Minister—that the Government felt it necessary to do so as a result of representation. We want to know, as a result of representation from whom? There has to be a provision to protect somebody.

Madam, there are two or three points which I would like to make and they are rather general in nature. In spite of the Companies Act, my experience has been that most of the violations which are technical in nature are taking a lot of time of the Company Law Board and we find notices being sent to the private limited companies, we find late presentation of returns, late holding of annual meetings, etc. and even about the solicitor companies in which the husband and wife are the directors,

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why the hell the Government should be worried about whether they hold a meeting at all?

DR. BAPU KALDATE (Maharashtra). They can hold it in a small room,

SHRI KAMAL, MORARKA: But they are holding. I would submit that the partnership firms, proprietary firms, private limited companies, are nothing but glorified partnerships and the Act should be amended in such a manner that the small private companies are kept outside the purview of this Department. Only then the Government Department can concentrate on the really larger violations where companies have started doing badly, but the balance sheet does not reflect that, with the result that more people start putting deposits and face difficulties later. There are investment companies about which the people do not know and they do not know whether they have the approval of the Reserve Bank of India or not and by the time the Government machinery acts, a large number of people find themselves duped by these companies and these companies cannot be stapled unless the Company Law Department is vigilant. But I submit that the Company Law Department cannot be vigilant in the present system because the present system is conducive to the harassment of the small man and I find nothing in this amending Bill which either disciplines these companies or stops the harassment of the small men or encourages the medium entrepreneur. Therefore, this Bill should be rejected and my submission to the Minister through you, Madam, is that if now this is referred to a Select Committee, at least all those of us who are interested in it can give specific suggestions. The objective is quite clear. The Government wants to rationalise the whole thing, the Government wants to make it effective and the social objectives of the Government are shared by all of us and there is

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no dispute about it. But look- at the provision regarding abridging the balance sheet giving Less information to the shareholders on the accounts. Why should the annual report contain, according to this bill, information "on conservation of energy, technology absorption"? Now, are these subjects in which a small investor is interested? Will he even understand it? It is highly technical. I am sorry, I have been in business for a long time and technology absorption is something which I have not been able to absorb at all. So, I do not know how a small man will understand that. With this kind of contradiction, I think this Bill is a typically bureaucratic Bill which only encourages more paper work. It is good for the bureaucracy. But the small man will have to go again and again to the Government which is probably good in the scheme of things, but which is contrary to the avowed object and reasons of the Bill. It is totally contradictory to the spirit of the Sachar Committee which had a very socialist approach. It is contrary, if I may submit with your permission, to the thinking of their own Prime Minister. I do not understand who is the author of this Bill; I do not understand how this kind of omnibus Bill without direction has been brought. This is one of the most poorly drafted pieces of legislation that I have come across. I submit, Madam, that apart from these things, if the hon. Minister may allow me to submit, I have seen in the administration of companies for smaller things they are more punctilious. If a company is not filling some paper on Mmc, promptly they will send a notice. But there are some other companies which I know of which are repaying their depositors. Depositors are knocking at their doors. And nobody is listening to them. This kind of anomaly must be corrected, since this is a very important Act in the sense that the entire corporate sector is administered

by this Act. If the Government has any power to discipline companies, it is through this Act. And if this Act is treated in such a callous manner, I am at my wits end to understand how larger companies will ever come within the framework of any discipline at all. They will not. Whenever any controversy starts, we start the controversy of the public sector and the private sector. This is a needless controversy. In this country we need the private sector and we need the public sector. In this country we need large companies and we need small companies. Everybody must play his role as per the scheme of the Constitution, as per the scheme of various resolutions. We in the Opposition may or may not agree with the Government's policies, But just now the Government's policies must adhere at least to what their own avowed objectives are. This Bill does not even conform to their own pattern. It is strange to me. I do not understand how these provisions have found their way into this Bill, specially in relation to the entire corporate deposits and loans just because a few High Court judgements have clearly stated that a loan is different from a deposit. The reason you are giving is that this Bill also includes the provision to plug loopholes and remove some lacunae. This is not a loophole or a lacuna, -Loans and deposits are two different things. But by an Act of Parliament we are trying to change the context and the meaning of the entire corporate operations.

While on this subject, I would like to say that recently we have seen companies—Madam, I am just finishing—whose turnover was, let us say, Rs. 10 crores, and let us say they had to pay excise of 20 per cent, which is Rs. 2 crores. We could see that same companies paid 10 per cent less excise or 10 per cent more. It could be in lakhs. Now, Madam, we find that there are corporate bodies which,

the Excise Department says, owe excise which even if they sell their whole company they will not be able to pay. Now, either the companies are indulging in a massive fraud, in which case the Company Law Department is not functioning, or if these are not real dues, the Excise Department is not functioning properly.

Madam, for the common man today it is not, a healthy practice in democracy. People will lose faith in this entire system. If there are companies which owe excise duties of Rs. 500 crores or Re. 10000 crores, well, I do not think it is a healthy practice in democracy of for corporate functioning.

Madam, through you I request the Minister that the Government of its even motion should bring a Joint Select Committee of both Houses of Parliament which can give a thought to this over the next few months and come out with a concrete Bill which will be less, cumbersome, less complex but more effective.

Thank you.

SOME HON. MEMBERS; Very good!

THE DEPUTY CHAIRMAN; Very good speech! Mr. Rameshwar Thakur.

SHRI RAMESHWAR THAKUR (Bihar): Hon. Deputy Chairman, I use to support the Companies (Amendment) Bill, 1987. I would like to congratulate the hon. Minister for a very bold, very pragmatic and very realistic Bill he has brought in this House. This was long standing amendment which has been pending and which was expected by the entire corporate sector, the shareholders, the depositors, stock exchanges, professional bodies, Chambers of Commerce and other sectors of the community. They expected a comprehensive amendment of the Companies Act. We know that the role of the corporate sector is very important in the national economy. We have to see that not only in India but throughout the

world, during the latter part of the 19th century and the current century, the corporate sector has done a remarkable work for the growth of national and international economy and its management. The important factor is that when the economy grew from the proprietorship or partnership, they had the unlimited liability. The corporate sector has a very chequered history of its growth and development in this country and abroad. So far as India is concerned, for the first time it came in the year (1850. Our present Act of 1956 is a very comprehensive legislation of its growth between 1850 and 1956, i. e. more than 100 years*. This old Act was primarily based on the English law. The first comprehensive law passed in England was in 1844. That was the basis of our law in 1850 which was amended from time to time. This law was not the central law and the administration of this law, i. e. the registration used to be with the permission of the High Courts of Calcutta, Madras and Bombay. I see that the first most important corporate sector in India was the East India Company in about 1600. Since then various forms grew and developed in this country. We had various developments so far this Act is concerned. But the most important in our country was the Act of 1913 which was based on the English law of 1908. Thereafter, there were a few amendments from time to time. I would not take the time of the House in mentioning all the amendments. But the most important amendments based on various experience; and expert opinions was the amendment of the year 1956. This is, the Act which we have before us. This Act, is so comprehensive. It is the biggest statute in India that we have got. I would like to mention here that it has 653 sections and 12 long schedules. This is the Act which is under consideration for amendment today. I would say that this matter has been discussed from time to time. After 21 years of the administration of this

[Shri Rameshwar Thakur]. law, i. e. in the year 1977, the Sachar Committee was appointed which submitted, as mentioned by my colleague Mr. Morarka, a very comprehensive report. He has mentioned about the working of the present Government during the last five years. But when the report was published, no action was taken by the then Government in 1978, 1979 and 1980. Thereafter, the new Government was formed in 1980 and that Government wanted to have a fresh look at the whole situation. Therefore, further detailed examinations were conducted in regard to the various aspects of the recommendations and suggestions of the various bodies keeping in view the developing trends in the corporate sector in India and abroad. We know that in the British law. There was a comprehensive amendment in 1985 and the present amendment takes into consideration the amendments in the British law. Keeping in view the growth and development of the corporate sector, particularly during the last 7 or 8 years, in all the countries, I would like to say that our corporate sector has grown very fast. The corporate sector in our country was of a small number when we started. After independence, even the public sector companies were of a very small number. 29 companies were there in the beginning. We find that in the year 1981-82...

THE DEPUTY CHAIRMAN: You please continue after lunch. Now the House stands adjourned for lunch and we will meet again at 2.30 P. M.

The House then adjourned for lunch at thirty-one minutes past one of the clock.

The House reassembled after lunch at thirty-two minutes past two of the clock, The Vice-Chairman (Shri Jagesh Desai) in the chair.

SHRI RAMESHWAR THAKUR: Mr. Vice-Chairman, Sir, the Companies Amendment Bill, 1987, containing 87 clauses reflects a substantial effort to-

wards amending the corporate law. It embodies the Government's intention to liberalise controls and, in particular, the concept of control by exception. The Bill is welcome for many of its positive and progressive features. The proposal for constituting an independent Company Law Board, for which there was a demand from various sections of the community for a long time with enlarged powers and duties, it is believed, would provide relief to courts from routine litigations and make room for less costly and expeditious disposal of matters. On the other hand, it will enable companies, shareholders and others to get quick and speedy disposal of their matters from the Company Law Board. There is a definite attempt to bring the law in line with the contemporary needs of the society, which is very important for any progressive change in the law, and towards fulfilment of public interest. Efforts in this direction are also noticeable in the proposals for protection of depositors and prohibition on the issue of irredeemable preference shares. As we are all aware, a number of companies, old companies, have got irredeemable preference shares and the shareholders have never got it. This will help such shareholders to get their money back after a certain period of five years or so.

Next is listing of public issues on recognised stock exchanges. This is very important in the interest of stock market and shareholders in general. Specific information is sought from companies in their report regarding conservation of energy, upgradation of technology, absorption and foreign exchange earnings and outflow. These are basic informations in the light of the current economic development and development of science and technology, and it is essential that this information should be available which is of vital interest to the people in general. The proposed amendment in the areas of uniform accounting relating to mandatory accounting on ac-

crual basis is very important. The companies had the freedom to prepare accounts in the manner they liked, Partly on cash basis, partly on accrual basis in which it was considered expedient and that never reflected a true and fair position of the accounts to the shareholders, particularly in respect of declaration of dividend. Therefore, this is a very important aspect and this will have the support of the professional Institutes, like the Institute* of Chartered Accountants of India and other professional bodies.

Next item is delinking of rates of depreciation from the fiscal laws. This is another welcome feature because we had the depreciation based on income-tax law and under the income-tax law, as we find, the rates have increased twice or thrice, and so that will not be a true picture. Therefore, this is a welcome feature. I was expected that this Bill will go a long way in rationalising and simplifying many of the provisions of the Companies Act, besides providing a better approach to many complicated and cumbersome provisions of the law. Therefore, as the hon. Minister has said, we have to see that the basic approach and the basic significance as laid down in the Objects clause of the Bill, are very important and a clear indication of the Government's intention to bring about important changes in the corporate law to enable healthy growth of private and public sectors.

Compounding of offences punishable with fine is a very important feature. Then, dispensing with Government approval for managerial appointments and remuneration subject to certain guidelines, is another important feature. Large number of applications were pending and in spite of this welcome feature, my friends from the other side are still criticising. This is a very important and a liberal approach. These guidelines have been laid down and all the companies, big, medium-sized and small, have to conform to these guidelines and will have

the freedom to choose their professional people keeping in mind their requirements. As I had said, delinking of rates of depreciation is very important because this is one matter where we have seen so many litigations in the corporate sector, and the present provision will also help in reducing unnecessary burden on the companies to attach the balance sheet. Now it will be only in the abridged form, and only an abridged version of the balance-sheet and audited report, which will be given to the members

Another provision requires companies to hold a poll in the general meeting at the instance, of the shareholders who have some minimum stake in the company.

There is also a provision requiring companies to file full annual return only once in six years. This is important because we find that a large number of documents are filed. It is a nuisance to the shareholders. Ordinary shareholders are not able to make use of these documents. It has been wrongly pointed out by my friend from the other side that the shareholders have to pay for this. These will be given free of charge to the shareholders who need them, who ask for them and who are able to make use of them.

Then, it is also necessary that the balance sheets which are sent to the shareholders should give the true picture, should reflect the fair picture. We should not unnecessarily waste money in stationery, postage etc. We should not spend money indiscriminately on these things specially where the number of shareholders is 40,000, 50,000 or more. It is not necessary. Those who need them will have them on specific request.

There were certain loopholes, certain lacunae, certain defects in the working of the law. These are being removed and these amendments will enable the Government to streamline

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the administration of the company law. At the same time, the companies themselves will have to improve upon their performance in the light of the amendments brought forward.

My friend, Mr. Morarka, is supposed to be a very knowledgeable businessman, an expert in business affairs. I expected very knowledgeable comments from him. I thought that he will suggest some improvements, if necessary. But to say that this Bill is a halfhearted measure is not correct. The bill has dealt with some of the most basic issues affecting the corporate sector. It has taken into consideration the various aspects. It has been mentioned that the Sachar Committee report is very old. The reason for this is that the report was given in 1978 but no action was taken on it. But I would like to point out that the latest amendments have taken into consideration not only the important recommendations of the Sachar Committee, but they have also taken into consideration the prevailing situation in the corporate sector, the developments in the corporate sector and the suggestions received from various export bodies, professional bodies, chambers of commerce, shareholders' association etc. Therefore, to say that this is a halfhearted measure or it does not take into consideration the latest requirements is incorrect. Such statements do not help. We should not try to undermine the progressive measure which has been brought forward before this House.

Then, in regard to the Company Law Board, we have been saying, we have been demanding, that it should be an independent body. We wanted that it should be like other independent bodies. For instance in the case of excise and customs, we have independent tribunals. Therefore, the amendment in this regard is welcome. The only suggestion I would like to

make here is in regard to the qualifications of the members of the Board. It is said here that the qualifications will be as may be prescribed. I think, when we are bringing forward such a progressive measure, we should have specialists on the Board. Recently, we passed the Khadi and Village Industries Commission (Amendment) Bill. On the same pattern, we should have specialists on the Company Law

Board; specialists in the field of accountancy like chartered accountants, experts in law, experts in administration etc. We should specify the qualifications of the people who will be eligible to become its members. If it is not possible to prescribe the qualifications at this stage, the hon. Minister should give us an assurance that when the Board is constituted it will be composed of specialities like chartered accountants, lawyers, experts in administration and eminent men in public and private sector organisations. When the Company Law Board consists of such eminent people, experienced people, they will have the necessary input and they will be able to do justice to the independent nature of the Company Law Board envisaged in the Bill.

The other point is, Mr. Morarka was good enough to mention about the right of the depositors and shareholders. He has also been good enough to mention that the amendments that have been brought about are not enough and that the bill should go to the Joint Select Committee for a fuller and fuller consideration.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): He has suggested that the Bill be referred to the Select Committee of Rajya Sabha and not to the Joint Committees.

SHRI KAMAL MORARKA: My motion is for referring this Bill to the Select Committee of Rajya Sabha.

SHRI RAMESHWAR THAKUR: It hardly makes any difference, whether it is referred to the Joint Committee

or to the Select Committee of Rajya Sabha. But I would like him to appreciate one thing. This Bill has already been delayed. The Sachar Committee report came in 1978. In 1986 the Bill was ready. Actually the Bill was introduced to us in August 1987. From 1987 to January 1988 there have been very sincere efforts on the part of the Company Law Department to obtain comments on this Bill. The Secretary, the Joint Secretary and other experts went round the country. The Chamber of Commerce, professional bodies like the Institute of Chartered Accountants, Cost Accountants Institute, Company Secretaries Institute, Stock Exchanges and other institutions had been given due representation. I am not sure whether my friend Mr. Morarka had an opportunity of going through the official amendments which have been brought about and introduced by the hon. Minister on 23rd February 1988 itself and this is very important. Unless we take cognizance of these amendments, we will not be doing justice to the Bill. After the official amendments were received, they were deliberated upon, discussed and a number of hardships which were contemplated have been met in the Bill. There are about 82 amendments by Government. A list of important amendments has been circulated to the hon. Members. I do not know whether Shri Morarka has received a copy of these amendments because these are the amendments which have taken into consideration all the things that could be pointed out by any Select Committee. There are very welcome features in these amendments and the Bill has been drafted in a very comprehensive manner. Normally, one stands on prestige to think that once the Bill is introduced, no amendments can be suggested. Here is a very progressive measure brought out by the hon. Minister where all these amendments, all these suggestions have been taken into consideration. The language, the drafting, various aspects of the Company Law, all these things have been taken into consideration. I am sure, at this stage

no professional body, neither the Chamber of Commerce nor any other institution or association wants this Bill to go to a Select Committee. With these amendments, I think we should not try to halt the application of the progressive law. If there is any further suggestion, it can be made in this House and the hon. Minister can consider it on merits, but there is no case to send this Bill to a Select Committee. It will be only waste of time because this opportunity was already given. We had more than six to eight months. We have gone through all the aspects of the Bill. Suggestions have come from various forums which the Joint Select Committee could collect. Therefore, my humble suggestion is that this Bill should be passed by the House after giving an opportunity to other Members of the House who want to speak on this Bill.

SHRI KAMAL MORARKA: Of * point of order. Public debates and press debates can never replace a discussion in Parliament or during the Committee meetings of the Parliament. So, to suggest that no useful purpose would be served if the Bill is referred to a Select Committee, is casting aspersions on the Committees of Parliament.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): That is his view.

SHRI RAMESHWAR THAKUR: It is not a point of order. But I would say, many eminent people have participated. Economists, professionals, business people, everybody has participated. What more public debates do you want to have?

SHRI KAMAL MORARKA: No public debate is higher than the debate in a Parliamentary Committee.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): There is no point of order.

SHRI RAMESHWAR THAKUR: We have got the committees. The purpose is the same. We must have the essence and not the form alone. The essence has been met and therefore

I think it is not necessary to go in for this.

He has also been good enough to criticise the performance of government officials and also spoken about powers of the High Courts. I would like to touch upon these two points. So far as powers of the High Courts are concerned, in many respects it was a costly affair for many share holders and depositors. It was in the interest of the corporate sector and the share-holders and depositors etc. to bring them under the powers of the Company Law Board. There was a demand for all these things. If you see the detail you will find that even for small petty matters it was quite expensive an affair; it was a time-consuming affair. It was not right that these matters should go to the High Court. Anyway, it was incorporated in 1956 and therefore it is a right step. There is no curtailment of the powers of the High Court. In fact powers have been given to the Company Law Board for speedy disposal, as has been done in other forums. We have been requesting for a similar court for direct taxes. Similarly we have got an independent body for Customs and Excise and people have welcomed it. Cases used to lie for years together in these courts. So--this will be helpful. He said that it is bureaucratic and all that. I suppose that is not a real appreciation of the provisions when they are very progressive.

Now coming to the working of the Department, in fairness to the Department, I would say that with all the limitations and despite the fact that the corporate sector has grown in a big way, the administration of the corporate sector has been as effective as possible. There are certain weak areas in which improvement is required and I have some suggestions to make which I will make towards the end. But I am sure these amendments will bring about radical changes, will streamline many of the procedures which used to be very lengthy

involving filing of so many documents and papers. There used to be no monitoring. It was not feasible to have it. These amendments are in that direction and we should appreciate them.

About small companies, I think this is a matter which should be taken into consideration, but I think a lot of rationalisation has been brought about and this will help many of the small companies and many other companies also in so far as these amendments are concerned.

Now I would like to make a few suggestions for the consideration of the hon. Minister. One is that the corporate sector must have a professional management. Unless this is achieved, we will not be able to get the desired results. Therefore some more positive steps should be taken in the direction of management of the company. Moreover, and also the administration of the Department should have professional people to the extent possible, because we are dealing with technical subjects. When we are dealing with the Companies Law of this size with 658 clauses, we must have persons who study them, not at the level of the Company Law Board alone but at the level of Regional Directorates and Registrar's office. These need to be strengthened in a big way by very professional people. Qualified and efficient people are a must. Otherwise we will not be doing full justice to the growing corporate sector.

Secondly, the strength of the Department is very much depleted. While the number of corporations has increased, the strength of the staff is virtually the same. I understand that lakhs of documents are pending. They are not classified. Many people going for getting the mortgage certificate and so on have to run from pillar to post and are not able to get these things because there is dearth of hands, dearth of space and facilities. We are aware that the number of corporations has increased. I would give a few examples. In March 1982,

we had about 894 companies in the public sector with Rs. 13, 309 crore as paid up capital. The number has increased as on 31st December 1987 to 1006 with Rs. 43, 792 crore as paid up capital. Similarly, in the case of non-Government companies, their number has increased from 71, 508 to 1, 49,554 and the paid-up capital has increased from Rs. 5, 626 crores to Rs. 9, 821 crores. Thus you will find that the total number of corporate companies in India has gone up to 1, 50, 620 with Rs. 43, 640 crores as paid-up capital. With this growth it is essential that we must have a proper set-up and organization to have effective administration... (*Time bell rings*)... Sir, I would like to mention a few points only.

The Department has got a good income. I would say that its income has increased. In 1987-88 it was Rs. 14. 15 crores. I think it should be Rs. 18 crores or so. But the expenditure was only Rs. 6. 42 crores. In this connection I would like to mention that the 53rd Estimates Committee of the Lok Sabha has made a recommendation and said that when we are getting so much income, even half of it is not expended by the Department; the money must be spent for the development of the Department, for research and bringing about efficiency in the Department. Or, they have said that the fees should be reduced. I would urge that the fee should not be reduced but the Department should be strengthened. We should have the latest equipment in the Department to streamline the whole procedure, the latest technology should be used, better accommodation and better facilities should be provided to the staff and officers so that the administration becomes more efficient. All this is very essential. Research also should be conducted: Effective administration, inspection and monitoring are very essential.

I would suggest that there should be a Codification Committee and this Committee should consider the entire law in the light of the latest deve-

lopments, as has been mentioned by my friend. But what is necessary is to examine it on a different footing, and not this Bill alone. They are already progressive. But there should be a Codification Committee for three kinds of laws. Firstly, for smaller companies we must have smaller laws—important ones—and they should not be burdened with such a complicated law. Secondly, for big corporations they should have a comprehensive, but streamlined, law. And the third one is for Government corporations because the same law is not applicable to them. But Government corporations are on a different footing where there is no private profit motive. They are owned by the Central Government or the State Governments. Therefore, it is essential.

Also, review of the working of the Central Government corporations, more so of the State Government corporations, is important. We have got a large number of State Government corporations where balance sheets are not filed for years together and there it is very essential that the working of those corporations should be professionalized, efficiency brought about, costs brought down, profitability improved and the obligations under the Companies Act fulfilled as any other corporation does. This is very essential.

The corporate sector has got a pivotal role to play in the economy of the country in the next 10 to 15 years and we must take the necessary steps to ensure that the efficiency of the corporate sector is improved, give it added opportunities and enable it to grow and not hinder its working. I am confident that the honourable Minister will take necessary steps to ensure it, growth and see that this progressive Bill which has been brought about in a healthy letter and spirit and I hope its faithful implementation will give the desired results expected from the corporate sector in the years to come. Thank you, Sir.

[Shri Rameshwar Thakur] 3. 00 P.

M.

SHRI SUNIL BASU RAY: Mr. Vice-Chairman, Sir, I have tried to go through the Companies (Amendment) Bill and the amendments to the Amendment Bill. So, it is really an Amendment Bill as amended up to date. I do not know, if we pass the Bill today, whether there will be necessity to amend it tomorrow because in the recent past we had passed the Direct Tax Laws (Amendment) Bill, and soon after we heard that it has got to be amended and such a Bill should not have been passed in such a hurry. Mr. Vice-Chairman, you may also remember that our hon. Member, Mr. Salve, has made this comment in the press when the House was not in session. Mr. Morarka has also moved an amendment, and I have also moved an amendment that this Bill should be referred to a Select Committee.

SHRI DIPEN GHOSH (West Bengal) The Minister himself has brought a number of amendments after introduction*.

SHRI SUNIL BASU RAY: I think, this Bill, if we want to do justice to it, should be referred to a Select Committee as per the rules. We should

not take chances to play with these Acts, these Bills because the fate of the proper operation of these Acts depends not only on the directors and many shareholders but the workers and other people also because companies are institutions which are a part of the present economic system which you cannot dispense with so easily. So, if you have to run this economic system as far as possible to the benefit of the common people, of the workers, then, the Companies Act should be as far as possible democratic. In the Company Law Department's Annual Report I have come across a new coinage of words "shareholders democracy." I do not know what it is. The shareholders attend meetings by proxy. I know, there are workers who are shareholders of Reckitt and Coleman. I have

come across those shareholders who do not get two square meals a day. Why did they become shareholders? Because the Company wanted to get rid of paying them the allocable surplus which they are to pay the next year if it is beyond 20 per cent. So, to avoid paying them directly, they gave them a share. After a few years who cares for the proxy, who cares for the annual general meeting of the company? Nobody knows where it is to be held. So, the workers sell their shares and take some cash money. This is the way our economy is functioning. This is the way our financial institutions are functioning and our corporate bodies are functioning. They are playing with everybody. In this way they are accumulating much of profit, they are accumulating much of capital legally, illegally. So, Our proposal that the Bill should be sent to a Select Committee is quite natural. Only such a committee can do natural justice to the problem that we are facing here.

You know that the 1950 Act was enacted after independence, quite long time after, of course. Till 1956 we had to do with the 1913 Act which was enacted with a purpose to help the British companies, to help the foreign companies to exploit our country. Now that situation has not altogether changed even after all these years, 40 years of independence.

Why has this act undergone so many changes? It has undergone changes, I find, five times. It has been amended in 1960, 1963, 1969, 1974 and last of all 1977. Only thereafter the Sachar Commission was set up. Earlier you know, Sir, the Vivian Bose Commission was set up to look into the affairs as disclosed by the Dalmia-Jain episode. Such episodes were not rare to find because earlier, we know, the misdeeds of the Birla House rocked the country, then the case of Mundhra also rocked the country. The Dalmia-Jain episode also rocked the country, which led to the setting up

of the Vivian Bose Commission, and that caused certain amendments of this Act. Thereafter, the experience of the emergency and the manner in which the corporate power in the hands of a few had appeared in the most blatant abuse of authority by the Government led to re-examination of the legal structure under which a few and their families and their friends manipulated vast organisation*.

The Sachar Committee was born out of this desire to deal with the emergence of a new power elite. What happened to this Report? He did not take much time. The Committee was set up in 1977 and the report was published in 1978. By 1980 the Government changed, but the Department did not change. Today the Department in which we are now going to vest all the powers of the High Court and all the powers of the Executive, that department did exist. As per the Annual Report of the Department I find that this Committee was seized with studying the Sachar Committee Report and getting light from it. Thereafter they got further light from the experience of operation of the Companies Act during the last few years. But it is said neither in Mr. Vengal Rao's statement of Objects and Reasons as published in the Amending Bill itself, nor in the Department's report for what years. After 1978 we have a report. After 1978 for which years the Department did investigate? Why don't you get the Investigation report? "Unless you get that investigation report and unless we see that the amendment are in consonance with those findings, we cannot say whether it is good or bad. You cannot simply say that you have got some light from somewhere and because you have got some light, you must treat yourself as enlightened. That cannot be paid, because we are dealing with the most important and vital Act in the country.

Under these circumstances, we must also recapitulate what the Sachar Committee recommendations were. The Sachar Committee was given certain terms of reference. I will not go into all the clauses of the terms of reference, I will only quote some of them. One of the terms of reference was measures by which workers' participation in the share capital and management of the companies could be brought about. I have my difference with this term of reference, but still it was there. Then what measures were necessary to promote professionalisation of management and regulation of managerial and executive remuneration commensurate with their responsibility. Then, whether it was desirable to enact special provisions applicable to Government companies as a class so as to explore the provisions of the Companies' Act 1956 generally in their applicability to such companies. What adaptation and modification was necessary in the provisions of the Companies Act, 1956 in their application to entrepreneurs in medium and small-scale industries carrying on business as joint stock companies.

I find these points have not been covered by the present amending Act, nor in the amendments to the Amendment Bill.

I am not going into the question of workers' participation in share capital because that is a bogus thing. That is 'deceiving and cheating the workers and the country. But you are talking about workers' participation in management in the public sector. How can you assure that? Going by your proposal we have an amendment to that proposal that if there be any workers' participation in any public sector company, it should be with full and equal rights. The workers should not be treated as tertiary citizens in the meeting as they are being treated now. So, if they are to be given full and equal rights, there must be statutory recognition of this fact. But it is not

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there. We are seeing how the workers have been let down by the Government of India in at least two cases of bipartite agreements in coal and steel. The Government agreed with the workers and signed the agreement that dependent sons will be provided with jobs. Now, they are denied jobs. I have raised this matter on the floor of this House. I have received replies from the Minister himself saying that it is against the Constitution, it cannot be done. I ask you: Why do you sign unconstitutional agreements? Why are you compelling the worker[^], persuading them to accept 'workers' participation in management when there is no statutory provision with guarantee that it will be honoured by the Government? I think, that this aspect should have been covered by the amendment Bill I. but I see it has not been done neither in the amendment Bill original nor in the amendment to the amendment Bill.

Then, the question comes; about Government companies. How these companies are being run? I hope this House must have gone through those documents. For us the Public Undertakings Committee has brought it out. The Eastern Coalfield India Ltd., in Raniganj area is a public sector company constituted under the Act. The Coal India Ltd., is also a public sector company constituted under the Act. But the Coal India Ltd., did not or could not transfer the deeds of the land and other assets to the Eastern Coalfield Ltd. I have checked it up after going through this report with the bank. In the bank account, it is not in the name of the Eastern Coalfield Ltd. What is this? You are playing with the people. You are playing with the workers. You are running illegal companies. There is no one to look after these things. There is no legal provision. The Committee has said that within six months this has to be done. But does the Parliament know as yet whether it has been

done or not? Who is going to catch hold of those persons? Neither Coal India Ltd., nor the Eastern Coalfields Ltd. is going to catch those persons.

SHRI DIPEN GHOSH: The minister himself will catch.

SHRI SUNIL BASU RAY: So it is a very important aspect. It should not have been missed by the drafters of the Bill.

Regarding medium and small scale sector, I have seen that Mr. Vengal Rao has informed the other House yesterday that only 7 per cent of the small scale (sector industries are sick. I have not checked it up whether it is 7 per cent or more. But the figure is quite impressive—1, 47, 750 with more than 2 million workers rendered jobless. This has been admitted in the 'Statesman's Editorial yesterday'. So, what about these assets which is almost Rs. 6000 crore locked up. This is financial institutions capital and it is not anybody's personal amount. May I know whether we have decided to recover this amount? Have we decided that these sick industries are never to be cured? When going ahead towards the 21st century for technological revolution or whatever it may be called, that is, the present jargon in New Delhi, do you say: in this way we can march towards industrialisation of our country? I have also read in the newspaper that Mr. Vengal Rao has said that 80 per cent of rural population is to be brought to industries, then, our country can prosper. I do not know, how many thousands and crores of rupees will be required for that. May I know from the Minister whether the present amendment Bill is quite suitable to sustain those responsibilities? If it is so...

SHRI J. VENGAL RAO: Sir, I have mentioned the industrial...

SHRI SUNIL BASU RAY: I have read it in the newspaper.

SHRI J. VENGAL RAO: That has nothing to do with it.

SHRI SUNIL BASU RAY: I have raised my arguments. You reply-when you are in a better position to reply but not now. Now these are the points.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Please conclude now.

SHRI SUNIL BASU RAY: Sir, this is a very vital subject. Of course, hon. 3awyer members are here. I am not encroaching on their field. My point is this. If these points have to be considered, then there are very many other factors also. To 'do jus-ti?e to those factors, we must have a Joint Select Committee and that is why. I have moved that resolution. Now, if you do not agree - with this, then I must say something more. If you agree to this then I may stop.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Five minutes more please.

SHRI SUNIL BASU RAY: Now the department has again claimed that the proposed amendment represented a land mark in the legislation relating to the corporate sector. I do not know in what respect- this is a land mark. It is mentioned in their report. Perhaps they thought that nobody will go through that report. Fortunately, on the eve of discussion, we had to go through those reports.

Our experience during the last four years in our country as a result of the operation of the Companies Act is that ordinary shareholders did not get any benefit but as a result, the monopoly houses have grown or are growing continuously. For example, between 1983 and 1986, 50 top industrial houses have increased their to-

tal assets by 74. 4 per cent though two of them are losing. Even then the total growth is 74. 4 per cent from Rs. 17, 910. 90 crores to Rs. 31, 236. 97 crores, that is by Rs. 13, 326. 07 crores. Now one company Chidambaram's growth is 913. 83 per cent and Reliance growth is 259. 1 per cent. Some of these companies are storming the present political atmosphere in India. How can you contain them? Where is the machinery to do so? The amendments, whatever they be, are not in a position to contain this growth, to contain these forces. Many of the amendments have been discussed by my colleagues Mr. Morarka and Mr. Thakur. One must get seized of the situation as to what it is. When we talk about political situation in our country, which are the forces, which are the factors responsible for such a situation that is almost over-turning the political system in our country and leading us to somewhere else? We must be careful in drafting the Companies Act because on the basis of this Act, on the very functioning of this Act will depend much of our political life, much of the political atmosphere in our country. I think that on this account too, the hon. Minister should agree that a Select Committee will be the best answer to the proposal he has made here. Now about other points, you have said that the amendments suggest that you will withhold information from the shareholders, you will withhold information from the public. What does it mean when you say to publish an abridged balance-sheet? What items will be there and what items will not be there, and how do you draft the proforma and how will it be included in the rule? How will the form be filled up by the companies? So this clause in itself will allow the companies to withhold facts in matters of finance, facts in matters of running the companies, facts in the matter of production and other things. If these things are not considered, then there will not be any benefit done to us.

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Then there is another aspect which should be considered. The honourable Prime Minister said recently that we are going in for inducting foreign capital as equity. If that be so, and I believe it is going to be, I want to know whether we are putting sufficient guarantees in our Companies Act to see that this foreign capital does not erode our national capital. If you do not consider all these aspects, then I do not know where you will lead the country. There is yet time and you should not lead us to a disgraceful place.

SHRI SANTOSH KUMAR SAHU
(Orissa): Mr. Vice-Chairman,
I want to support this Bill. It is very timely and its objects are very laudable. Since 1956 there have been many shortcomings noticed and experienced in the working of the Companies Act. The Sachar Committee made certain recommendations in its report which required this amendment to be brought. So the Bill is before us at the right time. A decade has passed and we should give a little more thought. Anyway, something is better than nothing. As has been stated by the honourable Minister, the Bill aims at protecting the interests of the shareholder who is quite often ignored by the companies which have taken his deposits. The shareholder has deposited his money in the company and therefore his interest should be protected. Government has created a new establishment; it is trying to make the Company Law Board better, specifically for the purpose of regulating and conducting the affairs of Company Law. It is an independent Board so that there can be better efficiency and better management. There are other aspects also. We have seen how procedural changes have been brought so that there is improvement in the functioning. Keeping in view the broader aspects of industrial development

in our country and in the international scene, we want to develop the corporate sector to suit our national economy. Corporate sector in India is growing very rapidly. But in a mixed economy like we have in our country there must be and there ought to be certain regulations to guide the corporate sector to better serve the interests of the common man, the shareholder, and this Bill has been brought primarily keeping that in view. We have to see how the different clauses incorporated in this Bill will protect the interests of the shareholder and what the new features and suggestions are.

Coming to the different clauses I shall confine myself to a couple of major and important points. Clause

"Sub-clause (a). The value of average annual turn-over of rupees one crore as the ceiling for deeming a private company as public company in section 43A is being substituted to provide for a ceiling that may be prescribed. Further, the provision for laying down absolute monetary ceilings are being substituted by ceiling to be prescribed by rules."

Sir, I would request the honourable Minister to explain during his speech whether he wants that the ceiling should be increased or should be reduced. To my mind, it appears—let me frank—that putting a statutory ceiling of one crore has certain implications as many other honourable Members have pointed out. There are three categories of companies or industries and they are industries in the public sector, industries in the private sector and industries in the small and medium sector. You must take into account the small and medium industries also. As the Prime Minister has rightly pointed out, if you want industrial growth

to take place in India and if you want to compete with the other countries in the world, you must stand on your own legs and it is necessary that there is entrepreneurial growth among the younger and new generation. We cannot scuttle them. If you have this one-crore turnover ceiling, then for this turnover they have to maintain certain records and other things and they have to come periodically under some checks. When you make it that they come under certain regulations, it should also be clarified whether it can be increased or decreased. To me it appears necessary that this should be clarified. I would like to submit humbly to the honourable Minister through you the difficulties that the small-scale industry people face. The small entrepreneur has to take loans and start an industry and he himself has to be the entrepreneur and he has to be the accountant, he has to be the typist and so on and, therefore, he is not able to manage the things in the small-scale sector. Of course, it might increase, the business might increase, in course of time. But till then he has to face a lot of difficulties. So, what I feel is that there must be some special consideration for the small or the medium sector. Of course, the definition is there according to which an industry is described as small or medium.

Coming to the other things in the Bill, I would say that there are certain good provisions in the Bill. If the depositors fail to get their money back on maturity, they can complain to the Company Law Board and they can get the refund. But, today, if you see the affairs of the companies and the problems of the shareholders, you will know why they suffer. There are many categories of cases which we must know clearly. There is the case of wilful default and this is generally resorted to by the gigantic corporate sector. They wilfully default, earn huge profits and then

they neglect the industry. There must be some deterrent punishment to these people and there must be some protection to the shareholders against this. Then there are cases where there is accrual of losses. There are small entrepreneurs and they incur losses and the losses accumulate over the years and they then ruin themselves. What protection can be given to them is a question which has to be examined. Firstly, there is the case of wilful default and the shareholders fail to get back their money which they contribute in the hope of getting some returns and getting back their money after some time. If they do not get any return, if they do not get back their money and if they do not get justice, then there must be other ways for them and the wilful defaulters must be punished and there must be deterrent punishment for them. Secondly, we have to see how there can be a guarantee for those people who contribute their share out of their meagre earnings. Who are the people who do it? It is the common man, it is the middle-class man, who contributes, in order to survive in this world, from out of his little surplus. Everyone has the will and desire to live better and everyone has the right to live better. So, he invests and if he does not get the return after some years, he is then disappointed and he feels frustrated. So, there must be some provision for guaranteeing him. The Bill says that the Company Law Board will look into such cases. We should see how the interests of the small shareholders can be safeguarded in the event of losses, continued losses. There must be some provision for this purpose also. There must be some guarantee scheme also. It may not be in this Bill, but it must be provided in future. So, the whole question of flow of investment has to be examined because investment is very important for the development of the corporate sector which will tap the resources, mobilise deposits and

[Shri Santosh Kumar Sahu]

generate wealth by stilising them for industry, for industrial development. This should be one of the main mottoes and that should be the ideal for our country.

Then, coming to the other provisions, clause 18 gives the Registrar the power to accept registration and other things. Now we have penal provisions. Penal provisions should also be there. But for the beginning there must be certain concessions, for which I plead, because they have not yet started functioning. Sometimes because of ignorance also they buffer. They must be given a warning. There must be a liberal outlook.

Then, many other things have been brought. I would like to say that this is definitely a beginning. It is a welcome measure. It is important to know what is the investment cannot protect the interests of the position of different corporate sectors today. We have to correlate it with the development of different industries and with a little history of industrial development of our country.

Sir, many times a few monopoly houses start one industry. They take the benefit out of it. They do not contribute for research and development of it. Then, when they become rich they enjoy the benefits, but they do not invest in it and they start and go to another new industry. But the common man who contributes towards shares falls sick. These are the permanent features of the industrial scene today which we are seeing everywhere, whether it is in Jute, cotton, cloth mills or elsewhere. We have to have a very radical law and we have to have a realistic picture of the country. We have to look into these considerations. There has to be some amendment of the Company Law or the industrial law to ensure that they contribute certain portion of the amount for development. Otherwise it will fall sick within two decades or one decade. So that it can be seen. Every industry will fall

sick some day and the shareholders, the poor contributors, will suffer. Big entrepreneurs will siphon off money for growth of other industries and there will be difficulties there. Unless these things are taken care of, it will be very difficult for a healthy growth of industry in our country. These things need careful observation for the future growth of industry in our country.

- *Then* technological, development and other things have been taken care of to some extent it is good. But I think this falls short of a radical measure which we want to have about it as I was telling before. There must be a greater emphasis on that. The Prime Minister promised to take the country into the 21st century. We can reach that target if we adopt technological innovations.

As Mr. Rameshwar Thakurji, who is himself a financial expert, was telling, financial expertise is a must; we have to improve the financial management of the industry by taking experts. The law for that reason must be simplified, so that the common man can understand, new entrepreneurs can understand. Voluminous law with a lot of amendments sometimes creates a lot of confusion and it can create bottlenecks for the growth of any industry and healthy growth of new entrepreneurs.

Then, coming to other things, the Company law also looks into other aspects. Many aspects have been stated. Now we have covered a very limited portion. They are very laudable.

As I said in the beginning, can you guarantee against the cases of wilful default and stop the entrepreneurs from making illegal transfer of properties? Unless there is such a measure, there will not be any security for the common shareholders against such illegal transfers or illegal financial manipulations. So, these laws cannot protect the interests of the shareholders. In future, we have to

consider all these aspects. Now, we have introduced the Company secretary. This new Company Secretary can give innovation and direction to the company. That should be seen. Under the Company Law, it is stated that he must provide the expertise for the management such as financial, legal and management expertise. That central organisation must also be strengthened so that the ideals can be achieved. The objectives must be clearly" stated. The Company Secretary must discharge his duties faithfully to the company and also to the shareholders so that he can bring new innovations. These are the broad "aspects. With these words, I support the Bill and I hope that the points I have mentioned will be kept in view in future for better management of companies.

SHRI L. NARSING NAIK (Andhra Pradesh), Mr. Vice-Chairman, Sir, this is the first time that I am putting forth a few suggestions, _ During the last three decades, the economic scenario has witnessed a change. Several new developments have taken place. Banks have been nationalised and a number _ of credit control measures have been instituted. A number of new financial institutions have been set up. The Company Law cannot be witnessed in isolation. It has to harmonise with . the country's growth which, in turn, ^ means taking into account the promotion of savings and investments and formation of an ever-increasing number of companies. - It has also to be in conformity with other economic manipulations and in tune with the recent trends of liberalisation. The private sector has been assigned an important role in the Seventh plan period. This sector has to achieve an investment of 52.2 per cent of the total investment. The share of private sector industries is still big 1 tier at 59.4 per cent. The private sector is placed at Rs. 54,236 crores in 1984-85 prices out of which 53 per cent is expected to... be financed 288 RS—9.,

through internal resources. The actual investment requirement would in fact, be still higher owing to inflationary and other factors. Investment of this magnitude would be extremely difficult. The private corporate sector should be conscious of its responsibility and should do its best to achieve the targets. The Government, on its part, must help the corporate "sector by creating a suitable environment through its fiscal and "corporate laws.

Sir, over the years, " the policy of the Government in regulating the affairs of the corporate sector has been one of liberalisation, coupled with required control % the interest of speedy industrial" growth and development in the country. "

Sir, some of the amendments in this Bill seeking to streamline and rationalise the existing provisions such as. (1) Annual return to be submitted in 6 years instead of 3 years, (2). increasing the validity period share transfer forms from 2 months to 12 months, (3).. empowering the Registrar of Companies, to - condone delay in- registration of changes up to one month, (4) stipulating, the eligibility for demand for pay to.. Rs.. 50,000 worth of share-holding, (. 5) provision to compound offences, and (6).. dispensing with government approvals for - managerial appointments and remuneration are welcome features

Sir, creation of an independent autonomous Company Law Board is necessary to decide various issues, subject to appeal to the High Courts. Though this Company Law Board is supposed to be free and independent of any control and direction from the Government, the.. Amendment Bill is silent with regard to the composition of the Board, and the qualifications and experience of the members and other important details which are left to the rule-making authority, and not "covered by. line

[Shri Santosh Kumar Sahu] main Amendment Bill. While the Sachar Committee has suggested that the members of the Company Law Board must be drawn from the experienced members of Chartered Accountants, Cost Accountants and Company Secretaries, the Amendment Bill is silent on this subject. At present, the Company Law Board is under the control of the Central Government and is manned by Central Government employees. The Amendment aims at the creation of an autonomous Board possessing judicial and quasi-judicial powers. As it is, these powers are distributed between the Central Government and the court, while some are retained by the Board itself. It is proposed to divest the Court and the Government of these powers and to centralise all judicial Powers with the Company Law Board. However, in the proposed Amendment, the qualifications and experience for becoming members of the Company Law Board have not been prescribed. It is essential that when the Company Law Board is entrusted with the judicial powers, the qualification and experience for becoming members of the Company Law Board should be stipulated in the statute itself instead of giving that authority to the Central Government. Originally, Sir, ten years back, the Sachar Committee suggested compulsory appointment of Managing Directors for Companies with a paid-up capital of Rs. 50 lakhs or more. Now, the Amendment Bill, instead of increasing the said Capital, has reduced the same to Rs. 25 lakhs. In view of the inflationary trends it should be examined whether the limit is reasonable.

With regards Relinking of depreciation rates Under the Companies Act, from that of the Income-tax Act to enable the Companies to declare dividends the proposed amendment will delink depreciation rates Act from that under the income-tax Act. Following the amendment,

depreciation for the purpose of the Companies Act will be calculated in accordance with the rates specified in Schedule XIV and not as per the Income-tax Act. A perusal of the rates prescribed in the proposed Schedule XIV of the Companies Act clearly suggests lower rates of depreciation than the present rates prescribed by the Income-tax Act. Decidedly, greater depreciation shall be permitted, under the Income-tax Act. However, an anomaly seems to have crept in. The Budget of 1986-87 had introduced section 115I in the Income-tax Act, whereby 30 per cent of the book profits are to be taxed. Book profits are arrived at after providing for depreciation under the Companies Act. Thus the purpose of depreciation provisions under the Income-tax laws may get diluted as book profits will go up. In other words, the benefits granted by one Act will get negated by another. This aspect must be looked into by the Minister.

The Sachar committee made some important recommendations for small companies with a paid-up capital of rupees five lakhs or less to be completely exempted from the Companies Act which have not been covered by the Amendment Bill. I suggest that this may be accepted.

The Sachar committee recommendations for providing workers' participation on the board of directors in respect of companies employing more than 1000 workmen has not been accepted in the Amendment Bill. This is an important recommendation that should be accepted.

The age-limit for whole-time directors has been prescribed as between 30 and 65 years. Compulsory retirement at the maximum age of 65 years may deprive the corporate sector of some of its best, efficient and experienced personnel. It is, therefore, desirable to enhance the maximum

age-limit to 70 years in exceptional cases with the prior permission Of the Government.

Sir, these suggestions may be considered by the hon. Minister. Thank you.

श्री रजनी रंजन साहू (बिहार) : उप-सभाध्यक्ष महोदय, मैं कंपनी संशोधन बिल 1987 का समर्थन करता हूँ बहुत सी बातें सदन में कही गईं, मैं उनको दोहराना नहीं चाहता हूँ। लेकिन माननीय मंत्री महोदय, का ध्यान इस संशोधन की ओर आकषित करते हुए यह बताना चाहता हूँ कि पिछले दिनों में भी कंपनी लाँ में संशोधन लाया गया था; सर्व-प्रथम 1956 के बाद 1959 में, उसके बाद 1962 में, 1963 में, 1964 में दो बार, पुनः 1966 में, 1968 में, 1971-72 में, 1974 में, 1977 में, एक छोटा अमेंडमेंट 1985 और फिर यह 1987 में बृहद अमेंडमेंट लाया गया है। हम बराबर कंपनी लाँ में अमेंडमेंट करते आए हैं, इसमें सुधार लाए हैं। यह आवश्यक भी है। देश की आर्थिक और सामाजिक संरचना को देखते हुए, समय के मुताबिक इसमें सुधार लाता चाहिए। आज जो यह अमेंडमेंट लाया गया है, यह बड़ा ही उपयोगी है। लेकिन मुझे दुख के साथ कहना पड़ता है कि हम अमेंडमेंट तो करते हैं लेकिन इनका इंपैक्ट कुछ खास नहीं पड़ता है। जिस तरह से इनकम टैक्स ऐक्ट का प्रभाव पड़ता है, करदाताओं पर पड़ता है, उस तरह से जो कारपोरेट सेक्टर के लिए हम संशोधन लाते हैं। उनका कोई खास प्रभाव नहीं पड़ता है। यह उसी तरह से है जैसे कि एक विष रहित साँप हरहरा साँप हमारे यहां होता है जिसके काटने से कोई असर नहीं होता है उसी तरह से यहां अमेंडमेंट हम लाते रहे हैं। मेरा निवेदन है कि कंपनी लाँ ऐक्ट में जब कभी अमेंडमेंट लाया जाए उसे प्रभावी होना चाहिए ताकि कारपोरेट सेक्टर का जो दायित्व बढ़ रहा है, उस पर इसका प्रभाव पड़े।

उपसभाध्यक्ष महोदय, मैं उन बातों की ओर नहीं जाना चाहता हूँ जिनकी चर्चा हमारे साथी ठाकुर जी ने किया है जैसे

इसकी स्थापना किस तरह से हुई, इसमें संशोधन की आवश्यकता क्यों पड़ी। जिन कमेटियों की रिपोर्ट और जिन सुझावों के आधार पर यह संशोधन लाया गया है, उसमें कुछ बातों की कमी रह गई है। कहा गया है कि सचवर कमिटी की रिपोर्ट 1978 में दी गई थी। बहुत दिन बाद यह सुधार 1987 में लाया गया, दस साल पहले रिपोर्ट दी गई थी, उस समय में और आज के समय में काफी अंतर पड़ गया है। हमारी धाराणाएं बदल गई हैं। हमारी आवश्यकताएं बदल गई हैं और विभिन्न प्रकार के जो दूसरे कारकों का भी असर इस कारपोरेट सेक्टर पर पड़ा है। अतः मेरा कहना है कि हम बीच में कोई दूसरी कमिटी स्थापित की गई होती और उसके आधार पर विवेचन किया गया होता देश में वाद विवाद हुआ होता, चर्चाएं हुई होती उनके आधार पर यह संशोधन लाया गया होता तो अच्छा होता पर ऐसा नहीं हुआ, जो भी संशोधन लाया गया है उसका मैं समर्थन करता हूँ। कंपनी ला बोर्ड बड़ा ही अशक्त है, उसे भी सुशक्त बनाने की जरूरत है। उसका कंपोजिशन बड़ा कमजोर है। सालों साल सामले लॉबित रहते हैं, इनके फैसले नहीं हो पाते हैं और इनमें इतने कॉन्फ्लिक्शन है जिनको सिप्लीफाई करने की जरूरत है। नई टेक्नोलॉजी, कंप्यूटर के युग को देखते हुये, नए ढंग से व्यवस्था करनी चाहिए। इसके कार्यकलाप को बदलना चाहिए और जिस काम के निष्पादन में सालों साल लगता है क्षमता बढ़ाने के लिए, एफिशेंसी बढ़ाने के लिए नई टेक्नोलॉजी का इसमें प्रतिपादन करना चाहिए और जिस तरह का श्रेष्ठ कारपोरेट सेक्टर का हो रहा है, जिस तरह

[श्री रजनी रंजन साह]

से इसमें इक्विटी का समावेश हो रहा है उसके लिए आवश्यक है कि इसकी पूरी संरचना को, कम्पनी ला बोर्ड के ढांचे को और भी सशक्त और मजबूत किया जाए जिससे कि सही मति में लोगों का विश्वास जक सके कि कम्पनी ला बोर्ड सही मायने में काम कर रही है। जो सुझाव इसमें दिए गए हैं, जो अमेंडमेंट्स हैं उन सबों की ओर तो नहीं, पर कुछ संशोधन की ओर मंत्री महोदय का ध्यान आकृष्ट करना चाहूंगा। इस अमेंडमेंट द्वारा धारा 73 में संशोधन लाया गया है इसके मुताबिक ऐसा प्रस्ताव है कि प्रत्येक कम्पनी के लिए यह अनिवार्य प्रावधान होगा कि पब्लिक इश्यू आफ शेयर या डिबेंचर के लिए स्टॉक एक्सचेंज के द्वारा अपना आवेदन देना होगा। यह प्रावधान अनिवार्य यानि मैडेटरी माना गया है और इस बिल में प्रावधान है कि पब्लिक इश्यू आफ शेयर या डिबेंचर देश के किसी स्टॉक एक्सचेंज के जरिए रजिस्टर्ड करार ही कोई कम्पनी दे सकती है, लेकिन साथ ही अपने प्रोस्पेक्ट्स में अपने स्टॉक एक्सचेंज का नाम अंकित करना पड़ेगा और साथ ही यदि पब्लिक इश्यू के 10 रोज के अन्दर स्टॉक एक्सचेंज में अपना नाम दर्ज नहीं कराते हैं तो शेयर का एलाटमेंट रद्द समझा जाएगा। यह भी प्रावधान किया गया है कि यदि स्टॉक एक्सचेंज 10 हफ्ते के अन्दर अनुमति नहीं देता है तो वह पब्लिक इश्यू रद्द समझा जाएगा। यह भी कहा गया है कि यदि स्टॉक एक्सचेंज अनुमति नहीं देता है तो कम्पनी जो रुपया शेयर्स के रूप में प्राप्त करती है उसे ब्याज के साथ वापस लौटाएगी। प्रश्न उठता है कि कैसे लौटाएगी, यह अपने आप में एक बड़ा ही कम्पलीकैटेड प्रॉब्लम है। एक बार शेयर्स का रुपया जाने के बाद उसे वापस लेने में शेयर्स होल्डर्स को बड़ी कठिनाईयों का सामना करना पड़ता है। इसके लिए कुछ सुविधा का प्रावधान होना चाहिए आपने इस अमेंडमेंट में डायरेक्ट्स को जिम्मेदारी दी। अगर पैसा कम्पनी वापस नहीं करती है तो 12 प्रतिशत ब्याज के

साथ पैसा वापस करने की जिम्मेदारी व्यक्तिगत रूप से डायरेक्टर्स को दी गई है। इस प्रावधान से जो रुपया लगाने वाले लोग हैं उनका इंटरेस्ट सेफगार्ड होता है क्योंकि पहले दिनों में कम्पनियां शेयर मनी के रूप में अपने खाते में रुपया जमा कर उस रुपये को इस्तेमाल किया करती थी जो अब इन्हें बैंक के खाते में जमा करना पड़ेगा। ये बाद में स्टॉक एक्सचेंज की अनुमति से शेयर्स में परिवर्तित किया जाएगा या उन्हें लौटाया जाएगा। इससे कम्पनियों के प्रति शेयर होल्डर्स का विश्वास दृढ़ हो जाता है। यह प्रावधान एक अच्छा प्रावधान है और मैं इसका समर्थ करता हूँ लेकिन एक बात है कि जो प्रतिबंध का प्रावधान है उसमें शेयर होल्डर्स को जिस तरह से पहले शेयर्स बेचने से पैसा मिल जाता था, शायद अब स्टॉक एक्सचेंज द्वारा अनुबंधित कराने पर यह सुविधा मिल सकेगी 4.00 P.M. या नहीं इसमें मुझे शक भालूम पड़ता है। तीसरी बात यह है कि कंट्रोलर और कैपिटल इश्यू ने भी इस अनुबंधन को सही माना है और इसे अनिवार्य प्रावधान कर दिया है। यह भी एक सराहनीय बात है।

चौथी बात यह है कि ज्वाइंट सेक्टर कंपनियों इनका नाम्स हैं कि 49 परसेंट शेयर्स प्राइवेट लोगों के हाथ में होंगे और 51 परसेंट शेयर्स गवर्नमेंट के पास होंगे। इस धारा में संशोधन करने के बाद सभी ऐसी कम्पनियों में लोगों का विश्वास जम जायेगा।

इसके बाद स्टॉक एक्सचेंज द्वारा अनुबंधन करने से कंपनी का स्टेटस भी बढ़ जाता है। हम इसे "वाइडली हेल्ड-कम्पनी" कहते हैं। इसमें टेक्स की लायबिलिटी भी कम होती है लोअर टेक्स रेट्स एप्लीकेबल होता है। इस तरह कम्पनी और शेयर होल्डर्स दोनों का फायदा होता है, यह बात भी सही है।

सरकार को चिंता अबश्य है कि शेयर होल्डर्स का रुपया सुरक्षित रहे और

इसके लिए प्रस्तावित संशोधन में अनेकों प्रावधान किये गये हैं। पर साथ ही इस बात का भी ध्यान रखना होगा कि स्टॉक एक्सचेंज मार्किट में भी बहुत खामियां हैं जिसे सुधारने की जरूरत है, जैसे — स्टॉक थोकर्स, जो अभी तक इस बात में पारंगत थे कि किसी कंपनी के शेयर्स को प्राइवेट रूप से गिरवी रख कर अपने इक्विटी बेस को बढ़ावा देना, देते हैं वैसे लोग स्टॉक एक्सचेंज ओकर में से ही होते हैं। इस तरह हजारों हजार शेयर्स होल्डर्स अपने शेयर्स को प्राइवेट प्लेसमेंट करते हैं जहां किसी भी तरह की फार्मल्टीज नहीं रखी जाती है। इस पर भी सरकार को ध्यान देना होगा। नहीं तो इस से जो सुधार होने की बात है वह बेकार ही जायेगी।

दूसरे प्रावधान ऐसा है कि प्रामेंटर्स कोट, का जो शेयर है वह तीन साल तक ट्रांसफर नहीं हो सकता है पर प्राइवेट प्लेसमेंट द्वारा वे आवश्यकता पड़ने पर धन उगाह सकते थे। ऐसा नहीं होने से उन्हें आर्थिक कठिनाइयों का सामना करना पड़ सकता है।

इसके अलावा जो तत्कालीन शेयर्स के ट्रांसफर का तरीका है वह भी बहुत कम्प्लीकेटेड है उसे भी आसान करना चाहिए।

कंपनियों की सबसे बड़ी विशेषता यह होनी चाहिए कि आम पब्लिक से उन कंपनियों में रुपया डिपोजिट हो जिस पर उन्हें ब्याज और यदि शेयर के रूप में हो तो डिविडेंड के रूप में पैसा मिले। सेक्शन 58-ए डिपोजिटर के लिए सुरक्षा का प्रावधान है। पर सब-सेक्शन 9 आफ सेक्शन 58 किसी भी तरह से डिपोजिटर की सुरक्षा नहीं करता है बल्कि उसके अधिकार का हनन करता है। इसे पुनः एक जामिन करने की जरूरत है क्योंकि कंपनी ला बोर्ड का कार्यकलाप इतना ज्यादा कम्प्लीकेटेड है कि इस एमंडमेंट से लोगों में जो एक विश्वास कंपनियों में इनवेस्ट करने का रहा है उस प्रवृत्ति में कमी होगी। कंपनियों में

पब्लिक डिपोजिट से कई फायदे हैं — जैसे—बैंक के दर से डिपोजिट का मूद दर कम देना पड़ता है, किसी भी तरह की सिक्योरिटी कम्पनियों को नहीं दनी होती है। पर सबसे बड़ी कठिनाई है कि कंपनी को रजिस्ट्रार आफ कंपनी के पास अपना रिटर्न आफ डिपोजिट 30 दिन के अन्दर दाखिल करना पड़ता है जबकि हम सब जानते हैं कि सब का अलग-अलग फाइनेन्शियल इयर होता है और एकाउंटिंग के बाद अलग-अलग तिथि पर एनुअल जनरल मीटिंग हुआ करती है इसलिए जो तीस दिन का प्रावधान एलाटमेंट आफ शेयर्स का है उससे व्यावहारिक कठिनाई होती है। मेरा सुझाव है कि जो कंपनियां 30 दिन के अन्दर अपना एलाटमेंट आफ शेयर्स का रिटर्न दाखिल नहीं कर सकती है उसे एनुअल जनरल मीटिंग के बाद जो रिटर्न फाइल होता है या फाइनेन्शियल इयर खत्म होने के बाद जो रिटर्न फाइल होता है उसके साथ में दे सकें। इसमें किसी भी तरह की बाधा कंपनी ला बोर्ड को नहीं होनी चाहिए। मैं यह कहना चाहता हूं कि और भी कई बाधाएं कंपनी ला बोर्ड की ओर से है। जैसे 10 प्रतिशत डिपोजिटर्स का एप्ली-केशन एक साथ होना चाहिए। यह भी एक सोचने की बात है। इस तरह की अनावश्यक बाधाएं डिपोजिटर के फण्ड-मेंटल राइट्स पर आघात करती हैं। कंपनी ला बोर्ड का अत्यधिक हेस्तक्षेप भी कंपनियों के विकास के लिए बाधक होता है। इस तरह से एमंडमेंट पर भी विचार करने लायक है।

इसके अलावा अन्य कई सेक्शन का एमंडमेंट है जैसे सेक्शन 108-ए, सेक्शन 219(1)(2)(4) इत्यादि पर भी विचार करना चाहते थे, पर एक पद्धति जो चली आई है शेयर ट्रांसफर द्वारा ब्लैक फार्म सिगनेचर करवा कर रखना, इसे रोकने के लिए ठीस कदम उठाया जाना चाहिए। इसके अलावा बड़ी कंपनियों द्वारा कुछ ज्यादाती भी की जाती है। जैसे रिफण्ड आफ डिपोजिट पेमेंट आफ इंटेरेस्ट टु डिपोजिटर्स एण्ड

[श्री रजनी रंजन साहू]

डिबेंचर होलडर्स, पेंनेलिटी प्रोविजन फार डिबेंचर पोस्टिंग वारंट या डिबिडेंट वारंट के संबंध में भी ज्यादाती - की जाती है। इस पर पूर्ण प्रतिबंध लगाया जाना चाहिए। इस पर कम्पनी ला बोर्ड का अंकुश रहना चाहिए। मेरा सुझाव है कि डिपॉजिटर और शेयरहोल्डर की तकलीफों को सुनने के लिए एक सेंट्रल सेल की स्थापना होनी चाहिए जो कम्प्लेन्ट्स को विधिवत सुन सके और गलत पाये जाने वालों के विरुद्ध कार्यवाही के लिए अनुशंसा कर सके। ऐसा नहीं होने से अभी जो लोगों का विश्वास है वह कम होने की आशंका है। एक आखिरी बात मैं यह कहना चाहता हूँ और उस पर माननीय मंत्री महोदय का ध्यान अकर्षित करना चाहूँगा। ऐसा देखा गया है कि जो बड़ी-बड़ी कम्पनियाँ हैं, जो बड़े-बड़े परसन्स से प्रभावित हैं उन कम्पनियों के ग्रुप होते कि वे नाभिन्ल शेयर्स है लेकर उनके मालिक बन जाते हैं। इस शेयर के पैसे से प्रिविली लाइफ लीड करते हैं। बड़ी-बड़ी इम्पाला गाड़ियों में चलते हैं और एयर कन्डीशन बंगलों में रहते हैं। इस संबंध में पिछले साल 1987 में माननीय मंत्री जी का ध्यान आकर्षित किया गया था और प्रश्नोत्तर काल में कहा गया था कि कुछ बड़े-बड़े लोग हैं जो इस तरह की कम्पनियाँ चलाते हैं। इस संबंध में कहा गया था कि यह मामला विचाराधीन है। लेकिन अभी तक इसका उत्तर प्राप्त नहीं हुआ है। मैं अलग से इस बारे में पुनः इस मामले को रेफर करूँगा, शायद वे उसका उत्तर देंगे। दूसरी बात मैं यह कहना चाहता हूँ कि जो बड़े-बड़े उद्योगपति हैं वे अपनी इंडस्ट्री को सिक घोषित करने के लिए कम्पनी का पैसा दूसरी तरफ लगा देते हैं और दूसरी कंपनी खरीद कर देते हैं। मेरा निवेदन है कि इस तरह के जो लोग हैं दूसरी कम्पनी चला देते हैं, पहले की अपनी कम्पनी को रूग घोषित करते हैं उनके ऊपर भी कम्पनी ला बोर्ड का कुछ अंकुश होना चाहिए। अंत में मैं यह कहना चाहता हूँ कि जो अमेंडमेंट लाया गया है, यह

बड़ा ही उपयुक्त है; लेकिन इस अमेंडमेंट को प्रभावी बनाने के लिए कदम भी उठाये जाने चाहिए। जैसा मैंने कहा, विबिले साप की तरह से कम्पनी ला बोर्ड का काम करना चाहिए दंतरहित साप की तरह काम करने से कारपीरेट सेक्टर पर कोई प्रभाव नहीं पड़ेगा। यही मेरा निवेदन है। जिस तरह से इनकम टैक्स ऐक्ट का प्रभाव पड़ता है उसी तरह से कम्पनी ला ऐक्ट का भी प्रभाव पड़ना चाहिए। इन शब्दों के साथ मैं आपको बहुत धन्यवाद देता हूँ जो आपने मुझे समय दिया।

श्री कलशवर्ति मिश्र (बिहार) :

उपसभाध्यक्ष महोदय, शायद मैं अंतिम वक्ता हूँ या एक आध कोई बाद में हो सकता है। मैं ट्रेजरी बैंच के मिश्रों का भाषण सुन रहा था। उसमें मुझे ज्यादा आनन्द इसलिये आ रहा था क्योंकि हर एक विधेयक का समर्थन करते समय लेकिन शब्द का क्रम से कभी एक दर्जन बार उपयोग करते हुये पाया गया। क्लार्जों का उल्लेख करते हुये लेकिन, माटेव का उल्लेख करते हुये लेकिन, बार-बार लेकिन कहने के पश्चात् ट्रेजरी बैंच के सदस्यों को अंत में विधेयक का समर्थन करना पड़ रहा है। महोदय, उल्लेख किया गया है कि इस बिल को लाते समय सचवर कमेटी की अनुशंसा भी इसमें रखी गई है। फिर चैम्बर आफ कामर्स की अनुशंसा का भी उल्लेख किया गया है। पूरे विधेयक के लम्बे चौड़े पोथे को पढ़ने के बाद यह समझ में नहीं आता कि इसमें कौन सा अंश सचवर कमेटी की अनुशंसा के आधार पर और कौन सा अंश चैम्बर आफ कामर्स की अनुशंसा के आधार पर लाया गया है। देखने से यह लग रहा है कि यह विधेयक न्यायालयों से न्यायिक अधिकार लेकर उन्हें कम्पनी ला बोर्ड के सुपुर्द कर रहा है। अंत में क्योंकि वहाँ संविधान खड़ा है इसलिये हाईकोर्ट की छूट दी गई है। लेकिन वहाँ भी उल्लेख है कि हाईकोर्ट में किसी ला प्वाइंट पर ही जाया जा सकता है। अर्थ यह है कि कंपनी ला बोर्ड के अन्तर्गत सब की गारंटी उसके हाथ में, उसके सुपुर्द की जायेगी। माननीय सदस्य श्री रामेश्वर ठाकुर ने अभी उल्लेख किया कि कम्पनी ला के अन्तर्गत

जितनी कम्पनियां आती हैं या उद्योग आते हैं, उनमें कुल मिला कर 42 हजार करोड़ रुपये की पूंजी लगी हुयी है और इस 42 हजार करोड़ रुपये की पूंजी में से लगभग 30 हजार करोड़ रुपये की पूंजी उन कम्पनियों पर, उन उद्योगों पर लगी हुयी है जो सरकार के हैं। उनकी संख्या कितनी है, लगभग 1 हजार और मात्र 9 हजार करोड़ रुपये की पूंजी है जो छोटी कम्पनियों पर, छोटे उद्योगों पर लगी हुयी है और इनकी संख्या लगभग एक लाख है। मेरी समझ में नहीं आता कि इतने वर्षों के अनुभव के बाद भी क्या सरकार को यह समझ में नहीं आ रहा है कि एक ही कानूनी ढांचा बड़ी कम्पनीज, बड़े उद्योगों, मझोली कम्पनीज, मझोले उद्योगों, स्माल स्कोल इंडस्ट्रीज या, छोटे उद्योगों की समान रूप से रक्षा नहीं कर सकता। बिल आप पारित कर लीजिये। लेकिन आप याद रखिये कि इसका टाटा के ऊपर कोई असर होने वाला नहीं है, इससे बिरला की पूंजी में वृद्धि जो हो रही है उस पर कोई असर होने वाला नहीं है। इसी सदन में एक बार नहीं, दर्जनों बार बात उठ चुकी है। बिहार में एक डालमिया की फैक्ट्री है। वह 1983 से बंद पड़ी है। इतना होने के बाद भी समाचार मिला है, उसकी खाता-बही से मालूम हुआ है कि 10 करोड़ रुपया उसको डालडा लेने के लिये एडवांस दिया है, सीमेंट लेने के लिये एडवांस दिया है, कागज लेने के लिए एडवांस दिया है। सरकार के हाथ में सब प्रकार के कानून हैं। लेकिन आज तक, पांच वर्षों के बाद भी जिक्वीडेट नहीं कर सके, आप टेक-ओवर नहीं कर सके। इतना होने पर जब आप डालमिया का कुछ बिगाड़ नहीं सकते तो मुझे संदेह होता है।

SHRI J. VENGAL RAO: Sir, he is talking on the Amendment Bill. What is all this about advances and all that?

श्री कैलाशचरित मिश्र : मान्यवर, बेंगलराव जी जब भाषण प्रारम्भ कर रहे थे, तो मेरे मन पर उस समय प्रतिक्रिया हो रही थी कि ब्यूरोक्रेट्स ने जो लिख कर तैयार करके हाथ में कागज पकड़ा दिया है

वही आप शुरू से लेकर अन्त तक पाठ कर रहे हैं।

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): I don't think it is a fair remark. It is not fair.

श्री कैलाशचरित मिश्र : मोरारका जी ने जो फैक्ट्स और फिगर्स रखे हैं बेमतलब का टेंशन पैदा नहीं करना चाहता हूँ केवल एक निवेदन करना चाहता हूँ कि आप एक ही कानून के अन्तर्गत बिग कम्पनीज को रखेंगे, मिडल साइज की कम्पनियों को रखेंगे और स्माल स्कोल कम्पनीज को रखेंगे तो याद रखिये संस्कृत का एक बड़ा पुराना म्लोक है—

अश्वम् नैव, गजम् नैव
सिंह नैव, च नैव
अजापुत्रम् बलि दद्यात्
देवोपि दुर्बल घातक :

कथानक ऐसा है कि साधक द्वारा भगवान की पूजा करना शुरू कर दी गई। भगवान प्रसन्न हो गये तो उन्होंने कहा कि दक्षिणा दो तो पुजारी ने साधक से कहा कि महाराज दक्षिणा लाइये। उन दिनों बलि प्रथा थी। उसने कहा कि घोड़ा पकड़ करके ले आते हैं तो भगवान ने कहा कि अश्व नहीं चाहिये। सोचा कि कोई अच्छी चीज मांग रहे हैं तो कहा हाथी पकड़ कर ले आते हैं तो भगवान ने कहा कि हाथी नहीं चाहिये। अब चक्कर में पड़ गये तो पशुओं में सबसे बड़ा सिंह को माना जाता है तो कहा कि शेर को पकड़ कर ले आते हैं तो भगवान कहते हैं कि सिंह नैव, सिंह नैव शेर बिलकुल नहीं चाहिये। तब हाथ जड़ कर साधक ने पूछा कि क्या चाहिये तो कहा कि बकरी का थोड़ी देर पहले पैदा हुआ छोटा सा बच्चा जो देखने में चिकना चुपड़ा हो उसको ले आएं तो सूत्रकार ने कहा कि देवोपि दुर्बल घातक : जो दुर्बल है उसका घातक भगवान बन जाता है। आप यह पास कर रहे हैं। त्रिपल लागू करने जा रहे हैं जो व्यवस्था टाटा जैसी बड़ी कम्पनियों ने बना रखी है छोटे कोर्ट से लेकर सुप्रीम कोर्ट तक उन के परमानेंट एडवोकेट पोस्टेड हैं। एक बेचारा जिसका टर्न ओवर 50 लाख या एक करोड़ का है उस पर भी वही नियम

[श्री कलाश पति मिश्र]

लगा देंगे तो अवस्था एक ही होगी सब छोटी कम्पनियां समाप्त हो जायेंगी और बड़ी कम्पनियां पनपेंगी ही। मुझे संदेह है कि देश के अन्दर मल्टीनेशनल बहुराष्ट्रीय कंपनियां घुस रही हैं कहीं ब्यूरोक्रेट्स के साथ हाथ मिला कर उनका इस में षड्यन्त्र न दिखायी देता हो। मैं लम्बा भाषण नहीं कर रहा हूँ जैसे सत्ता पक्ष के सदस्यों ने अनेक कलाजों के ऊपर सन्देह प्रकट किया है विरोधी दल से भी मांग हुयी है आप कृपा कर के इसको जल्दबाजी में पास न करायें और इस बिल को सेलेक्ट कमेटी को भेज दें जो तीन चार महीने तक छानबीन कर के अपनी पूर्ण रिपोर्ट दे देगी। इस के बाद आप सदन में यह विधेयक ले आयें और इसको पास करायें इतना कह कर के मैं समाप्त करता हूँ। धन्यवाद।

SHRI DAYANAND SAHAY (Bihar):
Mr. Vice-Chairman, Sir, I am standing to support the Bill, every clause of it, all the amendments. However, I have a few suggestions. I would like the Government and the Minister to take note of them.

The great and important leader of Europe, Count. Bismarck told his Ambassadors, "If you go to London, go to the share market. Then you will feel its pulse, and know its health and politics." The share market is controlled remotely or fully by the Company Law Board in our country. So, any amendment to the Company Law, in a progressive way, is going to help the growth, economic growth. If it is otherwise, it will be detrimental to the growth.

What is happening today in our country in the field of company law and how it is functioning? The company law is represented in the States by the Registrar of Companies. Today- In the eyes of the law everyone is equal. Whether you are a company with 2 persons or with Rs. 20, 000 capital or hundreds of shareholders with hundreds and crores of shares, the forms and formats made are the same for every one. On the one hand you suggest that companies

should be run properly, with proper professional management, with better auditors and company Secretaries, on the other hand you also allow a person or a group of even two persons-husband and wife or son and father, to form a company. In such cases, he is the producer, he is the engineer, he is the clerk, he is the typist, he is the accountant and hence he has no time to look into other things and understand all the forms. The result is that hundreds of cases are filed against such companies. Only in Kanpur, there must be 1, 000 such cases in which the party has failed to submit some forms, some reports or some proforma. There is a nexus between a few lawyers and the Registrar of Companies. Either in Patna or in Kanpur or anywhere in the State capitals hundreds of cases are filed. If you fail to submit "these forms you have to pay a penalty and suffer prosecution. The penalty is very minimal. It is Rs. 25 or Rs. 50, but the word prosecution is also there. The result is that small businessmen who are afraid of going to jail have to go and face the Magistrate. On the other hand, no case is filed on bigger companies because they can afford to appoint a lawyer, appoint a representative, have a liaison with the Registrar's Office. A person who is having a company with Rs. 5 lakhs or Rs. 2 lakhs or Rs. 10 lakhs of capital, a small factory or business, does not have that much of resources to go and have a liaison with the Registrar of Companies. The result is that cases are filed against him and where a fine of Rs. 50 could have been sufficient for flogging, a fine of Rs. 5000 is imposed. The same law is not applied to the public companies and Government corporations. Once I was Chairman of the Bihar Industrial Development Corporation. In that corporation, for the last five years the balance sheet was not audited. I enquired why the Registrar did not file a case against them. They said that it is headed by a Managing Director-

tor who is an IAS Officer, and no case can be filed against an IAS Officer. He is a big bureaucrat. He is much higher than the Registrar of Companies. That is why I suggest two of three things. Small people are actually being tortured and bigger ones go scot-free. This is practically happening. So for better growth of the companies my suggestions are three in number. First, simplify the forms. Make a division of companies with a capital of Rs. 20 lakhs and below and the companies with the paid-up capital of Rs. 20 lakhs and above. In the case of companies below Rs. 20 lakhs share capital, burden and difficulties should be lesser. The forms should be simpler. In case of failure to submit forms or delay in the submission of their reports, there should be a fine only, say of Rs. 50 or Rs. 500, but no prosecution. For bigger companies you have whatever laws you have got today.

Make another category of the public undertakings—the Government companies. Such companies should be treated on a different footing, because 100 per cent shares invested belongs to the Government. It is the people's money. It is managed officially. There is no personal interest involved. The delay is because of some administrative difficulties. So, keep such companies in a different category.

Fourthly, in case you are not able to amend this, the only alternative is, don't allow small companies to grow. Don't allow them any registration. If you allow them registration, you force them to follow these rules. And if they fail, you take them to the court and harass them. So, my submission is that we should definitely rationalise the rules for companies with capital below Rs. 20 lakhs, the private limited and public limited companies and companies beyond Rs. 20 lakhs should be kept on a separate footing. With this I support the Amending Bill.

SHRI J. VENGAL RAO: Mr. Vice-Chairman, Sir, I am very thankful to you and the hon. Members who have participated in the discussion. I have heard with great attention the various speeches made by the hon. Members in the foregoing debate on this Bill. Before reacting to the individual points made by the hon. Members, I would like to say that the present amendment Bill cannot be deemed to be a recodification of the entire Companies Act. This Bill incorporates provisions of an urgent nature which have to be brought not only for the effective regulation of the corporate sector but also for its smooth functioning. The corporate sector encompasses various sections of the people and not only companies and their management. We have to protect the interest of the shareholders, the depositors, employees, public interest, while also looking at the interest of the companies and their management.

If we go carefully through the various provisions embodied in the Bill, you will find that the different provisions have taken care of the interests of different sections of the people. While on the one hand, there is a forum being provided to depositors whose deposits are not returned by companies on time, on the other the interests of those who apply for shares in a company are also being protected by the provisions relating to the refund of the application money when shares are not allotted. It has also been made mandatory that the company will deliver share certificates and debenture certificates within a prescribed period of time. Similarly, when share transfers are refused, and there is a dispute, provision is being made that pending settlement of the dispute, the transferee does not lose his rights over the dividends right shares, bonus shares, etc. All these provisions are aimed at protecting the small investors and shareholders also.

श्री कलश पति मिश्र : प्रॉपर्ट आफ़
 प्रॉपर्ट, जय समझ में नहीं आ रहा है कि
 बिल का पाठ हो रहा है या कि कोई दूसरा
 भाषण हो रहा है, अगर आप बता दें तो
 जवाब दे सकूँगा ? मंत्री महोदय क्या पढ़
 रहे हैं, समझ में नहीं आ रहा है। वही बिल
 का पाठ कर रहे हैं या कोई भाषण कर
 रहे हैं ?

उपसभाध्यक्ष (श्री जगेश हेसाई) : आप
 जरा उनको सुनिए। (व्यवधान)

[The Vice-Chairman (Dr. Bapu Kaldate) in
 the Chair].

SHRI J. VENGAL RAO: Mr. Kamal
 Morarka mentioned about non furnishing of
 annual reports to the shareholders. It is not that
 we are not concerned that information needs to
 be furnished to the shareholders! However, it
 is felt that an average shareholder may not
 really require all the information that is
 published in the 'annual report today. Mr.
 Morarka himself stated that the list of the
 employees drawing over a certain amount of
 salary can be done away with. It would be
 evident, therefore, that he shares the view
 that all the information may not be essential for
 an average shareholder. It is, therefore, fully in
 order that the company should be asked to supply
 only such information as may be prescribed
 by the Government to a shareholder in the first
 instance and only those shareholders who
 really require the entire information in the annual
 report should be provided with it. As the
 proposals in the amendment Bill and the
 further amendments suggested will show that this
 full information can be obtained by any
 shareholder on demand free of cost, it cannot,
 therefore, be said that the interest of the
 shareholders are not being adequately
 safeguarded. So far, the small depositors whose
 deposits were not being refunded 'by the
 company' in time had no remedy

under the Companies Act. He had to go to the
 civil court to enforce his claim. We have
 provided in this Bill that a depositor whose
 money is not refunded⁰ in time can
 approach the 'Company Law Board' which,
 after looking into all aspects of the matter can
 direct a company to repay the deposit on
 certain conditions and if the company defaults
 in obeying this order of the Company Law
 Board it is liable to be punished. I am sure, all
 the members would agree that this is a
 major step towards the protection of the
 interest of the depositors, particularly the
 small ones. It will be seen that in various
 existing provisions of the Companies Act
 there are specific limits prescribed, such
 as the ones for disclosure of salaries
 above a certain amount, compulsory
 appointment of managing director etc.
 With the passage of time, many of the limits
 become outdated and need to be changed. It
 is felt that flexibility in these matters would be
 of great benefit and with this aim, it has
 been provided that these provisions be
 changed to such limits as may be
 prescribed by the Government. Shri Morarka
 had mentioned that, instead of the present
 provision that a managing director or a
 wholetime director be appointed in a
 company with a paid up capital of Rs. 25
 lakhs, that limit should be raised to Rs. 5
 crores. The provision that we have proposed
 in the Bill and the amendments that have been
 moved will take care of this problem.
 Whether the limit should be raised to Rs. 5
 crores or less or more, can be determined,
 from time to time taking into account all
 the circumstances. Some of the provisions
 relate to the removal of the lacuna and
 clarification of intention. There can be no
 dispute that whenever a lacuna is observed,
 and if it is seen that undue advantage is being
 taken by the company to avoid the
 intention of the law, such a lacuna must be
 removed. It is with this intention that the
 provision regarding private limited
 companies

becoming deemed public companies, the provision regarding inter-corporate deposits being treated as inter-corporate loans and inter-corporate investments have been brought in. I am sure that the Members would agree that the circumvention of the law by the corporate sector is not to be permitted.¹ The reduction of approvals by the Government has also been looked at. It has been felt that it is not necessary for every company to seek the Central Government's approval while appointing a managing director or a whole-time director. With this in view, a new provision of schedule XIX has been proposed and it has been widely welcomed by the corporate sector. However, it would be seen that it is not a blank cheque being given to the corporate sector. Conditions have been prescribed which have to be fulfilled before the public limited company can go ahead and appoint a managing director or a whole-time director without Central Government's approval. Where such conditions are not fulfilled, then they will still have to come to the Central Government for approval. Shri Morarka has mentioned that no recommendation of the Sachar Committee has been dealt with in the amendment Bill. I do not know how he has said this because many of the proposals that are included in the amendment Bill relate to items that have been considered by the Sachar Committee. It is another matter that we may not have gone along totally with what the Sachar Committee have recommended but their recommendations were certainly kept in view while framing such proposals. Shri Morarka also wondered why the items such as technology absorption, conservation of energy, foreign exchange income and output are sought to be included in the annual report. I am sure, all Members would agree that these are very important aspects of the company's working and it is necessary that the company lays focused attention to these. It is, therefore, consi-

dered imperative that the directors make a mention of these aspects, in their report to the shareholders. This would ensure that the directors are aware of the importance of these aspects and they pay adequate attention to them.

Shri Rameshwar Thakur has made my task easier. He has analysed in detail how the different provisions are going to be of benefit to the corporate sector and those connected with it. I thank him for supporting the Bill. Shri Thakur referred to the need for improving the facilities in the Department of Company Affairs to provide better service to the corporate sector. I would like to assure him that we are aware of this need. Computerisation has already been introduced at the headquarters of the Department of Company Affairs. It is proposed to fix computer terminals in some of the major field offices of the Department this year. We will take all necessary steps to ensure that efficient service is provided to the corporate sector by the Department.

I would like to refer to the request made for referring the Bill to a Joint Committee. Mr. Morarka had not mentioned about a Joint Committee; he only talked of a Select Committee of Rajya Sabha. I do not see the need for it. The Bill has been before the House for a long time. Members had enough time to study it. They could have made all their suggestions today. As has been mentioned by me earlier, we have taken note of all the views and suggestions made by the corporate sector in various meetings held in different regions. In these circumstances I do not see the need to refer this Bill to a Select Committee.

Shri Ray made a mention of the need for provisions in the Companies Act to regulate foreign investment. I think that is regulated by the Foreign Exchange Regulation Act and there does not appear to be any need for

[Shri J. Vengal Rao] duplication by incorporating provisions in the Companies Act. Shri S. K. Sahu wanted to know whether the flexibility provided in changing the ceiling prescribed will be used in increasing it or not. I would like to make it clear that flexibility means that j, he ceiling can be changed when the circumstances so necessitate and to the extent considered necessary. To say that the ceiling would be changed in a particular manner would mean taking away that flexibility. Shri Naik has commended a number of features of the Bill. I thank him for that. As regards the age of retirement of Managing Director I would like to make it clear that we are not totally debarring a person who is over 65 years of age from becoming a Managing Director or a wholetime Director. What is necessary is that the company will have to obtain the approval of the Central Government to do so. Shri Rajni Ranjan Sahu also mentioned about delays in the disposal of matters relating to the company sector. I have already said that computerisation is being brought in and other steps considered necessary will be also taken. He has made a reference to the amendment of 58 A in the Act. This provision is going o tbe of benefit to the depositors and there should be no apprehension on this score.

After introducing the Bill, after careful consideration and after discussions with Chambers of Commerce and experts in the country, I have also moved some official amendments to rectify certain defects and ewe have taken sufficient care to meet the needs of the present times. I am thankful to the Chair and to all the Members who have participated in the debate.

THE VICE-CHAIRMAN (DR. BAPU KALDATE); I shall first put the amendment moved by Shri Kamal jMbrarka for reference to a Select Committee of the Rajya Sabha to rote.

The question is:

"That the MI further to amend the Companies Act, 1956, be referred to a Select Committee of the Rajya Sabha, consisting of the following. * Members, namely: —

1. Shri B. Satyanarayan Reddy
2. Shri Virendra Verma
3. Shri Samar Mukherjee
4. Shri Parvathaneni Upendra
5. Shri Atal Bihari Vajpayee
6. Shri V. Gopalsamy
7. Shri K. Mohanan
8. Shri Gurudas Das Gupta
9. Shri Dayanand Sahay
10. Shri Kamal Morarka

with instructions to report on the first day of the next Session. "

The motion was negatived.

THE¹ VIC&CHAIRMAN (DR. BAPU KALDATE): I shall now put the amendment moved by Shri Sunil Basu Ray for reference of the Bill to a Joint Committee of the Houses to vote.

The question is:

"That the Bill further to amend the Companies Act, 1956, be referred to a Joint Committee of the Houses consisting of 21 Members; 7 Members from this House, namely: —

1. Shri Aladi Aruna alias V, Arunachalam
2. Shri M. S. Gurupadaswamy
3. Shri Samar Makherjee
4. Shri Parvathaneni Upendra
5. Shri Atal Bihari Vajpayee
6. Shri N. E. Balaram
7. Shri Sunil Basu Ray

and 14 Members from the Sabha;

that in order to constitute a meeting of the Joint Committee the

quorum shall be one-third of the total number of members of the Joint Committee;

that in other respects, the Rules ^A of Procedure of this House relating to Select Committees shall apply with such variations and modifications as the Chairman may make;

that the Committee shall make a report to this House by the first day of the next Session; and

that this House recommends to the Lok Sabha that the Lok Sabha do join in the said Joint Committee and communicate to this House the names of Members to be appointed by the Lok Sabha to the Joint Committee. "

The motion was negatived

THE VICE-CHAIRMAN (DR. BAPU KALDATE); I shall now put the motion moved by the Minister, Shri Vengal Rao, to vote.

The question is:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration. "

The motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU LOATH): We shall now take up clause-by-clause consideration of the Bill.

Clause 2 was added to the Bill

Clause 3—Substitution of new section for section 5

SHRI J. VENGAL RAO: Sir, I beg ' to move:

4. "That at a page 2, line 13, for the word 'Directors' the word 'wholtime directors' be substituted. "

* 5. "That at page 2, after line 20, the following proviso be inserted, namely: —

• "Provided that the person so

charged has given his consent in. this behalf to the Board; "

6 "That at page 2, line 23>, for the word 'shall' the word 'may' be substituted. "

7. "That at page 2, line 23, after the word 'behalf' the words 'or where no director is so specified, all the directors' be inserted. "

The questions were put and the motions were adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): I shall now put clause 3 Eg amended, to vote.

The question is:

"That caluse 3, as amended, stand part of the BUI. "

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 4—Amendment of section 10B

SHRI J. VENGAL RAO: sir, I beg to move:

8. "That at Page 2, line 32, for the figure '1987' the figure '1988' be substituted. "

9. "That at page 3, line 7, for the figure '1987' the figure '1988' be substituted. "

The questions were put and the motions were adopted

THE VICE-CHAIRMAN (DR. BAPU KALDATE): I shall now put clause 4, as amended, to vote.

The question is:

That clause 4, as amended, stand part of the Bill. "

The motion was adopted.

Clause 4, as amoended was added to the Bill

*Clause 5 was added to the Bill. Clause 6—
Amendment of section 33*

SHRI J. VENGAL RAO: Sir, I beg to move:

10. "That at page 4 after line 12, the following be inserted, namely: —

(iii) the following Explanation shall be added at the end, namely: —

"Explanation—For the purposes of this sub-section, "Chartered accountant in whole-time practice in India" means a chartered accountant within the meaning of clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who is practising in India and who is not in full-time employment". "

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): I shall now put clause 6, as amended, to vote.

The question is:

"That clause 6, as amended, stand part of the Bill. "

The motion was adopted.

Clause 6, as amended, was added to the Bill.

Clause 7—Amendment of section 43A

SHRI J. VENGAL RAO: Sir, I beg to move:

11. "That at page 4, after line 13, the following be inserted, namely: —

(a) in sub-section (1), the following Explanation shall be added at the end, namely: —

"Explanation—For the purposes of this sub-section, "bodies corporate" means public companies, or private companies which had become public companies by virtue of this section

12. "That at page 4 Line 20 for the figure '19B7' the figure '1988' be substituted. "

13. "That at page 4, lines 20-21, for the words 'invites, accepts, or renews deposits from the public' the words 'accepts, after an invitation is made by an advertisement, or renews, deposits from the public other than its members, directors or their relatives' be substituted. "

14. "That at page 4, line 22, the word 'invitation' be deleted. "

15. "That at page 4, line 40, the word 'invite' be deleted. "

16. "That at page 4, line 45 for the words 'inviting, accepting or renewing deposits' the words 'accepting, after an invitation is made by an advertisement, or renewing deposits' be substituted. "

17. "That at page 5, line 2, for the words 'inviting, accepting or renewing deposits' the words 'accepting, after an invitation is made by an advertisement, or renewing deposits' be substituted. "

18. "That at, page 5, lines 3-4 the words 'whether selected as members of debenture holders of the company concerned or in any other manner' be deleted. "

The questions were put and the motions were adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): I shall now put clause 7, as amended, to vote.

The question is:

"That clause 7, as amended, stand part of the Bill. "

The motion was adopted.

Clause 7, as amended, was added to the Bill.

Clause 6—Amendment of section 66.

SHRI J. VENGAL RAO: Sir, I beg to move:

19. "That at page 5, line 19, after the words 'person' the words 'before the closing of the subscription list' be inserted. "

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): I shall now put clause 8, as amended, to vote.

The question is:

"That clause 8, as amended, stand part of the Bill. "

The motion was adopted.

Clause 8, as amended, was added to the Bill.

Clause 9—Amendment of Section 58/4.

SHRI J. VENGAL RAO: Sir, I beg to move:

20. "That at page 5, line 28, for the figure '1987' the figure '1988' be substituted. "

21. "That at page 5, lines 34 to 42, the following be substituted namely: —

'(9) Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board may if it is satisfied, either on its own motion or on the application of the depositor, that it is necessary so to do to safeguard the interest of the company, the depositors or in the public interest, direct, by order, the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order'.

I *The question was not put and the motions were adopted.*

THE VICE-CHAIRMAN (DR. BAPU KALDATE): I shall now put clause 9, as amended, to vote.

The question is:

"That clause 9, as amended, stand part of the Bill. "

The motion was adopted.

Clause 9, as amended was added, to the Bill. "

Clauses 10 to 12 were added to the Bill.

Clause 13—Amendment of section 80.

SHRI J. VENGAL RAO: Sir, I beg to move:

22. "That at page 7, line 17, for the figure '1987' the figure '1988' be substituted. "

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): I shall now put clause 13, as amended, to vote.

The question is:

"That clause 13, as amended, stand part of the Bill. "

The motion was adopted.

Clause 13, as amended, was added to the Bill.

Clause 14 {Insertion of new section 80/4}

SHRI J. VENGAL RAO: Sir, I move:

23. That at page 7, line 15, for the figure '1987' the figure '1988' be substituted. ⁰

24. That at page 7, line 34, for the word 'five' the word 'ten' be substituted. "

The questions were put and the motions were adopted.

THE VICE-CHAIRMAN (DR. BAPUJI KALDATE): The question is:

"That clause 14, as amended, stand part of the Bill."

The motion was adopted.

Clause 14, as amended, was added to the Bill.

Clause 15 was added to the Bill.

Clause 16 (Substitution of new section for section 111).

SHRI J. VENGAL RAO: Sir, 1 move:

25. "That at page 8, after line 28, the following be inserted, namely: —

'(2) The transferer or transferee, or the person who have intimation of the transmission by operation of law, as the case may be, may appeal to the Company Law Board against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in sub-section (1), either to register the transfer or transmission or to send notice of its refusal to register.

(3) An appeal under sub-section (2) shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date on which the instrument of transfer, or the intimation of transmission, as the case may be, was delivered to the company'."

26. "That at page 8, line 29, for the bracket and figure '(2)' the bracket and figure '(4)' be substituted."

27. "That at page 9, for lines 1 to 4, the following be substituted, namely: —

*'(5)' The Company Law Board, while dealing with an appeal preferred under sub-section (2) or an application made under sub-section (4) may, after hearing

the parties, either dismiss the appeal or reject the application, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order, >

(b) (d) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved'."

28. "That at page 9, line 5, for file bracket and figure '(4)' the bracket and figure '(6)' be substituted."

29. "That at page 9, line 6, for the bracket and figure '(3)' the bracket and figure '(5)' be substituted."

30. That at page 9, line 12, for the 'bracket and figure '(5)' the bracket and figure '(7)' be substituted."

31. "That at page 9, for line 20, the following be substituted, namely: —

(8) The provisions of sub-section (4) to (6) shall apply in relation to."

32. "That at page 9, line 23, for the bracket and figure '(7)' the bracket and figure '(9)' be substituted."

33. "That at page 9, lines 29-30, for the brackets, figures and words '(8)' Every application to the Company Law Board under sub-section (2), the brackets, figures and words '(10)' Every appeal or application to the Company

Law Board under sub-section (2) or sub-section (4) be substituted."

34. "That at page 9, line 32 for the bracket and figure '(9)' the bracket and figure '(H)' and '(10)' respectively be substituted."

35. "That at page 9, for the words, brackets and figures 'sub-sections (2) to (5)' the words, 'brackets and figures 'sub-sections (4) to (7)' be substituted." —

36. "That at page 9, line 39, for the bracket and figure '(3)' the bracket and figure '(5)' be substituted."

37. "That at page 10, lines 1 and 5 for the brackets and figures '(10)' and '(H)' the brackets and figures '(12)' and '(13)' respectively be substituted. "

The questions were put and the motions were adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE); The question is:

"That clause 16, as amended stand part of the Bill. "

The motion was adopted.

Clause 16, as amended, was added to the Bill.

Clause 17 (Amendment of section 113)

SHRI J. VENGAL RAO: Sir, I move:

38. "That at page 10, after line 20, of the following proviso be inserted, namely:

Provided that the Company Law-Board may, on an application being made to it in this behalf by the company, extend any of the periods within which the certificates of all debentures and debenture stocks allotted or transferred shall be delivered under this sub-section, to a further period not exceeding nine months, if it is satisfied that it is not possible for the company to deliver such certificates within the said periods. "

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE) The question is:

"That clause 17, as amended stand part of the Bill"

The motion was adopted.

Clause 17, as amended, was added to the Bill.

Clauses 18 to 24 were added to the Bill.

Clause 25 (Amendment of section 198)

SHRI J VENGAL RAO: Sir, I move:

39. "That at page 12, for lines 19 to 22, the following be substituted namely: —

'25. In section 198 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely: —

'i(4) Notwithstanding any thing contained in sub-section (1) to (3), but subject to the provisions of section 269, read with Schedule XIII, if, in any financial year, a company has profits or its profits are inadequate, the company shall not pay to its directors, including any managing or wholetime director or manager, by way of remuneration any- sum (exclusive of any fees payable to directors under sub-section (2) of section 309), except with the previous approval of the Central Government. " . "

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE); The question is:

"That clause 25, as amended, stand part of the Bill. "

The motion was adopted.

Clause 25, as amended, was added to the Bill.

Clauses 26 and 27 were added to the Bill.

Clause 28 (Insertion of new section 206A)

SHRI J. VENGAL RAO: Sir, I move:

40. "That at page 13, for lines 5 to 8, the following be substituted, namely: —

'shares has not been registered by the company, it shall, notwithstanding anything, contained in any other provision of this Act,

41. "That at page 13, line 6 for the figure '1987' the figure '1988' be substituted. "

[Sfai J. Vengal Rao]

42. "That at page 13, line 9, after the word 'dividend' the words 'in relation to such shares' be inserted. "

43. That at page 13, line 13 after the word 'abeyance' the words 'in relation to such shares' be inserted. "

The questions were put and the motions were adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): The question is;

"That clause 28, as amended, stand part of the Bill. " *The motion was adopted.*

Clause 28, as amended, was added to the Bill.

Clauses 29 and 30 were added to the Bill.

Clause 31 (Amendment of section 219)

SHRI J. VENGAL RAO: Sir, I move:

44. "That at page 14, for lines 21 to 43, the following be substituted, namely: —

'(ii) in the proviso, in clause (b)

(1) the word "or" occurring at the end of sub-clause (ii) shall be omitted;

(2) the words "and" occurring at the end of sub-clause (in) shall be omitted;

(3) after sub-clause (iii). the following sub-clause shall be inserted namely: —

"(iv) in the case of a company whose shares are listed on a recognised stock exchange, if the copies of the documents aforesaid are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents aforesaid, as the company- may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of meeting; ". "

45. "That at page 15, line- 2, for the words 'on payment of such fees as may be prescribed' the words 'free of cost' be substituted. "

The question were put and the motions were adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): The question is:

"That clause 31, as amended, stand part of the Bill. "

The motion was adopted.

Clause 31, as amended was added to the Bill.

Clause 32 was added to the Bill.

'33. In sub-section (18) of section 224

SHRI J. VENGAL RAO: Sir, I move:

46. "That at page 15, for lines 11 to 14, the following be substituted, namely: —

'33. In sub-section (18) of, section 224 of the principal Act, —

(a) in the opening paragraph, after the words "re-appoint any person", the word "who is full-time employment elsewhere" shall be inserted;

(b) for the first proviso, the following proviso shall be substituted, namely: —

"Provided that in the case of a firm of auditors, "specified number of companies" shall be construed as the number of companies specified for every partner of the firm who is not in full-time employment elsewhere; ". "

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): The question is:

"That clause 33, as amended, stand part of the Bill. "

The motion was adopted.

Clause 33, as amended, was added to the Bill.

Clauses 34 to 45 were added to the Bill.

Clause 46 (*Substitution of new section for section 269*)

SHRI J. VENGAL RAO: Sir, I move:

47. "That at page 18, in lines 19 and 24 for the figure '1987' the figure '1988' be substituted. "

48. "That at page 18, line 21, for the words "of rupees twenty-five lakhs or more" the words "of such sum as may be prescribed" be substituted. "

49. "That at page 18, line 27 the word "prior" be omitted. "

50. "That at page 18, for lines 33 to 38 the following be substituted, namely: —

'(3) Every application seeking approval to the appointment of a managing or whole-time director or a manager shall be made 'to the Central Government within a period of ninety days from the date of such appointment. "

51. "That at page 19, after line 4, the following be inserted, namely: --

'(6) If the appointment of a person as a managing or whole-time director or a manager is not approved by the Central Government under subsection (4), the person so appointed shall vacate his office as such managing or whole-time director or manager on the date on which, the decision of the Central Government is communicated to the company, and if he omits or fails to do so, he shall be punishable with fine which may extend to five hundred rupees for every day during which he omits or fails to vacate such office'."

52. "That at page 19, lines 5 to 7, for the figure and words '(6) Where the appointment of a person as a managing or whole-time director or a manager under sub-section (3) is not approved by the Central Government, or, where

the/ the figure and words '(7) Where the' be substituted. "

53. "That at page 19, line 10, for the word 'prior', the word 'the' be substituted. "

54. "That at page 19, lines 14 and 15 for the brackets and figures '(7)' and '(6)' the brackets and figures '(8)' and '(7)' respectively be substituted. "

55. That at page 19, lines 20 and 21, for the brackets and figures '(9)' and '(8)' the brackets and figures '(10)', and '(9)' respectively be substituted. "

56. "That at page 19, lines 28 and 29 for the brackets and figures '(9)' and '(8)' the brackets and figures '(10)' and '(9)' respectively, be substituted. "

57. "That at page 19, lines 41 and 42 for the brackets and figures '(19)' '(9)' the brackets and figures '(11)' and '(10)' respectively be substituted. "

58. "That at page 19, line 48 for the bracket and figure '(H)' the bracket and figure '(12)' be substituted. "

59. "That at page 20, line 4 for the bracket and figure '(8)' the bracket and figure '(9)' be substituted. "

The questions were put and the motions were adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): The question is:

"That Clause 46, as amended, stand part of the Bill. "

The motion was adopted.

Clause 46 as amended, was added to the Bill.

Clause 47 (Amendment of Section 310)

SHRI J. VENGAL RAO: Sir, I move:

60. "That at page 20, after line 8 the following be inserted, namely: —

'(a) in the opening paragraph, for the portion beginning with the words "shall not have any effect" and ending

[Shri J. Vengal Rao]

with the words "approved by the Central Government", the following shall be substituted, namely: —

'shall not have any effect. —

(a) in cases where Schedule XIII is applicable, unless such increase is in accordance with the conditions specified in that Schedule; and

(b) in any other case, unless it is approved by the Central Government'. "

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): The question is:

"That Clause 47, as amended, stand part of the Bill. "

The motion was adopted.

Clause 47, as amended, was added to the Bill.

Clause 48 (. Amendment of section 314)

SHRI J. VENGAL RAO: Sir, I move:

61. "That at page 20, after line 28, the following be inserted namely: —

'48. *Amendment of Section 311.* — In section 311 of the Principal Act, for the portion beginning with the word's "shall not have any effect" and ending with the words "approved by the Central Government", the following shall be substituted, namely: —

"shall not have any effect—

(a) in cases where Schedule XIII is applicable, unless, such increase is in accordance with the conditions specified in that Schedule; and

(b) in any other case, unless it is approved by the Central Government". "

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): The question is:

"That Clause 48, as amended stand part of the Bill. "

The motion was adopted.

Clause 48, as amended, was added, o the Bill.

Clause 49 was added to the Bill.

Clause 50 (Amendment of Section 370)

SHRI J. VENGAL RAO: Sir I move:

62. "That at page 20, for lines 43 to 46 the following be substituted, namely: —

"50. In section 370 of the principal Act

(a) in sub-section (1), —

(i) in the first proviso, for the words

"ten per cent, of the aggregate of the subscribed capital of the lending company and its free reserves", the words "such percentage of the aggregate of the subscribed capital of the lending company and its free reserve* as may be prescribed," shall be substituted;

». a) in the second proviso, —

(1) in clause (a), for the words "thirty per cent, of the aggregate of the subscribed capital of the lending company and its free reserves", the words "such percentage of the aggregate of the subscribed capital of the lending company and its free reserves \. as may be prescribed" shall be substituted:

(2) in clause (b), for the words "twenty per cent, of the aggregate of the subscribed capital of the lending company and its free reserves", the words "such percentage of the aggregate of the subscribed capital of the lending company and its free reserves as may be prescribed" shall be substituted:

(iii) in Explanation (1) for the words, brackets and letters "thirty ^A per cent, of aggregate specified in clause (a) or as the case may be of twenty per cent of the aggregate specified in clause (b) of the second proviso".

the Words brackets and letters "the percentage of the aggregate specified in clause (b) of the second proviso" shall be substituted;

i r.) the following *Explanation* shall be added at the end namely: —

"Explanation. — For the purposes of this section, "loan" includes any deposit of money made by one company with another company, not being a banking company. " "

[The question was put and the motion was adopted.]

THE VICE-CHAIRMAN (DR. BAPU KALDATE): The question is—

"That Clause 50, as amended, stand part of the Bill."

The motion was adopted.

Clause 50, as amended was added to the Bill.

Clause 51 (Amendment of section 372)

SHRI J. VENGAL RAO: Sir I move:

53 "That at page 21, for lines 12 to 14 the following be substituted namely: —

'(b) in sub-section (2),

(i) for the opening paragraph, the following shall be substituted, namely: —

"(2) The Board of directors of the investing company shall be entitled to invest in any shares of any other body corporate upto such percentage of the subscribed equity share capital, or the aggregate of the paid up equity and preference share capital of such other body corporate, whichever is less, as may be prescribed.

(ii) in the first proviso, for the words "thirty per cent, of the subscribed capital of the investing company," the words "such percentage of the aggregate of the subscribed capital and free reserves of the investing company, as may be prescribed" shall be substituted.

(iii) in the second proviso, for the words "twenty per cent of the subscribed capital of the investing company", the words 'such percentage of the aggregate of the subscribed capital and free reserves of the investing company as may be prescribed' shall be substituted., "

SHRI SUNIL BASU RAY: Sir, I beg to move;

83. "That at page 21, after line 22, the following be inserted, namely: —

'(e) in sub-section (14), after clause (e) the following shall be inserted, namely: —

(f) to any Company owned by the Central or any State Government, set up primarily for the development of industries either through subsidiaries or through joint sector undertakings' "

THE VICE-CHAIRMAN (DR. BAPU KALDATE): First, I shall put Amendment No. 63 of Shri Vengal Rao to vote.

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): Now I put Amendment No. 83 of Shri Sunil Basu Ray to vote:

The question was put and the motion was negatived.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): The question is.

"That Clause 51, as amended, stand part of the Bill."

The motion was adopted.

Clause 51, as amended, was added to the Bill.

Clause 52 (Amendment of Section 383/4)

SHRI J. VENGAL RAO: Sir, I move:

64. "That at page 21, line 25, for the words 'of such sum', the words 'having such paid-up share capital' be substituted."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): The question is:

"That Clause 52, as amended, sLand part of the Bill. "

The motion was adopted.

Clause 53 to FD were added to ilie Bill, the Bill.

Clause 53 to 64 were added to the Bill.

Clause 65 (Insertion of new Schedules XIII and XIV)

SHRI J. VENGAL RAO: Sir, I move:

65. "That at page 26, for line 10 the line '(See sections 198, 269, 310 and 311)' be substituted. "

66- "That at page 26, line 13, the words 'Prior' be omitted. "

67. "That at page 26, for line 19. the following be substituted, namely: —

'(a) he had not been sentenced to imprisonment for any period or to a fine exceeding one thousand rupees, for the conviction of an offence under any of. "

68. "That at page 26, for lines 39 and 40 the following be substituted, namely: —

'(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974).

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-

paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval. ' "

69. "That at page 26, lines 41 and 44, for the brackets and letters '(b)' and '(c)' the brackets and letters '(c)' and '(d)' respectively be substituted. "

70. "That at page 27, Line 1, for the bracket and letter '(d)', the bracket and letter '(e)' be substituted. "

71. "That at page 27, for lines 2 to 5 the following be substituted, namely: —

'(f) if the company had suffered loss or had inadequate profits during the financial year immediately preceding the financial year in which the appointment is made (hereinafter referred to as the preceding financial year) or in any of the three financial years in the four financial years immediately preceding the preceding financial year'. "

72. "That at page 27, lines 42 and 43, for the words "be subject to a maximum limit of rupees two lakhs and seventy thousand per annum", the following be substituted, namely: —

'not exceed the following limits, namely: —

Where the effective capital of the company is-	^SlyS^ot'
~ ---- (a) Less than 10 lakhs	exceed—
(b) rupees 20 lakhs or more but less than rupees 50 lakhs	7 rupees 17,000/-
(c) rupees 50 lakhs or more but less than rupees 1 crore	rupees 1,35,000/-
(d) rupees 1 crore or more but less than rupees 3 crores	rupees 1,62,000/-
(e) rupees 3 crores or more but less than rupees 5 crores	rupees 1,98,000/-
(f) rupees 5 crores or more	rupees 2,30,000/-

73. "That at page 28, line 15 for the word '(i) Housing: ', the words ' (i) Housing I' be substituted "

74. "That at page 28, after line 23, the following be inserted, namely; —

'Housing II—In case the accommodation is owned by the company, ten per cent, of the salary of the appointee shall be deducted by the company.

Housing III—In case no accommodation is provided by the company, the appointee shall be entitled to house rent allowances subject to the ceilings laid down in Housing I. "

75. "That at page 28, line 24 for the words 'The expenditure', the words 'Explanation. —The expenditure' be substituted. "

76. "That at page 28, after line 39, the following be inserted, namely: —

'Explanation. —For the purposes of Category-A, "family" means the spouse, the dependant children and dependant parents of the appointee'. "

77. "That at page 29, line 17, the word 'sanctioned' be omitted. "

78. "That at page 29, the lines 28 to 33 be omitted. "

79. "That at page 30, line 2. for the word 'section', the words 'sections 205 and' be substituted. "

80. "That at page 31, line 11, for the word 'electric' the word 'electronic' be substituted. "

81. "That at page 34, line 30 the word 'previous' be omitted. "

82. "That at page 38, lines 10 and 17 for the figure '1987' the figure '1988' be substituted. "

The questions were put and the motions were adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): The question is:

"That Clause 65, as amended, stand part of the Bill. "

The motion was adopted.

Clause 65, as amended was added to the Bill.

Clauses 66 and 67 were added to the Bill.

Clause 1 (Short title and commencement)

SHRI J. VENGAL RAO: Sir, I move:

2. "That at page 1, line 4, for the figure '1987' the figure '1988' be substituted. "

3. "That at page 1, for lines 5 to 9, the following be substituted, namely: —

'(2) Section 66 of this Act in so far as it relates to the insertion of new Schedule XIV to the principal Act shall be deemed to have come into force on the 2nd day of April, 1987, and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act'."

The questions were put and the motions were adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): The question is:

"That Clause 1, as amended; stand part of the Bill. "

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula

SHRI J. VENGAL RAO: Sir, I move: "That at page 1, line 11, for the word

[Shri J. Vengal Rao] *'Thirty-eighth the words 'thirty-ninth' be substituted'*

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (DR. BAPU KALDATE): I shall now put the Enacting Formula, as amended, to vote.

The question is;

?That the Enacting Formula, as amended, stand part of the Bill. " *The motion was adopted.*

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill.

SHRI J. VENGAL RAO: Sir, I beg to move;

"That the Bill, as amended, be passed."

The question was proposed.

SHRI JAGESH DESAI (Maharashtra): Mr. Vice-Chairman, Sir, I would like to place four points before the Minister for his consideration. One is that the right of proxy should be done away with. I am unable to expand this point because of short of time and proxy to Director or his relatives must not find any place. If it is done away with, then the Directors will invest more money and the company will not go sick. At present many companies have only 8 per cent equity of the Directors but they are having a complete control of the companies. That is why the Government must think seriously about this so that proxy is not given to the Directors or their relatives. Secondly, wherever the turnover is more than Rs. 25 crores and more than 500 are employed in a public limited company, one of the auditors should be appointed by the recognised labour union and the fee should be given by that company so that the manipulations which are going on to give less bonus, dividend and less taxes can be eliminated. Thirdly, whenever more than 75 per cent of the resources are given either by equity by the Government or as loan by the financial institutions, there also, one of the

auditors should be appointed by the Government and their accounts should be submitted to Parliament for its scrutiny. Similarly, in all the MRTP companies one of the auditors should be appointed by the Government and their accounts must be placed before the Parliament for discussion as it is done in the case of public sector undertakings. As you will see the report of the Finance Ministry, last year 12 groups of companies evaded Rs. 200 crores income. That was found by overseeing. If their accounts were gone into in depth, then hundreds of crores of rupees would have come into surface: and the Government would have got its due share. That is why, one of the auditors in these MRTP companies must be appointed by the Government and their accounts must be placed before the Parliament. If their accounts are to be scrutinised by the Parliament, then they will not take this risk and they will not indulge in this kind of practice. These are my suggestions and I would like the Government to go in depth into these and come out with a simple amendment in the Companies Act to remove these loopholes. These are my suggestions and I hope the hon. Minister will accept them.

SHRI RAOOF VALIULLAH (Gujarat): Will the Minister respond to these suggestions?

THE VICE-CHAIRMAN (DR. BAPU KALDATE): Yes, yes.

SHRI SUKOMAL SEN (West Bengal): Sir, this Bill is an Amendment Bill to an Amendment Bill. Under this Amendment Bill, the hon. Minister has got so many amendments today also and so hurriedly this Bill is getting passed. It is a very voluminous Bill as Mr. Rameshwar Thakur has demonstrated. And this voluminous Bill is being passed with a jet-plane speed. Now, I would like to know from the hon. Minister when the next Amendment Bill is coming to the present Amendment Bill.

SHRI DIPEN GHOSH: Mr. Vice-Chairman, Sir, as you have noticed, I have submitted an amendment. And when this amendment was put to vote and negatived,

nobody said 'No'. But you too\ it as if they were saying 'noes' or that they will ba saying 'noes* whenever any amendment is putforth by the Opposition. You assumed it. But the fact is thai they could say even 'noes' because they could not study what exactly the amendment wanted to do.

5. 00 P. M.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI M. M. JACOB): Sir, he is trying to mislead the House.

SHRI DIPEN GHOSH: You go to the tape record and find out whether what you say was at all taped. It was not taped. Actually, they, including even the Minister, did not pay any attention to this amendment. So, I would appeal to the Minister to consider this amendment, because it is assumed that the Government will again come up with another voluminous set of amendments to this Amendment Act, as happened in the case of the Direct Tax Laws Amendment Bill. There have been certain exemptions that any company when out of its own resources invests in its subsidiaries certain exemptions are granted. But the companies owned by the Central Government or any State Government which have been set up for the purpose of developing industries out of their own resources money given by the Centre, or money given by the Centre through the State Goveinment, if they invest in their own subsidiaries, or through subsidiaries in the joint sector ventures, they are again required to come to the Centre for permission. This simo-Iv is a bureaucratic approach. This gives the scope for bureaucratic bungling and delaying the whole process. The companies are owned by the Government. Money has been supplied by the Government to such companies. The purpose of floating such companies was to develop industries and out of the money provided to such companies if they wished to invest in their subsidiaries or through subsidiaries in certain other joint sector ventures again they were required to come back to the) Centre for permission; that is

why this amendment sought to give exemption to such companies. But even they did not pay any attention to this kind of amendment. This is the way the Government is functioning.

Sir, I would¹ appeal through you to the Minister that assuming that they will again be coming forward with another amending Bill on this subject, I would request him to consider this amendment also at that time. Thank you.

SHRI J. VENGAL RAO: Sir, after passing the Bill, hon. Members have come forward with some suggestions...

THE VICE-CHAIRMAN (DR. BAPU KALDATE): No, we have not passed it yet. We are at the third reading stage and therefore I have allowed it.

SHRI DIPEN GHOSH: I do not believe in God. Otherwise I would have said: May God save us from the ignorance of the Minister!

SHRI K MOHAN AN (Kerala): This is the way they are handling the things. (*Interruptions*).

SHRI M. M. JACOB: You do not allow the Minister to complete the sentence.

SHRI J. VENGAL RAO: After passing two-thirds of the Bill the Members gave som© suggestions. I will remember these suggestions when I come forward with the amendments" next time. I will certainly look into them. (*Interruptions*).

SHRI DIPEN GHOSH: Provided you are a Minister, and the Industry Minister, at that time. (*Interruptions*).

THE VICE-CHAIRMAN (DR. BAPU KALDATE): He said, has will examine it. Now I will put the motion. The question is:

"That the Bill, as amended, be passed. "

The moton was adopted.