

[श्री देवकीनन्दन नारायण]

जल्द से जल्द खत्म हो और आपस का बैर, विटर्नेस, रहे नहीं ।

तो मेरी यही प्रार्थना है कि आप बार-बार क्यों तकलीफ लेते हैं कि गोआ को अलग रख कर यहां के कानून लागू करें । अच्छा हो कि आप जल्दी से जल्दी महाराष्ट्र में उसको मिला दें ताकि महाराष्ट्र के सारे कानून वहां लागू हो जाय और वहां के लोगों को भी कोई तकलीफ न रहे ।

SHRI JAGANATH RAO: Sir, I have already replied to these points which had been raised in the main debate. The hon. Member has spoken about the immediate need for the merger of Goa with the State of Maharashtra. As I said, this Bill has nothing to do with the merger question at all. The merger question can be taken up only when normal conditions prevail in the country. This is not the time even to talk of merger of Goa much less of any other dispute that may exist between different States. About the Bill the hon. Member has said nothing and I have nothing more to add.

THE CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

THE COMPANIES (AMENDMENT) BILL, 1965

THE MINISTER OF PLANNING (SHRI B. R. BHAGAT): Sir, I beg to move:

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

As hon. Members might recall, the Bill, had earlier been considered by

the Joint Committee of the Houses and the Report of the Joint Committee was presented to this House on the 23rd February, 1965.

[THE DEPUTY CHAIRMAN in the Chair]

After careful and thorough scrutiny of the detailed provisions of the Bill, the Joint Committee had made changes in some of the original provisions and I feel sure that these will be welcomed by the House. In making these changes, the Joint Committee had the benefit of the suggestions and observations made in this House on the 24th December, 1964 during the discussion on the motion for concurrence in the proposal to refer the Bill to the Joint Committee, as also the various memoranda and representations received by them and the evidence given before them by the representatives of the various Chambers and Associations. The representatives of the Institutes of Chartered Accountants and the Cost and Works Accountants also appeared before the Joint Committee and submitted their views to them.

The Bill as emerged from the Joint Committee has taken note of the objections raised by the various Chambers and is definitely an improvement on the original version. Apart from the improvements made by the Joint Committee, the Members will notice that the Bill as adopted by the other House, has undergone further changes designed to relax some of the rigid provisions of the Act. I believe that the Bill in its present form will achieve the objects for which it was framed, namely to plug the loopholes and at the same time to simplify procedural requirements as pointed out by the various Chambers and Associations. As the principal changes made by the Joint Committee have been explained in their Report, I need not comment on all those changes. However, I would like to make some observations on some of the important amendments made by the Joint Committee and the other House.

In the first place I will take up Clause 13 relating to proposed restric-

tions on blank transfers. In order to remove the possible hardships arising out of the operation of this provision, the Joint Committee had recommended certain relaxations. While considering this Clause along with the recommendations made by the Joint Committee, the other House made certain amendments with a view to simplifying its operation and removing practical difficulties in its working. The effect of these amendments is as follows:—

(1) The requirement of obtaining the prescribed forms of transfer from the prescribed authority has been done away with. Instead it has been proposed that the form of transfer as prescribed by Government should be presented to the prescribed authority for stamping the date of presentation before it is signed by or on behalf of the transferor. I am told that this would remove the time lag involved in obtaining the form from the prescribed authority.

(2) Blank transfers of shares dealt in or quoted on a recognised Stock Exchange will be allowed to circulate till the date on which the Register of Members of the company concerned is closed for the first time after the date of presentation of the transfer forms to the prescribed authority, as against the period of six months from the date of issue of the transfer form as provided in the original Bill. I understand that this modification might remove the difficulty of multiple rates being quoted for the same security on account of transfer deeds of varying currency being operated at the same time.

(3) The period within which blank transfers of shares dealt in or quoted on a recognised Stock Exchange and held at the commencement of the Act are required to be delivered to the company has been suitably modified so as to extend the time to six months or the date when the Register of Members is closed for the first

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time after the commencement of the Act, whichever is later. Apparently, this modification is designed to remove the difficulties which the holders of such shares might experience for shortness of time.

(4) The exemption from the operation of the proposed restrictions in respect of State Bank of India or any Scheduled Bank or financial institutions as approved by the Central Government, is proposed to be extended to banking companies other than Scheduled Banks as may be approved by Government. I believe that the hon. Members will be happy to note that this amendment has been designed to remove the difficulties which the non-Scheduled Banks might experience in the absence of any exemption to them.

I may now say a few words about clauses 20 and 23. Hon. Members would kindly recall that in the course of the debate on the motion for concurrence in the proposal to refer the Bill to the Joint Committee there was much discussion on these two provisions. The Joint Committee had modified clause 20 and restricted the power of the Government so that it can require only a class of companies to include in their books of account particulars relating to utilisation of material or labour as may be prescribed. This is a significant amendment recommended by the Joint Committee as it will remove the apprehension of the hon. Members that the Government might utilise this power in respect of any company irrespective of the fact whether it belongs to any particular class or not. While the Bill was discussed in the other House it was felt that for the purpose of maintaining the cost records of such companies, the inclusion of other items of cost apart from material or labour, would also be necessary. Hence a formal amendment was made in the other House providing that the other items of cost as may be prescribed by Government shall also be included in the books of accounts of such com-

[Shri B. R. Bhagat.]

panies. As the maintenance of cost records will be necessary for the purpose of cost audit of the company, clause 23 of the Bill seems to be closely related to clause 20. Accordingly, the other House has amended this clause so as to clarify that the power of the Central Government for directing the cost audit should be used only in relation to companies ■which are required to maintain cost records in pursuance of the provision of clause 20.

One of the important modifications suggested by the Joint Committee relates to clause 25 which deals with certain facilities proposed to be given to Inspectors appointed to investigate various aspects of company matters. The power of the Inspector to call for information or for production of books or papers for the purpose of his investigation, to be exercised with the previous approval of the Central Government, has been restricted to calling for information, etc. only from any body corporate and not from any firm or from any individual as provided in the original clause. In this connection it may be recalled that the proposal contained in clause 25 casts a duty on the company whose affairs are being investigated or other body corporate to produce documents or furnish information to any person authorised by the Inspector in this behalf. This clause has been modified by the other House so as to provide that the previous approval of the Central Government has to be obtained by the Inspector before any other person could be authorised for the purpose of this section. I may also mention that the Joint Committee has proposed that the Inspector should return the books and papers obtained from a company after a period of six months with the proviso that he may call for these documents again if they are needed. This seems to be a welcome improvement on the original proposal under which

the Inspector could keep the books for an indefinite period,

Lastly, I come to what may be called the most controversial of the clauses in the Bill, *i.e.* clauses 25 to 37. The original proposal was to impose an absolute age limit of 75 years on the attainment of which every director should retire. In the course of discussion in the other House, strong feelings were expressed against this provision. On the one hand the Members felt that the directors who have attained the age of 75 years should be allowed to continue if approved by the shareholders. Some of the Members however suggested the deletion of this clause as well as section 280 of the Companies Act. I thought that the old provision requiring the shareholders' approval for the continuance of the director who has attained the age of 65 did not serve any useful purpose in practice because we have hardly come across any case in which such approval had been refused. After due consideration I felt that the House should either accept the provision for an absolute limit of 75 years or alternatively I would be prepared to completely abrogate section 280. The matter was therefore left to the decision of the other House which ultimately decided to delete the provisions in the Act imposing restrictions on the age limit of directors. I am sure this amendment will be welcomed by the hon. Members.

The other amendments to the Bill effected by the other House are of a drafting or consequential nature. I should like to close by saying that the Bill which has emerged from the Joint Committee and the other House is a simple measure designed to regulate the working of the corporate sector more effectively than hitherto and for the common good. I am aware of criticism about the frequent changes in the Company Law, but unfortunately we feel that in a developing economy such changes are absolutely necessary for a healthy growth of the country's economy. It has often been argued that by intro-

ducing amendments every now and then Government curtails freedom of persons engaged in corporate ventures. The company method of business organisation provides freedom to these persons to do business on others capital. It is the duty of the Government to see that the funds so collected are properly spent and companies are properly managed. So long as anybody is doing nothing wrong he has no reason to be afraid. These regulatory provisions are nothing but logical consequences of that freedom given to the people to use the company method of running business. The freedom of the people should be restrained subject to good behaviour.

Madam, with these words I commended the Bill for the acceptance of the House.

The question was proposed.

SHRI DAHYABHAI V. PATEL (Gujarat): Madam Deputy Chairman, I have listened patiently to the speech of the Minister. At the present juncture, I am sure everybody in this House will agree with me—in fact, the attendance in the House shows it—that our hearts and minds are with our fighting forces on our borders and our mind is not exactly with what is before us. I would like, even at this stage, once again, to appeal to Government not to go along with measures of this type which are bound to raise controversies, controversies which are not at all necessary. It is a pity that Government did not listen to us in the matter of the Gold Control Order, in spite of requests and appeals from all sides. Again, the government is repeating the same. The Prime Minister appeals for cooperation from every section in the matter of defence. He gets the willing co-operation of people from all sides of the House. "Why then does Government take this attitude? Are the heavens going to fall if consideration of a controversial Bill of this type is not sought to be pushed through in this manner? We know the history

of company law administration, the history of how the company law has been changed again and again. Is it really necessary to do it? I would particularly point out that a healthy feature of the last company law Bill was the co-operation or a sort of balance that was brought about between the greed for power of the Central Secretariat and a sort of semi-non-official or non-political official body as the Company Law Board. Why does the Government want to do away with it? When it was working satisfactorily, when there was a semblance of consultation between the people who understand business, people who know business and Government, when people co-operate with it, when that infused a kind of confidence in the business community, when between the Government and the administration of joint stock companies we have really built up a proper basis for co-operation and it is working, why then, at this juncture, Government wants to do away with it? Therefore, I would like to appeal to the Finance Minister, who is unfortunately not present, but to him through his deputy who is here and also to the Prime Minister, to give a little second thought to this and not try to pass this in this manner and in this way. If, after the last Companies Bill was passed—I think it was in 1956—for six years the companies have been going on and have been working, it could go on for a few more months or years, if it is necessary. Perhaps we could consider it in a calm and detached manner, when I would hope also that the greed of the Government to acquire more and more power in their misguided notion of taking the country more and more towards communism would have softened a little. They should think again and not punish the whole business community as a whole for the faults of a few erring people. Whether it is nationalisation of life insurance or the Companies Bill, Government has to admit, it is because of the fault of the erring Government officers,

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whose duty it was to administer the law but they failed to administer it, that the whole business community of this country and the country as a whole is being punished by such penal legislations, one after another, which are hardly necessary. In spite of this, the business community, people from all sides of the House who oppose these measures, come forward willingly, in a most patriotic spirit to help the Government at a juncture like this. Is it not time for Government to respond to this feeling and consider whether it is really worthwhile engaging the mind of Parliament, engaging the minds of so many officers and the whole machinery of the Government on¹ this measure, when perhaps it could be better utilised for strengthening the defences of the country?

We have also to take into account the changing economic conditions in the country. In view of the new situation that has arisen perhaps the whole outlook on planning will have to be changed. If the whole outlook on planning has to be changed and has to be geared to defence, would it not, in the same way, affect our thinking on company administration? Company law in this country is already very rigid. The present Bill, if I mistake not, is the seventh in a series of Bills that had been introduced by Government one after another and it seeks to vest with the executive Government very wide and arbitrary powers. I am totally opposed to giving such vast, arbitrary powers to a Government, to say the least—at this juncture I am not in a mood to repeat the criticism or to mention names—that has not been able to acquite itself well or to get a clean name in its ordinary working and methods. How can you expect us to support a Government that has not been able to keep a clean name? From the highest people have been charged with corruption or protecting corrupt people, which amounts indirectly to the same, and whether they deny it today or not facts have proved that

the allegations made from this side, from the Opposition, were not without substance. In these circumstances, how does Government expect us to support the granting of more and more power to an executive Government of this type? Changes in laws of this type could only be made when the existing laws become outdated. I do not think it can be said that the amendments made a few years ago—I think it was in 1956—have become outdated. I do not think it has been given sufficient trial. Perhaps some officials in the Ministry have become outdated and they are not able to do their work efficiently. Therefore, we are in this soup.

There have been certain concessions made, as pointed out by the hon. Minister, in one or two matters, *e.g.*, in respect of blank transfers. I do not know whether the concessions that he has made are going to solve the difficulties completely. What do we want in this country? Do we want rapid development or do we want to build up an autocratic Government machinery that has complete control of the life, of the business activities and everything that the people do? I happened to go out of India for a few days and on my way back I was stranded in Hong Kong for a few days. I understand many of our Ministers also go there. Why do not they learn the lessons, *viz.*, how practically the city has developed, in the city's administration which is not more than a hundred square miles, how building activity is going on, how business is going up, how international trade has developed—, how a large number of Indian residents, who came back to India as refugees with hardly a penny, have gone there and made it a successful business? It is possible because there is no such Company Law there and no such obstacle in the way of the people at every stage.

SHRI AKBAR ALI KHAN- (Andhra Pradesh): It is a free port.

SHRI A. D. MANI (Madhya Pradesh): There is a lot of opium smuggling.

SHRI DAHYABHAI V. PATEL: It is a free country, if I may say so, much more than being a free port. The Government has an eye for many things, and it has been talking of making free ports. I do not know whether one port here or there is going to make a difference. But the point is, if progress is possible in freedom, why do you not give freedom to people? That is the point, Madam, that I make. Unfortunately our machinery of propaganda is so poor that people do not know why we are fighting in Kashmir. Our Ambassadors seem to be doing nothing. The one in Hongkong seems to be doing better. At least he briefed the local newspapers and there was something of our side appearing in the papers. Now I understand that he is being transferred. At this particular critical stage he is being transferred to some other place. You know, Madam, and many Members in this House may know that he is a person who would make a success anywhere. But is it right that transfers of this type are made when we are told that we are passing through a critical stage? Even the mover of the previous Bill mentioned that in this critical stage we might go only thus far and then we would do rethinking. I am therefore appealing to the hon. Minister not to press this Bill in this manner at this stage.

SHRI ABID ALI (Maharashtra): And we should be reduced to Hongkong size which is smaller than our city.

SHRI DAHYABHAI V. PATEL: Madam, Mr. Abid Ali has got very funny ideas of things. I am afraid there will not be many Members at least on this side of the House who will agree with him. But he has seen Hongkong, he has seen Bombay and he has seen other cities than Bombay. Why does Bombay not progress so rapidly which is a seaport, and why

was it necessary for refugee merchants of Sind who came to Bombay to go away to Hongkong? It is because of the disabilities that the Congress Government put in their way at every stage. Why is building activity not going on in the city of Bombay and why do we have so many slums there? It is because of the disabilities and obstacles placed in the way of people who are able to go ahead, not only for themselves but also for the country.

SHRI AKBAR ALI KHAN: My hon. friend was the Mayor of Bombay.

SHRI ATAL BIHARI VAJPAYEE (Uttar Pradesh): He knows better.

SHRI DAHYABHAI V. PATEL: Therefore, I speak from experience. Some of the Sindhi friends I met there came as refugees and they did meet me and I tried to learn something from them and understand something. I am telling you something of my experience. I wish the Ministers who go there also do so because it has been quite a practice of Ministers and so many people in our Ministries to go abroad so often. I do not know what they tell us or what they do not. Perhaps they tell us what suits them; they do not tell us anything of the other side. It happened to be the Minister of International Trade, Mr. Manubhai Shah, who was at Philippines at the same time as I was there. Why did the Chief of the Broadcasting Office want to have an interview with me and ask me to speak before the television on the present dispute between India and Pakistan? If the Minister would do it, they would not have asked me. When Ministers go, perhaps they go for other work and they have no time for all this. But at this critical time when we are faced with an aggression, when we are misunderstood all over the world, was it not necessary for the Minister to do that?

SHRI A. D. MANI: May I ask a question? Did the Minister at least make a press statement in the Philippines?

SHRI DAHYABHAI V. PATEL: Unfortunately not. I accepted the Invitation. I was asked to speak on the television. Then they reproduced it on the broadcasts. The next day when I met people at the conference, they said: "We did not know all this. What you have told us has opened our eyes completely. We do not know anything about this." Madam, I mention this today because we are in this situation. It may not be exactly having a complete bearing on the Company Law before us, but it does have a bearing on the manner in which Government seems to think. If Government thinks that there is necessity for rethinking on many things like the small Bill that was before us in view of the present times, much more so is rethinking necessary on a controversial Bill of this type. In the Select Committee report the number of minutes of dissent point out how this Bill has been looked upon. It is true that the Congress Party has a great majority in this House, and therefore it has a large majority in the Select Committee and it is able to do it. May I suggest that it is not wise to use this majority in this manner? Government at this critical stage should be a little more responsive to people of the opposition particularly when there is an opposition which is constructive, an opposition that is patriotic. Their patriotism is above! doubt. They have no links or alliances outside the country, whether open or secret. Therefore, it is the duty of the Government to listen and respond.

AN HON. MEMBER: Reconstitute?

SHRI DAHYABHAI V. PATEL: Certainly anybody should have done it long ago. When this Government went to war, they should have formed a National Government. But I

am not saying that just now. • Certainly since the Prime Minister has made it a habit of taking all parties or party leaders, whether in the House or outside, into confidence, I am sure he will continue this practice. At least he has given an indication that he proposes to do that. Well at this juncture is it necessary for one Ministry of Government to proceed with a Bill of this type in this way?

Madam, I will refer only to two or three matters on which perhaps I will say more when the clause by clause consideration of the Bill comes before us. I am not satisfied with the concessions given in the matter of blank transfer. If the blank transfer has been abused by certain people, under the existing law the Company Law Administrator and the Registrar of Companies have sufficient power to check this. The only point is, they do not want to use it or they have been reluctant to use it. Because they have been reluctant to use it, Government seems to want to make this as an excuse for getting more power. For instance, Government had a Superintendent of Insurance to look after insurance companies and put them right, and the Government with open eyes allowed him to function from Simla, his whole office and staff were at Simla, whereas the head offices of insurance companies were in Bombay or Calcutta and there were a few in Delhi also. If the Superintendent had been functioning at any one of these places, perhaps his administration and his pulling up of these insurance companies would have been better, and the evil that crept in would not have been there and nationalisation would not have been necessary as it is said. I repeat the same thing and the same argument applies in this case. It is not giving Government all power that is going to correct all evils. Some friends on the opposite side and perhaps a few on this side also have got such notions that giving all power to Government is going to correct every-

thing. It is a completely wrong notion. Give power to Government if necessary by all means, give it when it is necessary but only when the existing power is used and when the

existing power is not enough. Looking into the history of this Company Law Administration it appears that the whole thinking of Government or of Parliament has been based on what has happened in respect of a certain group of companies. A closer examination will show that it has been the officers of Government who have been failing every time. Government should have dealt with the erring, failing officers more strongly. That would have prevented other officers from being lenient and negligent. But having failed to do that, they brand the whole class of businessmen, the whole private enterprise, as bad, and they want to pass such oppressive laws. Such oppressive laws will mean more paper work certainly and submitting of more forms to the Government offices. And what submitting any forms to the Government of India will mean, anybody knows—it will open the door to more corruption which neither helps the country to progress nor helps the business men nor it brings in more revenue to the Government. It is the same vicious circle going round. Is it not time, in a crisis like this, that Government tried to break through this vicious circle and came forward with a new outlook? If the people of this country can rise in a crisis like this unitedly in a patriotic spirit, surely, the businessmen of this country also will do the same if you make the right appeal. (*Interruptions*)

Madam, people who get their inspiration from countries outside India will never face the facts and I hope that our Government keeps a complete and good watch over them. Those people who have seen things here, those people who have lived in this country, have been patriotic always; the Government has no reason to doubt it. Certainly, there is a thing called greed; human beings have greed. But the way of curbing greed is not this and the people who

are greedy, people who want money, they have always been able to go beyond the law every time the Government has made it. Has the experience of the past six Companies Acts made the Government even the least wiser after so many years of experience? Government is also being misled by certain businessmen in their ranks who try to run with the hare and hunt with the hounds. They support the Government here when it suits them; when they go to the meetings of the Indian Chambers of Commerce or the Federation of Chambers of Commerce they talk strongly against the Government. I say, take sufficient notice of them. This country has always had Amin Chands who have let it down. Even in America they were people like Arnold who had let the Government down in moments of great crises. What the country needs is rethinking; what the Government needs is rethinking. Prime Minister Lai Bahadur Shastri has shown that he is capable of rising to some of those heights at certain junctures. Will he be able to do that further? I will not say more now. But when we are on the clauses of the Bill, I will take the opportunity of speaking on them later.

SHRI RAJENDRA PRATAP SINHA (Bihar): I have heard the speech of my hon. friend, Shri Dahyabhai Patel, and I have been trying to find out what he wants to say about the Companies Bill. He has hardly said anything on the Bill itself. But he has been talking all kinds of things because he always speaks for the sake of speaking and for the sake of opposing the Government. Well, I could only conclude that he has nothing material to say against this Bill, and therefore he has not been able to marshal any facts in opposition to this Bill. That is all that I could conclude from the speech that he has just delivered.

Now, Madam, I entirely agree with the fact that the corporate sector has to play a very important role in the development of the economy of this

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country and the Company Law is designed merely to help the growth of the corporate sector. This is what I maintain. Now, the corporate sector, as the Minister has said, has funds invested either by the large number of the public who invest money in the shares of the companies or the corporate sector today is 'finding large sums of money from the different financial institutions set up by the Government. The corporate sector today also largely gets investments not only from foreign private enterprises but also from foreign financial institutions. It is very important therefore that the monies invested in the corporate sector should be properly utilised and it should be seen that no fraud is committed upon the moneys so raised, by a few unscrupulous company managements. It is merely to safeguard that that the Company Law has been revised and this Bill has also been brought forward. If the investing public, if the foreign investors who invest in India and if the financial institutions have got the confidence that the moneys invested in the corporate sector will not be misutilised or will not be misappropriated, then there will be a greater flow of funds into the corporate sector. Therefore it is important that the corporate should be properly managed and with a view to seeing that the corporate sector is properly managed and that nobody plays with the money given to the corporate sector, this Bill has been brought forward.

SHRI DAHYABHAI V. PATEL: Only Government officers can say.

SHRI RAJENDRA PRATAP SINHA: Well, I will come to that point also.

SHRI DAHYABHAI V. PATEL: Ministers.

SHRI RAJENDRA PRATAP SINHA: Well, I cannot carry on with the running commentary that the hon. Member is making of Ministers

and Governments, without having any specific relation to facts. If we look into the Report of the Vivian Bose Commission, we will find what types of frauds have been committed on the moneys raised by public subscription. Now we have got to safeguard that such things may not happen again. What is the safeguard? The best safeguard is that you have a perfect law. When we have got a good and perfect law, a law which provides all kinds of safeguards against such mischief being done, that alone will act as a deterrent against persons acting in the manner in which they did in the case of the Dalmia-Jain group of industries. I do not know what my hon. friend means when he says that the officers did not discharge their duties properly. I cannot understand what he means by that. The officers discharged their duties according to the Company Law existing at that time and they will continue to discharge their duties as the law is now in existence. If certain people take advantage of some law or of the loopholes in the existing law to commit certain frauds, how are the officers responsible for it? The only way to stop them is to plug the loopholes. That is why we have provided so many clauses, because we find that whenever prosecutions are launched and whenever an investigation is undertaken of any company, the directors or the managing agents or the people who have control over the company non-co-operate with the investigating authorities. Now, what have the officers to do with that? We have got to provide that such non-co-operation is done away with. Therefore the various clauses have been provided so that either the people would not commit such fraud or if an investigation is started, they do not hamper that.

I was reading through the Annual Report of the working of the companies—it is the latest one—and I find that there is still need for vigilance, for improving our administration and also for strengthening the Company

Law because people are still not fully co-operative with the Company Law, as they ought to be.

In paragraph 99 the report says:

"The progress of investigation in several cases was hampered by the dilatory, evasive and obstructive tactics adopted by the managements. One of the companies under investigation has gone into voluntary liquidation. In one case the court has had to be moved for production of documents under section 240(3) of the Act. Another company has obtained a stay order from a High Court and investigations in 3 other cases had to be postponed on account of the petitions submitted to the court by the managements."

You will find that the Company Law Board is taking full precautions that these things do not happen, but they are not in a position to take full and effective steps unless the present Bill is enacted and full powers are given to them that these dilatory tactics may not be adopted by the management.

Another point which has been made by the critics of this Bill is that it will adversely affect the growth of the corporate sector when it has such complex laws on company matters. Now, I was looking through this report and I find that the corporate sector has been steadily expanding in spite of the fact that we have got such a voluminous and complex company law and because, as the Minister has said, the people who are not out to do some mischief in the corporate sector, do not get terrified or afraid of such complex or voluminous laws, it is only those people who are out to do some mischief that are afraid of such legislation. Madam, even some hon. Members in the other House said that the corporate sector will get a set-back if such laws are enacted. I find that the corporate sector has been steadily increasing and expanding ever since the Company Law came into operation in

1955-56. Now let us take only the public companies and you will find that now the registration of public companies has been going on steadily from year to year. From 1956 to 1964-65 there has been steady growth of the formation of new companies. The report says:-

" This reduction in the number of companies should not however be constituted as a decline in the activities of the corporate sector in the country,' as, despite the fall in number, the paid up capital of companies had recorded a continuous upward trend since the new Companies Act came into force."

I find that the paid up capital has gone up rapidly from Rs. 9,58-2 crores in 1955-56 to Rs. 15,69-3 crores in 1964-65. Therefore, it is proved by this data that the growth of the corporate sector has not been steady, and I maintain, Madam, that even after the enactment of this Bill the growth of this sector will go on as it has been going on in the past.

Now I would like to refer to some of the clauses "that are there in the Bill. I agree with the Minister that this Bill has been largely improved as a result of the discussions in the Joint Committee. When they discussed it they took into account all the points of view raised by different parties who gave evidence before them. The Committee tried their best to meet the objections raised by many of the memoranda. I am glad the Minister has said that the Bill has been further improved by its passage in the Lok Sabha excepting one or two clauses about which I would say shortly.

Since we have got very few amendments before us I would like to comment upon some of the clauses. Although clause 3(ii) talks about the enlargement of the definition of officers, I find that this is not a new concept. This concept has always been in existence in the Company Law and other laws. It is important that the concept of the definition of

[Shri Rajendra Pratap Sinha.] "officers" should be enlarged as proposed in this Bill. The objection that they are a professional class of persons does not hold good because the professional class of persons are covered under section 7 of the Act which gives them exemption from coming under the mischief of this clause.

[THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) in the Chair.]

Now, clauses 5 and 15 were also Improved by the Joint Committee. The existing companies need not recast their memorandum in order to give the main objects, the ancillary objects and other objects. It is only the new companies which will come under the mischief of this Act. Similarly, in clause 15 we have improved upon the original provisions, and As it has now emerged, it is more acceptable to the business community Now the existing companies will have to take the permission of the shareholders only if they go on such objects of manufacture which are not germane to their existing line of activity. The new companies will now have to have a set of different Memoranda, and when they go out of their first main object, then alone will they have to take the permission of the shareholders. The best portion of this is that the company is now in a position to permit itself to go into other lines even if they do not pass a majority resolution. If they just pass a resolution they can go into new lines. This will meet the criticism that their competitors can thwart the activities of some of the expanding business of some of the companies.

Coming to clause 13 which deals with the blind transfer, I think that all the objections that have been made by different interests concerned have been largely met. Now it was urged before us that the blank transfer should be continued for one year. That has been largely met by the

amendment made by Lok Sabha, as explained by the Minister, that the currency of the blank transfer will be till the closing of the members' register at the time of the annual general meeting. Then to remove hardships it has been provided that in some cases the Government may have power to give them the power to ratify the period of the currency of the blank transfers.

Coming to the clause regarding cost audit, it is a very good concept that we must introduce the cost audit concept in our industries and make them cost-minded. I agree that to-day there is not a good deal of costing done in the industries but in order to improve the efficiency in the working of the industries it is important that the element of cost accounting be introduced. It is good that the Government will gradually introduce this cost accounting in certain classes of industries or certain classes of Companies and now the cost audit will only be done where the Government has announced that the companies will maintain the necessary cost records. Now as regards the controversy that it should be done only by Cost Accountants or by the Chartered Accountants also, I do not think there is any justification in carrying on such a controversy because it is already provided in the Bill that the cost audit will be done by Cost Accountants and the powers have also been given to the Companies or the Government to get this work done by Cost Accountants or by other persons if they are qualified to do it. I do not think the Cost Accountants will suffer on that account and I have seen an amendment that it should only be done by Cost Accountants. As a matter of fact if you look at the course of study of the Chartered Accountants also, you will find that they are conversant with costing work also and they can easily do it and when the time comes, when we have more and more of Cost Accountants, then probably we can think of keeping this reserved or

Cost Accountants but to-day if we have such a provision we have not got sufficient Cost Accountants to do the Job.

Coming to the other clause introduced by the Lok Sabha for the removal of the age-limit, I would say that I do not agree with the amendment introduced by the Lok Sabha. There should be a limit on the age and the directors should retire at 75. I fully endorse the amendment moved by many friends of this House that we should have a limit on the age and the director should be asked to retire at 75.

SHRI M. N. GOVINDAN NAIR (Kerala): Mr. Vice-Chairman, I broadly support this Bill though I see that certain clauses could have been made restrictive but I was very much amazed at the speech of Mr. Patel. It seems that he has completely forgotten the background in which this Bill was brought here. We had occasion to discuss the Vivian Bose Commission Report in this House. That report was an epic in itself. It showed how the modern Kauravas function in this country.

SHRI DAHYABHAI V. PATEL: Do you mean that Pandavas are sitting opposite?

SHRI M. N. GOVINDAN NAIR: I never said that.

SHRI DAHYABHAI V. PATEL: I am glad you did not.

SHRI A. D. MANI: Pandavas are here.

SHRI M. N. GOVINDAN NAIR: But we were all shocked at the way in which the investing public were defrauded by the business houses. We also at that time knew or heard from the Treasury Benches that they were helpless to do anything because there

were certain loopholes. At that time they told us that they were entrusting this to the Daphtary-Sastri Committee to find out what are the loopholes and how they could be plugged. So, it is after all that, this amendment Bill has been introduced.

SHRI DAHYABHAI V. PATEL: They have gone far beyond that.

SHRI M. N. GOVINDAN NAIR: I do not think they have gone far beyond and my complaint is that they did not go to the extent they should have. Shri Patel forgets that the Company Law itself is a great concession to the business community of this country. Without even the least risk, without even investing a single pie, because of the Company law, the promoters are permitted to collect huge funds from the public and do business. I ask you, even in a capitalist society, even in any of the continental country, is this freedom permitted? From the Vivian Bose Commission Report itself it was clear that without even investing a pie just by printing the prospectus and making some book adjustments, one could get a certificate for starting business. That has been pointed out in the Vivian Bose Commission Report. Now some amendment is brought to say that the money should be deposited in some bank and then only the business can be started. I ask Mr. Patel whether he is opposed to this.

It has again been pointed out—that too is in the Vivian Bose Commission Report—that in the memoranda of association they put in everything under the Sun and nobody knows what type of business the concern will be undertaking. An example has been quoted—of Dalmia Jain Airways—where a company was floated in the name of Dalmia Jain Airways but the business they did was something else. They dealt with spare parts or other vehicles that are old which are left over by the United States, etc. and

[Shri M. N. Govindan Nair.]

they made a lot of profit but actually the Company—the Dalmia Jain Airways—did not make any profit by that.

But the money was pocketed by these people, and it is very well put in the Vivian Bose Commission's Report. And now, if by this Bill somebody insists that the objects should be clearly stated, why should my friend object to it, and that too in the name of emergency? Because there is a war going on our borders he perhaps wants freedom for his friends to defraud the people.

SHRI DAHYABHAI V. PATEL: He is only showing ignorance of the memorandum and articles of association, which are there all over the world, and it is the normal practice.

SHRI M. N. GOVINDAN NAIR: But is it a fact, or is it not a fact? You tell me whether or not in the Vivian Bose Commission's Report this particular instance was quoted and it "was recommended that the Government should take necessary steps to see that this thing does not repeat itself.

Then again in the matter of holding shares in fictitious names, it has been pointed out that shares to the extent ^{of} sixteen lakhs of rupees ⁱⁿ a public company were applied for in the name of non-existing shareholders. Should not the Government do something to check it?

Again with regard to blank transfers, my friend was very very eloquent about it. My complaint to the Government is that they should have taken this opportunity to completely ban these blank transfers. Instead of that the Joint Committee further watered ^{the} provisions that were already there. The Vivian Bose Commission Report has also pointed out the defects in the existing blank transfers, how the taxes are avoided, how the beneficiary is not brought to

light; all these things have been dealt with. So when we bring it something, though not to my satisfaction, and some restrictions are sought to be placed on them, my friend is very angry with it and he says that there is a war on the borders and so this is not the time for all that.

Then with regard to these accounts and balance-sheets, well, they had to be gone through by cost accountants, etc. On that also I do not know why my friend should be opposed to it. There also the Vivian Bose Commission Report has placed so many facts before us.

SHRI A. D. MANI: Not about cost accounts.

SHRI M. N. GOVINDAN NAIR: **Not** about cost accounts, but about the way in which there was misappropriation and all that. And the only guarantee to the investing public is a proper auditing of the accounts. Is it not? And why should my friend be opposed to that provision? I cannot understand it. He wants the whole Bill to be withdrawn in the name of emergency, and he is appealing to the Government that this patriotic section should not be irritated by this kind of Bill. Well, about the patriotism of the business section whom he represents, we have ample proof.

SHRI DAHYABHAI V. PATEL: I represent the State of Gujarat in this House; I do not represent the business section here.

SHRI M. N. GOVINDAN NAIR: But you advocate the cause of the business community.

SHRI A. D. MANI: Of Gujarat.

SHRI M. N. GOVINDAN NAIR: Now whether Gujarat, or outside, I am not bothered, but what was their behaviour? When in 1962 we had the Chinese aggression, when the entire people were called to respond to the situation, how did this business community respond? Can you say that it

was a very patriotic response from , their side? Compare notes and see] how the working people in this country behaved at that time, what was their contribution, and what was the contribution of the business community. If, is on record. Then, even after that it has not improved—I need not narrate the whole story. Then he mentioned about the Gold Control. The Government was trying to unearth gold, but how did the business community respond? Again I am not supporting the Gold Control Order.

SHRI ARJUN ARORA (Uttar Pradesh) : Why not?

SHRI M. N. GOVINDAN NAIR: Because that ^{was} wrong, because Government had failed to unearth the gold and that was another matter. But when somebody speaks in terms of the patriotism of a particular business community, we have to remind him how they behaved, how that community behaved.

Then again there was the question of black money amounting to crores of rupees. What happened? How did they respond? Now this opportunity, even this war opportunity is utilised by the business community to make more profits. I ask you, you have seen during the last fortnight how the prices have gone up, of every article ; in the market. Is this the way the business community, if it is patriotic, is to behave? And he wants licence for the business community to loot the people. So if you are patriotic and if the business community is to be made patriotic too, you have to take the steps by which the loopholes that are already in the company law, are properly plugged. Instead of helping in that process, and instead of helping the business community itself to change their attitude and approach in the matter of making profits, I am very sorry that my hon. friend is trying to befriend them and help them in the looting of the people.

I do not want to go into all the clauses about which mention was made, but I have only to say this that I do not agree with one amendment that has been accepted by the other House, and that is with regard to the age limit. I think even the age limit at seventy-five years was going a little too far. When people get old, their faculties will not function as they used to do. So no useful purpose will be served except getting the remuneration if a man above seventy-five is still to continue as a director. There may be some exception somewhere, but normally a man above seventy-five should be allowed to retire and lead a peaceful life instead of his getting involved in the directorship of companies.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Mr. Govindan Nair, are you likely to take more time?

SHRI M. N. GOVINDAN NAIR: Five minutes more, Sir.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : So you can continue after lunch. The House stands adjourned till 2 P.M.

The House adjourned for lunch at half past twelve of the clock.

The House reassembled after lunch at two of the clock, THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) in the Chair.

SHRI M. N. GOVINDAN NAIR: Mr. Vice-Chairman, another point on which my hon. friend, Shri Dahyabhai Patel, raised a complaint was about giving too many powers to the Government. I would agree with him in what he says if the powers conferred on them are not properly utilised, for then they would be of no benefit. But that does not mean that the Government should not be given the necessary powers. Here again, on the basis of the Vivian Bose Commission:

[Shri M. N. Govindan Nair.] Report, it was found that the Company Law of 1956, did not empower the Government to investigate into the affairs of companies, as was needed by the situation. So in that Report, you will find how the company managements were trying to evade proper investigation. Again it had been pointed out that they were destroying the necessary documents so that no incriminating material may fall into the hands of the Government. So in this measure an attempt is being made to prevent these two things, namely to have enough authority to investigate and then also to see that the documents are not destroyed but are maintained for at least eight years even if the company goes into liquidation or is amalgamated with other companies. So from this it is clear that all the provisions are just enough to prevent a repetition of the crimes that were committed earlier by these concerns.

One argument of my hon. friend was that if one had committed a mistake why should all be punished? I cannot understand the logic of this argument, because this one concern was able to commit these things because there were loopholes in the Company Law, and utilising one loophole or the other, they were able to manipulate things like this. So by preventing or plugging these loopholes, the honest businessmen are not going to suffer any hardship. They never utilise these lacunae for expropriation of funds or for making undue profits or things of that sort. That being so, plugging these loopholes in the law should not create any heartburning for my hon. friend.

With regard to the Bill and its provisions, when some of these provisions were discussed earlier, one hon. Member raised a point to which the hon. Minister replied that when the Bill came through the Joint Select Committee there would be some provision made by which that point would be met (*Time bell rings.*) I will finish in a minute, Sir. It was, I think, my hon. friend, Shri Pathak, who raised

that point. He asked: "What is the use? It is all right your punishing the directors for all their crimes. But what about the shareholders who have suffered the loss? Will you not do something to compensate their loss?" That point was raised by him, and the answer given by the hon. Minister at that time was that he would see when the Bill came through the Joint Select Committee some provision was provided in it. But unfortunately he seems to have forgotten about the promise he made, or I do not know what happened. Anyway, I do not find anything in the Bill.

There is another point. In place of the advisory commission, they are proposing to appoint a committee. But no sufficient reason has been given why this advisory commission has been given up. At the time in 1956, when this Company Law was being discussed, Members had stressed the necessity for such a Commission and how it was going to create proper conventions and all that. But now suddenly the Government have decided that this commission should go and only 0 committee should be there. I think it is better that the old advisory commission is maintained as it is, instead of having this new advisory committee.

Finally, I would say that broadly I support this Bill. But with regard to the provision about this blank transfer, I think it would have been better if the Government had decided to completely ban it, except in the case of loans or for mortgaging and so on. But the Government does not seem to hold that view. In that way, I feel that this Bill has not been up to the expectation. Otherwise I support the Bill.

SHRI G. S. PATHAK (Uttar Pradesh) • Mr. Vice-Chairman. I welcome this Bill and I think that it contains many salutary and beneficial provisions. It has been said that repeatedly you should not change a law like the Companies Act. But this attitude or this view disregards the fact that this Bill

is only a logical sequence to the Commission which was appointed in the year 1956. That Commission made certain recommendations and those recommendations were made with a view to the alteration of laws. In fact, that Commission was instituted in order to make an investigation into the prevailing evils with a view to the future action which the Government might take. Now, when that Report was being discussed in this House it was emphasised that action should be taken. The Government took into consideration the views of the Members of Parliament, studied the recommendations of the Report and this Bill is only the implementation of the recommendations of the Commission. To say today that this Bill might not be passed or this Bill should not be taken into consideration with a view to making it an Act, I submit, is quite contradictory to the attitude which we have always taken with regard to the Commission which was instituted in 1956. All this work during these ten years will be obliterated if opposition to this Bill were allowed to prevail.

Now, Mr. Vice-Chairman, there are a few observations which you will permit me to make with regard to some of the provisions of the Bill. May I invite the attention of the House to pages 10 and 11 of the Bill? The bottom of page 10 contains sub-section (4A):

"The Central Government may, by general or special order, direct that in the case of such class or description of companies as may be specified in the order, the auditor's report shall also include a statement on such matters as may be specified therein:"

Now I wish to draw the attention of the House to the proviso:

"Provided that before making any such order the Central Government may consult the Institute of Chartered Accountants of India constituted under the Chartered

Accountants Act, 1949, in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case."

The question is this. What is meant by this word 'may'? Is it the intention of the Government that it will be optional with the Government to consult or not to consult the Institute of Chartered Accountants?

SHRI AKBAR ALI KHAN: The following portion then becomes irrelevant.

SHRI G. S. PATHAK: If you look into the Report of the Joint Committee on page (viii), paragraph 22, you find it says:

"The Committee also feel that the Central Government should consult the Institute of Chartered Accountants of India before issuing order . . ."

Now I want a clarification on this point. Is it the view of the Government that consultation would be permissive and optional or is it the view of the Government that the Government must consult unless what follows later, i.e., unless the Government decides that consultation is not necessary? Now if the view is that it is compulsive then I would suggest that the proper word should be used, i.e., 'shall'. Otherwise the result will be that if the matter goes to the court there will be controversy and it will be said that only option was given to the Government and that the Government may or may not consult. This will raise a question there which will unnecessarily occupy the time of the court as to whether 'may' could be read as 'shall'. We all know that, 'may' *prima facie* is not 'shall'; 'may' merely gives an option. It is only in a rare case the court is compelled to hold that in the context and in the circumstances of the case there was a compulsive effect given by Parliament. On the other hand if the word

[Shri G. S. Pathak.]

'may' was intended to possess a permissive or optional effect then in that case the result will be very anomalous. Now this is an exception. The Government may or may not consult "but if the Government decides that such consultation is not necessary then what? Even then the Government may or may not consult. Now this anomaly should be removed because it is our duty as legislators—I say with all respect to Members of this House—to see that clear language is used so that the courts' time may not be unnecessarily occupied and no Judge should be able to say that any provision of the law was ill-drafted. That is one observation which I had to make.

Then I very strongly support clause 20 which you will find on page 8 of the Bill. Sub-clause (d) there says:

"In the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour Or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of account;"

Now the way in which income-tax was evaded was that the cost of raw material was inflated in the books; • expenditure was inflated; profits were under-assessed or under-stated. Now this evil was rampant and this provision will strike at that evil because it will not be possible or at least it is not likely that that evil would continue after this provision comes into force.

Now clause 49 on page 21 deserves the consideration of this House as it raises a question of great importance. Section 394 of the Companies Act gives the power to the court to sanction or not to sanction a compromise or any arrangement. Now this provi-

sion is added and as a result of this provision the power of the court becomes limited because it says:

"Provided that no compromise or arrangement proposed for the purposes of, or in connection with a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the Court unless the Court has received a report from the Company Law Board or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest."

Therefore the power which belongs to the court under the existing section 394 has received a limitation. There is a prohibition on the exercise of that power unless it has got a report from the Company Law Board or the Registrar about the conduct of the affairs of the company. The result therefore is that the Registrar or the Company Law Board has got the final voice in the matter as to whether the conduct of the company is proper or not. I could have understood a provision by which they had the right to make a representation to the court that the conduct of the affairs of the company was prejudicial to the interests of its members and the court had decided on it. The court has to decide such questions in connection with other sections but here what has been done is that the court has been converted into a mere registering authority of the decrees passed by the Registrar or the Company Law Board. I submit, Sir, that in principle it is wrong to deny the power to the court in matters where the interests of the companies or of the citizens are involved. It may be that certain provisions may be made which, as I have submitted, enable the courts to decide matters on a representation made by the executive or the Registrar or the Company Law Board but to give the final authority to the Registrar or the Company Law Board

in such matters in which the rights of tother people are concerned, I submit is not right in principle; and I would therefore, request the Government to consider this aspect. Although I am very anxious, and the whole House is very anxious, that dishonesty must be prevented, dishonesty must be punished, we are also anxious that the honest may not suffer and that protection can be given only by the courts. Any legislation which curbs the ordinary authority of the court in a matter where the rights of the people are concerned would be obnoxious in principle. Parliament has got the right to do it; the powers of the courts may be taken away by the Parliament but that should not be done.

I now come to the question of the age of directors. I mean no disrespect to those who want to limit the age to seventy-five when I say that those who do it have no confidence in themselves. I have seen people in full possession of their faculties after they have passed the age of eighty. In my own profession there are a number of people who have passed the age of eighty and who can work better than those who are in their fifties.

SHRI AKBAR ALI KHAN: That is an exception.

SHRI G. S. PATHAK: No exception. There are many. I know of two persons who have passed the age of ninety and who still go to court.

AN HON. MEMBER: Only two?

SHRI G. S. PATHAK: Only two but consider this. Why do you disqualify people by such an arbitrary standard? Why should it not lie with those who are concerned with the affairs to decide whether a person is in a position to work efficiently or not?

SHRI A. D. MANI: I would like to ask the hon. Member whether his attention has been drawn to a United 671 RS—5.

Nations Report in which after seventy-five persons are described as very old. He said that persons past the age of eighty are active in his profession but how many persons, after seventy, have become senile? He must know the proportion of people who have become senile in mind when he makes a proposal like this.

THE VICE-CHAIRMAN: (SHRI M. P. BHARGAVA): Mr. Pathak, it is time you wound up.

SHRI G. S. PATHAK: I did not know that my distinguished friend is a statistician also. If he assures the House that he has calculated the number of people who are not able to work after seventyfive and those who are able to work . . .

SHRI JAIRAMDAS DAULATRAM: (Nominated): Dr. Kunzru.

SHRI G. S. PATHAK: Yes, Dr. Kunzru and many others. But, why should you disqualify people unless there are grave reasons to disqualify them? I have had the opportunity to shake hands with a man aged ninety-eight working in the fields a few weeks ago. I had an occasion to go to Russia and in the State of Georgia I was told that there were people who were one hundred and thirty years old, one hundred and forty years old and I asked one of those to take me to a place where I could shake hands with a man who is a hundred years old. I was taken to a garden where a man was working and he was aged ninetyeight years.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Yet two years short of a century.

SHRI G. S. PATHAK: Therefore, why should we indulge in this lack of confidence and not see that there are many people in this country who are able to work? In my profession, physical exertion is also required but ki a directors' meeting, it is only just about an hour's business. This curbing, I submit with respect to those

[Shri G. S. Pathak.] who hold the opposite view, is not justified. Thank you, Sir.

SHRI SUKESH J. DESAI (Gujrat): Mr. Vice-Chairman, Sir, the Companies (Amendment) Bill which is before the House is more or less based on the recommendations of the Vivian Bose Commission and the Sastry-Daphthary committee. The broad objects of company law anywhere in the world are promotion and growth of companies in the corporate sector, regularisation of that sector and, at the same time, protection of the bona fide investor, that is, the public. Usually the shareholders have no inclination nor even the capacity, to go into the affairs of any company. What happens usually is that when the annual report comes, the shareholder looks to the notice to see whether there is any item relating to the declaration of dividend. If he finds this item, "declaration of dividend for the year such and such" then he goes to the next page of the Directors' Report to find out the quantum of the dividend to be declared. That is the only thing that he looks forward to. That is why Government has to step in to see that malpractices and irregularities are removed and the companies function properly in the interests of the country and in the interests of the shareholders. There are twenty-six thousand five hundred and sixty-three companies in the country. I may say that the Department of Company Affairs and the Company Law Board have functioned very successfully and are managing the affairs very well. The authorities have to strike a balance. On the one hand they have to see that the bona fide growth of the corporate sector is not fettered and, on the other hand, they have to protect the interests of the investors and the public. I say, Sir, that they are doing their work really well.

There is a marked difference between the Bill that was introduced in this House and in the other House and the Bill that has come out of the

Select Committee. I must pay a compliment to the hon. Finance Minister because he was very accommodative and very co-operative and he took the most reasonable attitude in the Select Committee and saw to it that while the Bill was not watered down it did not unnecessarily hamper the growth of the corporate sector and the industries. I must congratulate the Finance Minister for the very helpful attitude which he adopted in the Select Committee, of which I had the privilege to be a Member.

Coming now to the Bill, Sir, the changes which have been made by the Select Committee are necessary and good. I will refer to clauses 5 and 15, taken together. The original Bill provided that the Memorandum of a company should mention the main objects, the ancillary and the incidental objects and the other objects and it was necessary for every company to pass a special resolution to commence business and to file a declaration with the Registrar. Now, this would have created a number of practical difficulties and all the existing twenty-six thousand odd companies would have been required to change their memoranda and to have special resolutions passed. They had already commenced their business. Another difficulty related to passing a special resolution in respect of a new company. A special resolution requires a three-fourths majority and because of the activities of a rival company, it may not be possible in some cases to get this done—that rival company may have control over twentyfive per cent, of the shareholders. In that case, after all the labours about promotion, etc., it may not be possible to start the company at all. The Select Committee saw those difficulties and amended the Bill so that now the special resolution is required only if an existing company were to start any new business not germane to the business already carried on. Then, for new companies they will have to pass a special resolution and file a declaration, not for the main objects and

the ancillary or incidental objects, but for the purpose of other objects. If they want to start any business under "other objects" then only a special resolution is necessary. This is a very good amendment.

Then, coming to a very important amendment, clause 13 deals with blank transfers. Blank transfers have been an evil, as everybody recognises. The original Bill provided that all transfers should be on a prescribed form obtained from the prescribed authority and within the date fixed thereon and they should be lodged with the company within six months after they were filled in. This created a practical difficulty, for so many, shares and Blank transfers are deposited with banks and other financial institutions as a security for the repayment of a loan. This difficulty was pointed out and the Select Committee amended the Bill, so that blank transfers deposited with an approved financial institution or bank are exempted from the requirement of being deposited within six months with the company. At the same time, powers have also been given to the Company Law Board so that in case of genuine hardships—suppose the person dies or something like that happens—the Company Law Board will have powers to extend the period of six months. This is really a very good amendment.

Now, coming to clause 36, i.e., the age of directors, the original Bill provided that no person can be or continue to be a director of a company, which means either private or public, if he has attained the age of 75. That was in the original Bill. Then the Select Committee changed it so that it should apply only to public company or a private company which is a subsidiary of a public company. Then, the other House amended it again and dropped this requirement also. Now, we revert to the original position in the Bill. The position is that if a person attains the age of 65, the company has to pass a special resolution if he is to continue as a direc-

tor after the age of 65. Now, I entirely agree with my hon. friend, Mr. Pathak, in what he said on this subject.

In every sphere of life you find elderly people, people more than 75, carrying on their normal business, and why should a person be debarred from running a company, of which he is the director and on which he has invested in the majority of shares? Why should he be debarred from running that company? A person can be a Member of Parliament. There is a Member of the other House who is a director of several companies. If he is fit to be a Member of Parliament, the supreme body of the country, why is he not fit enough to run his own company started by him and in which he has put in quite a lot of money? I have in mind the amendment which my hon. friend, Shri Babubhai Chinai, has proposed. I am not speaking on that amendment just now. But as my hon. friend Shri G. S. Pathak, has put it, I am not at all in agreement with that. In fact, my friend, Shri Babubhai Chinai, will point out that there are directors who take nurses to the meetings of the board of directors. I do not doubt that. There may be some directors who pass water in the Board Room when the board of directors meet. Even that may happen, but these are exceptions and these are very few.

SHRI BABUBHAI M. CHINAI (Maharashtra): They may not be allowed, according to you.

SHRI SURESH J. DESAI: These are a few exceptions. For these few exceptions you just want to make a rule. There are so many healthy, normal people above 75 who are running companies. You want to stop everybody. They have been and can be in other responsible positions, but now they cannot be directors. It is not proper. Moreover when the Lok Sabha has deleted that provision, it does not involve such a high principle that the Rajya Sabha should go against

[Shri Suresh J. Desai.] it, throw it out and again institute that provision in the Bill. It does not involve any high principle at all. It is a matter of administration only that too a minor one. That does not mean that companies are badly run because there is one director who may be more than 75 years of age. It is not like that.

SHRI AKBAR ALI KHAN: Most of us are over 60. We are all interested in it.

SHRI SURESH J. DESAI: I may tell my hon. friend, Akbar Ali Khan Sahab that I know more about companies. So, it is not so.

SHRI ARJUN ARORA: You know from one side and he knows from a different side.

SHRI SURESH J. DESAI: It does not involve such a high principle that when the Lok Sabha has made an amendment to the Select Committee's recommendation, that we should throw it out and we should send the Bill back again to the Lok Sabha. Of course, I am not speaking on the amendment, but I entirely agree with my hon. friend, Shri G. S. Pathak, that this provision is not necessary. The provision about limiting the age of directors to 75 is not necessary.

Now, the last point I wish to make is about inter-corporate loans. Section 370 deals with inter-corporate loans. So far, the requirement of a special resolution applied only to loans given to companies under the same management. Now, in line with inter-corporate investment, that is, section 372 of the Act, we are proposing to apply requirement of a special resolution and the requirement of Government sanction also to inter-corporate loans. There were certain difficulties in the original proposition, in the Bill as was introduced in this and the other House. Now, the Bill which has emerged from the Select Committee has introduced two very good provisions, viz., in respect of up to ten

per cent of the loan given to a company, a corporate body, no special resolution will be required. That is very necessary. Otherwise for giving a loan of even Rs. 500 or Rs. 1,000, a special meeting, giving 21 days' notice, would be required and a special resolution would have to be passed. That would have been cumbersome. That would have been really difficult for a company. So, up to 10 per cent exemption has been granted. And, then, a limit has been set beyond which, if the loan exceeds that limit, the sanction of the Government will be necessary. That limit is 30 per cent for loans given to corporate bodies which are not under the same management and 20 per cent for corporate bodies which are under the same management—30% and 20 per cent of the subscribed capital and free reserves of the company. This is really a good provision. The Bill which has emerged from the Select Committee is a vastly improved one and the practical difficulties which had been pointed out have been removed. I again say that the hon. Finance Minister took a very co-operative attitude and we hope that the Bill will now be very helpful to the growth of the corporate sector. It will plug the loopholes which have been pointed out by the Vivian Bose Commission and the Daphtary-Sastri Report.

Thank you, Madam.

[THE DEPUTY CHAIRMAN in the Chair.]

SHRI MULKA GOVINDA REDDY (Mysore): Madam Deputy Chairman, I welcome the Companies (Amendment) Bill, 1965 and while doing so I would like to make some observations. Mr. Dahyabhai Patel, leader of the Swatantra group, said that this is not the occasion for bringing forward controversial Bills, when we are facing an aggressor on our frontiers. Yes, we are facing an aggressor and the country stands behind the Government—as one man in repelling this aggression. There is unity in the country. I agree that controversial matters should not be brought before this House, but this

Bill is not a controversial one. When we are in an emergency, the total mobilisation of the people is necessary. Regulatory measures are needed, to regulate the functioning of companies in the interests of the country and also to regulate the life of the community. We cannot give freedom to hoarders and profiteers to loot and plunder. Anti-social elements should be curbed. If at any time such regulatory measures are needed, it is here and now, when we are faced with an aggressor on our frontiers. We cannot allow freedom for profiteers or a section of the big business to make money out of the misery and out of the suffering of the people. Yes, they are also patriots, they love freedom, they love their country, they love their God, but they love much more the money that they all seek. Therefore, I entirely agree with the Mover of this Bill that it is a necessary one to regulate the affairs of companies where thousands of crores of rupees are invested by the share-holders. The interests of the shareholders should be safeguarded and the interests of the country should also be safeguarded, and we should not allow profiteering by some of the concerns, I would have expected the Minister to come forward with a more comprehensive Bill, for instance, for abolishing the managing agency system. Some of the managing agency firms are companies which manage big companies, and they make use of the funds of the big companies for their private ends. Even though the regulatory measures are there, even though the Company Law Administration has been empowered to deal effectively with the malpractices committed by these managing agents or managing agencies, there are many who go scotfree.

SHRI ABDUL GHANI (Punjab): Mr. Charat Ram and Mr. Bharat Ram are getting more than Rs. 60 lakhs per year.

SHRI MULKA GOVINDA REDDY: That is the reason why I plead that the Government should come forward with a Bill in the next session or, if

possible, during this session abolishing the system of managing agency.

Madam Deputy Chairman, I would like to bring to your notice and to the notice of this House that the Company Law Administration has failed in investigating into the malpractices of some companies. In Mysore there is one Bagalkot Cement Company Limited with an authorised capital of Rs. 80 lakhs. The Chief Executive Officer of this company in February 1962 detected certain irregularities and with the approval of the Chairman of the Board of Directors, of this company made a reference to the Auditors, Messrs Dalai and Shah, and they investigated into the affairs of this company. It was found that the managing agents under the leadership of the managing director, one Mr. A. G. Tendulkar, misappropriated properties, stores and other equipment of the company to the tune of Rs. 2,08,919. In the report that was submitted by the auditors this paragraph finds place:

"During the year under Report, it was discovered that the Managing Agents had been using, without any authority, Company's stores, equipment, labour and funds for their Aluminium and Cement Projects at Ambaghat and Vani respectively as well as Managing Agents' Belgundi and Bombay Houses during the years 1959 to 1961. The total value of such stores, etc. utilised by the Managing Agents in accordance with the inquiry made by us at the instance of the Board amounted to Rs. 2,08,919. Such use of stores, equipment, etc. in our opinion, also contravened the provisions of sections 360 and 369 of the Companies Act.

We further report that such stores, material etc., (excluding capital equipment) issued to the Managing Agents were being written off as consumed by the company."

[Shri Mulka Govinda Reddy.]

It further says: ,

"Under the head "Loans and Advances" is a sum of Rs. 5000 paid to a party for supply of gunny bags. On inquiry, we are informed that 'originally this sum was paid by the Managing Agents to the party as a personal loan but later converted into advance for supply of gunny bags although no gunny bags had been received from the party. The amount advanced has been received back during the current year."

Madam Deputy Chairman, I quoted the report of these auditors who went into the affairs of this company.

SHRI M. N. GOVINDAN NAIR: Why is it that the Government did not take any action?

SHRI MULKA GOVINDA REDDY: Later on some shareholders of this company made a complaint to the State Government that funds to the extent of nearly Rs. 5 lakhs were misappropriated by the managing director of the managing agency of this particular Bagalkot Cement Company. The State Government spent Rs. 80,000 for investigating into the allegations that were made by the shareholders. Complaints were filed. A charge-sheet containing 31 charges was filed before the Judicial Magistrate, Bagalkot. And then, I do not know how, this mystery was enacted. Pressure was brought on the Chief Minister of the Government of Mysore to withdraw the cases. One of the cases was committed to the Sessions Court, and when the Home Minister at that time refused to withdraw the cases that were filed against this company, the managing director, the portfolio of the Home Minister was changed, and I understand that the Government of Mysore have withdrawn the prosecution against this company. This is a very serious matter. I ask why the Company Law Administration did not investigate into the affairs of this company. When in 1961 the report

of the auditors was placed why was the Registrar of Companies in Mysore not asked for his explanation for not having investigated into the affairs of this company? Why did not the Company Law Administration itself go into the affairs of this company? This is a very serious matter where the Company Law Administration has failed to discharge its primary obligations to the shareholders, its primary obligations to this august House. The powers that the Government ask for for the Company Law Administration ■ we are willing to give and are giving, but the Company Law Board has not exercised these powers that are vested in them to go into the malpractices committed by some of the managing agents or some of the concerns. Here is a case which I have brought before you so that the Government will take adequate steps to see that a proper investigation is conducted into the affairs of this company and the persons concerned brought to book including the Government of Mysore for having violated the Company Law and for having interfered with the process of the judicial probe. One member of, the State Assembly had also issued a statement to the effect that the Central Government should immediately order an investigation into the whole affair including the reasons which prompted the State Government to withdraw such a serious case against the offender. Another point that I would like to stress before this House is that the Company Law Administration has failed to take action against such companies which had not provided in their Articles of Association and Memorandum of Association the power to donate funds to political parties. One of the instances brought to the notice of the Company Law Administration—I mean the donation that was made to a political party by the British India Corporation—was not looked into. They went beyond the powers, beyond the Articles of Association, beyond the Memorandum of Association, which had not empowered that concern to donate to political parties, I would here very much like to urge upon the Government that it

is absolutely necessary that to save democracy, to save the lamp of freedom, in this part of the world, donations made to political parties by companies should be done away with. I would request the hon. Minister to bring forward a measure banning donations being made to political parties by companies.

Another point—the last one—which I would like to make is that clause 20 was referred to by Shri Pathak. The cost structure of the automobile industry has not been gone into. The managements in order to evade income-tax and in order to make more money give some figures which are being accepted. Here if there is any case for cost-structure investigation, this automobile industry should be properly investigated into, the cost-structure of a car should be investigated into. We are paying abnormal prices apart from the taxes that the Government imposes on the cars. The price which manufacturers charge is much more than what it would really cost them. There is need to investigate into this affair, and the Income-tax Department should also investigate into the ways in which the prices of all manufactured goods are inflated so that they can knock away lots of money.

I support the Bill and I request the hon. Minister to bring forward a comprehensive Bill so that all these loopholes are plugged.

श्री रामकुमार भुवालका (पश्चिमी बंगाल) : उपसभापति महोदय, इस बिल का मैं समर्थन करता हूँ। साथ में इस बिल के क्लॉज 36, धारा 280 तथा क्लॉज 38 धारा 202, के बारे में कुछ कहना चाहता हूँ। मैं मंत्री महोदय से रिक्वेस्ट करूँगा कि जो लोक सभा में पास किया, उसी को रखने दें। इस सदन में इस पर अमेंडमेंट आया है और कई माननीय सदस्यों ने उम्र के बारे में अमेंडमेंट दिया है। जब सन् 1965 में यह कम्पनी ऐक्ट पास हुआ था, उस वक्त इसमें 65 वर्ष की उम्र रखी गई थी डाइरेक्टरों

की। उस के ऊपर यह कहा गया था इस धारा में कि जो भी कोई अच्छा काम करने वाला डाइरेक्टर रहेगा, तो उसको एक स्पेशल रेजोल्यूशन पास कर के रखा जा सकता है। उसके बाद बहुत सी कम्पनियों में ऐसा देखने में आया कि कुछ डाइरेक्टर बराबर बने रहे और काम करते रहे। परन्तु जब यह अमेंडमेंट बिल लोक सभा में पेश हुआ, तो इस में यह रखा गया था कि 75 साल इसमें उम्र रहनी चाहिये। इस पर लोक सभा में बहुत से माननीय मेम्बरों ने अपनी बातें बताईं और यह तय हुआ कि इसको हटा दिया जाये। तो मेरा यह सदन से निवेदन है और विशेषकर के माननीय बाबुभाई से कि यह बन्धन क्यों हो? 75 वर्ष का बन्धन वहाँ पर हटा दिया गया, तो 75 वर्ष के कितने आदमी डाइरेक्टर रहेंगे? जो अच्छे अच्छे आदमी हैं, जिनका सदुपयोग हम कर सकते हैं, जिन का हम लाभ उठा सकते हैं, उनका हम लोग उपयोग न करें, ऐसा बाबुभाई जी के ध्यान में कैसे आया, यह मेरी समझ में नहीं आता। 65 वर्ष की उम्र जब थी, उस वक्त भी बराबर यह होता रहा कि स्पेशल रेजोल्यूशन पास कर के बराबर उनको रखा जाता था। तो यह नई बात क्यों की जाय कि हम उनको हटा दें? इस लिघे मैं बाबुभाई जी से निवेदन करूँगा कि यदि वे अपने इस अमेंडमेंट को वापस ले लें तो बड़ी खुशी की बात होगी।

दूसरा क्लॉज नम्बर 46, धारा 370, में लोन देने की बात है। उसमें पहले जो धारा 370 में पास हुआ था, वह यह था कि एक ही मैनेजिंग एजेंट है, उसके मैनेजमेंट में दूसरी कम्पनी है, उसे वह लोन नहीं दे सकेगा। अगर देगा तो उसे पूरी गारन्टी के साथ स्पेशल रेजोल्यूशन पास कर के दे सकेगा। अब इस बिल में यह हटा कर कहा गया है कि कोई अब स्पेशल रेजोल्यूशन की जरूरत नहीं है। अगर लोन देना हो और एक ही मैनेजमेंट में दूसरी कम्पनी चलती हो तो उसे 10 पर सेंट से ज्यादा नहीं दे सकेगा, वह भी गवर्नमेंट

[श्री रामकुमार भुवालका]

से पूछ कर, फिर अगर दूसरे के मैनेजमेंट में कम्पनी हो तो उसे 30 पर सेंट से ज्यादा नहीं दे सकेगा और यह भी गवर्नमेंट से पूछ कर ।

मेरा कहना यह था कि समझिये एक मैनेजिंग एजेंट है और वह तीन या चार या उससे ज्यादा कम्पनियों को चलाता है । सभी कम्पनियां तो एक सा लाभ या नुकसान करती नहीं हैं । जिस कम्पनी ने लाभ ज्यादा किया, उसके पास सरप्लस रुपया है । दूसरी कम्पनी उसी के अंदर में काम करती है । उस कम्पनी को रुपयों की जरूरत है । अब आप सोचिये कि जिस कम्पनी के पास रुपये पड़े हैं, वह दूसरी कम्पनी को लोन न देकर बैंक में फिक्स्ड डिपॉजिट करे, उसका व्याज चाहे कम हो । जिन कम्पनियों को रुपयों की जरूरत है, उन्हें ज्यादा व्याज देकर के रुपये बाहर से लोन लेने लगे । यह उचित नहीं लगता । असल में होता यह है, जो मेरा अनुभव है उसके आधार पर सुनाता हूं कि जिस कम्पनी के पास रुपये हैं वह दूसरे के नाम लिख कर दे दिया जाता है और जिस कम्पनी में जरूरत है उस के खाते में जो दूसरे के नाम से दिया है उन से चेक लेकर जमा कर लिया जाता है । इस में फर्क क्या हुआ ? केवल बहियों में एंट्री दो हो गई । इसलिये मेरा यह सजेशन है कि इसे हटा कर रुपयों के लोन देने में छूट रहनी चाहिये ।

मान लीजिये, हजारों लाखों कम्पनियों में से किसी एक कम्पनी ने कोई गलत रास्ते पर काम किया तो सभी को तकलीफ में डालना बाजब नहीं लगता । सारी जगह विश्वास से ही काम होता है । विश्वास की बात तो यह है कि लाखों शेयरों का काम शेयर बाजारों में रोज होता है । लेकिन वहां पर कभी कोई गोल-माल नहीं होता है । फिर और बाजारों में भी जैसे हैसियन और गनी मार्केट में और इसके अलावा और सभी मार्केटों में भी इसी तरह व्यापार होते हैं । टेलीफोनों से भी व्यापार करने में कोई संकोच नहीं करते । एक

या दो वर्ष में कोई एक दो गोलमाल होती हैं, वह भी बात करने में या सुनने में भूल रह गई तो बात अलग है । उसका भी उसी समय निपटारा हो जाता है, न तो कोई कोर्ट में जाता है, न तो कोई लेन-देन में बाधा होती है ।

कारखानों के कामों में या व्यापार में रोज रोज लेन-देन होता है । जानबझकर कोई खराबी करना चाहें, तो अलग बात है । सब अपनी अपनी साख रख कर काम करते हैं । मैं माननीय वित्त मंत्री जी से सिफारिश करूंगा कि वे इस धारा पर विचार करें ।

एक समय से यह सोचा जा रहा है कि कम्पनियों के मैनेजिंग एजेंट हटा दिये जायें । इस पर कुछ कंपनी वालों ने मैनेजिंग एजेंसी स हटकर सेक्रेट्री और ट्रेज़रर के रूप में काम करना शुरू कर दिया । अब यह भी सोचा जा रहा है कि न मैनेजिंग एजेंट रहे, न ही सेक्रेट्री ट्रेज़रर रहे, फिर कौन काम को देखे ? केवल डाइरेक्टर लोग ही काम देखे, यह अभी तय हो कर के सदन के सामने कोई पक्का फारमूला नहीं आया है । बाकी सवाल तो यह है कि सरकार को इसके बदलने की जरूरत महसूस होने का कारण क्या है और इसके बदलने से क्या सरकार को सुविधा होगी, या कम्पनी चलाने में सुविधा होगी ? मान लीजिये ऐसा ही पास हो गया कि बिना मैनेजिंग एजेंट तथा सेक्रेट्री, ट्रेज़रर के कम्पनी का काम चलाया जाये, लेकिन कैसे ? आज कोओपरेटिव सोसाइटियां हमारे यहां बहुत बनी हुई हैं और बहुत बन रही हैं, तो वहां क्या सब मिल कर काम चलाते हैं या कोई एक आदमी को काम का जिम्मा दे कर चलाया जाता है ?

हम लोग अपने अपने घर में भी देखें । जिस घर में कई हुक्म चलते हैं, उस घर की क्या अवस्था है, यह किसी से छिपा नहीं है । वैसे ही जिस कम्पनी में कोई मालिक नहीं है, केवल मैनेजर काम देखने वाला है, उसको तो अपने महीने की तन्ख्वाह से मतलब है, घाटे-

नफे से कोई मतलब नहीं। जैसा रोज देखा जाता है जिसको उस कम्पनी में से कुछ भी उसके काम किये का बेनीफिट मिलता है, वह दिन-रात सोचा करता है कि कोई भी ब्रांच कम्पनी के नाम पर न आए, रुपये पैसे का लेन देन कौन करेगा, किसके भरोसे लोग उस पर कम्पनी को उधार देंगे? हाल की बात लीजिये, बैंक वाले किसी भी कम्पनी को भोन देते हैं—उस कम्पनी के समक्षिये 7 डाइरेक्टर हैं, वह सब से परसनल गारन्टी लेता है, उस पर भी स्टॉक बैंक के कब्जे में रहता है, मशीनरी भी बैंक के कब्जे में रहती है। एक ही बात नहीं है, बैंक अपना पूरा सेटिस्फिकेशन कर लेता है जब रुपया देता है। उस पर भी रिजर्व बैंक के बिना आर्बेर एक भी पैसा देना उन्हें मना है।

3 P. M.

वित्त मंत्री महोदय जो भी सोचते होंगे, वह तो उन के सोचने की बात है। बाकी देखने में यह आता है कि जब तक कोई होशियार आदमी कम्पनी को हाथ में न ले, कम्पनी नुकसान करने लग जायेगी। मुझे याद है, 1943 के आस पास हमारे यहां 5-7 बैंक नई खुलीं। उनमें से एक बैंक के चेयरमैन बहुत होशियार थे, उन्होंने 10 डाइरेक्टर बना कर उन डाइरेक्टरों को 5-5 लाख के शेयर देकर रुपए लिए। सब मिला कर 50 लाख रुपए के शेयर निकाले और बैंक को इस मुचारे रूप से चलाया कि आज वह बैंक 5 बड़ा बैंकों में से एक है। उसमें अरबों रुपए फिक्स्ड डिपॉजिट है, रिजर्व भी काफी है। बाकी जो बैंक खुलीं उनमें से एक बैंक तो पहले ही एक दूसरी बैंक में मिल गई, बाकी वैसे ही चल रही हैं। मेरे कहने का मतलब है कि सारा काम, उपसभापति महोदय, योग्य आदर्श पर निर्भर है। अब इन कई वर्षों में काफी लोग समझदार तथा जानकार हो गए हैं। उन्हें अगर मौका देंगे तो देश में कारखाने और भी अच्छी तरह से चलेंगे, इसमें मुझे कोई मन्देब नहीं है। बहुत से छोट बच्च के कार-

खाने सरकार चला रही है। सरकार को मालूम है कि उन में जो काम करते हैं, उनको रुपयों का बन्दोबस्त करना नहीं होता। शेयर होल्डर का उन्हें कोई डर नहीं। शेयर-होल्डरों की मीटिंग में बैलेन्स शीट में कोई भूल हो तो वह पास नहीं होगी—यह बात भी नहीं होती। सीधी सी बात है कि जब तक दिल में डर नहीं रहता कि हमें लोग क्या कहेंगे, पूरा काम होना सम्भव नहीं लगता।

मेरे सामने एक प्राइवेट कम्पनी की रिपोर्ट है। शेयर 10 रुपए का है, डिबिडेन्ड 8 रुपए 57 पैसे दिया है। इसमें से इनकम टैक्स काट कर बाकी शेयर पर नेट 6 रु० 85 पैसे मिलता है। उस कम्पनी में 3-4 करोड़ का रिजर्व है, 15 लाख पेड अप कैपिटल है। अच्छा मैनेजमेंट हो तो कम्पनी भी अच्छे तरीके से चलाई जा सकती है। एक दूसरी कम्पनी का हाल मालूम हुआ है। यह भी प्राइवेट सेक्टर की कम्पनी है। उसका शेयर दस रुपये का है, उस कम्पनी ने 6 शेयर धीरे धीरे बोनस के दिए। उसका दाम आज कल बाजार में करीब 30-32 रुपए के होगा। जब कम्पनी को उन्हें हर तरह की सहाय्यता मिले, पूरा विश्वास किया जाये, कम्पनी चलाने वाला उस काम को जानने वाला हो तो कोई कारण नहीं कि कम्पनी में एक र्भ. पैसे का बही गोलमाल हो जाय।

सदन के माननीय सदस्यों द्वारा यह भी कहा गया है कि हमारे यहां के बेहिस्साबी रुपये स्टालिंग के रूप में बाहर चले जाते हैं। शायद उन्हें ने सोचने में काफी जटिलबाजी की है—ऐसा मेरा खयाल है। वित्त मंत्री महोदय ने गत 27 फरवरी को एक स्कीम पेश की थी कि जो बिना हिस्सारी रुपये देगा, वह 60 परसेंट टैक्स देकर बाकी अपने काम में 40 परसेंट जमा कर सकेगा। उस स्कीम में करीब 60-62 करोड़ रुपये 30-6-1965 तक आए। भला बताइए कि 13 रुपए के भाव के स्टालिंग अगर 25-26 में लेकर

[श्री रामकुमार भुवालका]

रुपया बाहर ब्लोक कर दें, इसमें सुविधा है या 60 परसेंट देकर 40 परसेंट अपने काम में लें। यह व्यापार करने वाला समझता है कि फायदे का क्या काम है। व्यापार करने वाला बराबर अपने मन में खयाल रखता है कि जिसमें फायदा हो, वही काम करो। मुझे एक मिसाल याद आ गई। एक व्यापारी सज्जन एक लड़के को गोद लाये। गांव वालों ने तथा उनके कुटुम्ब के लोगों ने उन से कहा कि यह तो कोई दूसरी जाति का लड़का है, इसे हम जाति में नहीं लेंगे। वह बेचारा काफी खर्च करके लाया था। उस ने जा कर राजा से कहा। राजा बड़ा चतुर था। उसने लड़के को अलग बुला कर एकांत में बड़े जोर से डांट कर पूछा "तुम झूठ क्यों बोले कि मैं व्यापारी का लड़का हूँ। तुझे सजा दी जायेगी"। लड़का धबराया। राजा ने कहा, "हमने तै कर लिया है कि तुम्हें दो सजाओं में से एक सजा दी जायेगी, जिसे तुम पसन्द करो। बोलो सूली पसन्द करते हो या फांसी।" लड़का बिना संकोच के बोला, "हुजूर, जिसमें आप फायदा सोचें, वही काम करें"। राजा ने फैसला दे दिया गांव वालों के सामने कि लड़का बिल्कुल व्यापारी का है। संसद् के माननीय सदस्य जरूर जानते होंगे कि आज रुपयों की बितनी कमी चल रही है। हर महकमे में कोई भी कारखानेदार या व्यापारी अपना रुपया ब्लोक करके रखे, यह संभव नहीं लगता।

अब फिर मार्च 31, 1966 तक का टाइम वित्त मंत्री ने दिया है। इसमें तो काफी सुविधा दी है कि जिनके पास बिनाहिस्सबी रुपए हैं, वह साधारण टैक्स जो हमेशा लगता है, उसी रकम से दे दें। और भी छूट दी है कि नगद 10 परसेंट देकर बाकी 4 वर्ष में भी दे सकते हैं। उन्हें इतना कम टैक्स कमिश्नर को गारन्टी देनी होगी। इससे रुपए आने चाहिए, लेकिन मेरा निज का खयाल है कि रुपए बहुत आयेंगे, ऐसा नहीं दीखता; क्योंकि

बहुत रुपए हैं ही नहीं, जैसा कि बताया जाता है। अगर बहुत आ जायें तो बड़ी अच्छी बात होगी। इन शब्दों के साथ मैं इस बिल का समर्थन करता हूँ।

श्री विमलकुमार मन्नालालजी चौरड़िया (मध्य प्रदेश): उपसभापति महोदया, जो कम्पनी संशोधन विधेयक हमारे सामने प्रस्तुत किया गया है, उसका अगर इतिहास देखें तो ज्ञात होगा कि भारतवर्ष में सबसे पहले 1882 में एक कानून था। उसके बाद 1913 में नया बना और फिर उसमें कुछ संशोधन होते रहे। 1956 में हमारी सरकार ने नया कानून 658 धाराओं वाला बनाया। उपसभापति महोदया, उस 1956 के इतने बड़े कानून के बना लेने के बाद भी, हमारी सरकार ने 1960 में 218 धाराओं वाला संशोधन किया, '62 में दो धाराओं वाला संशोधन किया, '63 में 14 धाराओं वाला संशोधन किया, '64 में तीन धाराओं वाला संशोधन किया, और अभी हमारे सामने जो प्रस्तुत है, वह 62 धाराओं वाला संशोधन है।

इन संशोधनों के अलावा, हमारी सरकार ने नोटिफिकेशन्स के द्वारा अपने क्लस में और अन्य व्यवस्थाओं में काफी परिवर्तन किए। उपसभापति महोदया, एक समय था जबकि कम्पनी ला एडमिनिस्ट्रेशन उद्योग विभाग के अन्तर्गत चलता था, लेकिन अब टूटकर, 1963 में हमारे वित्त मंत्रालय के अन्तर्गत किया गया और 1964 में एक कम्पनी ला बोर्ड भी बना और उसके अन्तर्गत बहुत भारी व्यवस्थाएं करके 18 नवम्बर, 1964 को राष्ट्रपति के आदेश के अनुसार वित्त मंत्रालय में एक नया विभाग खोला गया और उस Department of Company Affairs and Insurance Comprising the Company Law Division of the Department of Revenue and the Insurance Branches of the Department of Economic Affairs to the Company Law Division.

के नाम से कायम किया तथा चार्टर्ड एकाउन्टेन्ट्स कास्ट एकाउन्टेन्ट्स के और सारे काम उसे सौंप दिए गए। इस तरह से इतने संशोधन आए दिन करते रहने के परिणामस्वरूप, क्या हम यह अपेक्षा कर सकते हैं कि हमारे साधारण कानून के जानने वाले इन परिवर्तनों से भिन्न रह सकें ? बहुत बड़ा सवाल यह आता है कि हम अपने कानून बनाने में इतने अस्थिर क्यों रहते हैं, बार-बार हम क्यों सोचते हैं, हम क्यों उसमें टुकड़ों में संशोधन करते रहते हैं—कुछ समझ में नहीं आता। या तो हमारी सरकार यह समझती है कि हमारा समाज इतनी प्रगति करता जा रहा है कि हमें प्रति दिन कानून में परिवर्तन करने की आवश्यकता है, या हमारे अंदर कुछ कमी है कि हम अपने कानून को समय की आवश्यकताओं के अनुकूल समय पर सोच-समझ कर बना नहीं सकते और इसलिए आए दिन उसमें परिवर्तन किया करते हैं नोटिफिकेशन के द्वारा, अमेंडमेंट के द्वारा। जितने अधिक अमेंडमेंट 1956 से लेकर, 1965 की 9 साल की अवधि में हुए, उतने 1882 से लेकर 1956 तक की 74 वर्ष की अवधि में भी नहीं हो पाए। कारण क्या है ? या तो यह कारण है कि हमारा समाज इतना ज्यादा प्रगतिशील हो गया है कि हमारी सरकार को रोज नए-नए संशोधन सोचने पड़ते हैं या हमारे कार्य करने की पद्धति में कहीं कुछ गड़बड़ी है और उसके परिणाम-स्वरूप हमें बार-बार परिवर्तन करना पड़ता है। मेरे मत से बार-बार परिवर्तन करना अच्छा नहीं है। परिवर्तन अच्छे भी होते हैं, बुरे भी होते हैं, उनकी मेरिट्स और डिमेरिट्स अलग अलग हैं, परन्तु जहां तक बार-बार परिवर्तन करने का सवाल है, यह बार-बार परिवर्तन करना कभी भी न्यायसंगत नहीं कहा जा सकता। इससे जो काम करने वाले हैं और जो समाज है उसमें हमारी सरकार के प्रति अविश्वास पैदा होता है कि यह सरकार न जाने कब कब क्या संशोधन करने वाली है। जो काम करने वाले हैं, चाहे वे कम्पनी ला एडमिनिस्ट्रेशन डिपार्टमेंट के लोग हों, या

चाहे कम्पनी चलाने वाले लोग हों, वे जो नया कानून आता है उसको समझ ही जब तक पाते हैं तब तक नया संशोधन उनके सिर पर आ जाता है। वह पहले के कानून को समझ भी नहीं पाए कि नया संशोधन उनके दिमाग में चक्कर लगाने लगता है और उसके परिणाम-स्वरूप सारी व्यवस्था बिगड़ने लगती है। इसका एक परिणाम यह भी होता है कि जो पूंजी लगाने वाले हैं उन पर भी इसका बड़ा असर पड़ता है और यह असर फाइनेंशियल मार्केट के लिए व्यापारिक गतिविधियों में एक अविश्वास पैदा करने वाला बन जाता है। तो इस तरह से हमारा इरादा अच्छा होते हुए भी कि हम समाज को अच्छा चलाना चाहते हैं, हम उद्योग खूब पनपाना चाहते हैं, देश की एकानामी की प्रगति की दिशा में बढ़ाना चाहते हैं, इस सारे इरादे के बावजूद भी हम अपने लक्ष्य की प्राप्ति करने में सफल नहीं हो पाते। तो इसके कारण को हमें खोजना होगा।

उपसभापति महोदया, अपनी कम्पनी एडमिनिस्ट्रेशन की जो वार्षिक रिपोर्ट है उसके हिसाब से अगर हम आंकड़ों को देखते हैं तो पता लगता है कि 1964 ई० में हमारे यहाँ पर 26,002 कम्पनीज काम कर रही थीं और मार्च, 1965 ई० के अन्त तक 26,653 कम्पनीज काम कर रही थीं, जब कि ग्रेट ब्रिटेन में जो कि हमारे भारतवर्ष के मुकाबिले में भारत के एक प्रान्त के बराबर ही होगा, वहाँ 1961 ई० में 4,01,653 कम्पनीज रजिस्टर्ड थीं और 1962 ई० में 4,27,842 कम्पनीज रजिस्टर्ड थीं। ऐसी स्थिति में जब हमारे यहाँ प्रगति करनी है, विकास करना है, नवीन कम्पनियों का निर्माण करना है, तब हमारे यहाँ केवल इतनी ही कम्पनियाँ हैं। माननीय मंत्री जी जवाब दे देंगे कि अभी-अभी हमारा देश स्वतंत्र हुआ है, इसलिए इतनी कम्पनियों का एक साथ निर्माण हो नहीं सकता, परन्तु प्रति वर्ष जो निर्माण की प्रगति है, वह आंकड़े भी हम उठा

[श्री विमलकुमार मन्नालालजी चौरङ्गिया]

कर देखें तो ऐसा लगता है कि उसमें भी हम कोई विशेष उत्साह से काम नहीं कर रहे हैं और हमारे यहां कम्पनियों का अधिक निर्माण हुआ हो ऐसा लगता नहीं है। जो नई कम्पनियों का रजिस्ट्रेशन हुआ, उसके आंकड़े इस प्रकार हैं :—

1955-56	1,448
1960-61	1,683
1961-62	1,614
1962-63	1,497
1963-64	1,227

इस तरह से उनकी संख्या घटती जा रही है। और 1964-65 में रिपोर्ट के अनुसार उनकी संख्या 1,365 है, तो 1955-56 के मुकाबिले में हमारे यहां प्रति वर्ष नई कम्पनियों का रजिस्ट्रेशन उतना भी नहीं हो पाता, जब कि ग्रेट ब्रिटेन में 1955-56 में एक वर्ष में ही 17,760 नई कम्पनियों का रजिस्ट्रेशन हुआ। हमारी तुलना में उनके आंकड़े इस प्रकार हैं :—

1955-56	17,760
1960-61	34,620
1961-62	33,997
1962-63	35,174

तो वहां एक वर्ष में उतनी अधिक कम्पनियों का नया रजिस्ट्रेशन होता है जितनी कि आज तक हमारी कुल संख्या भी नहीं है, हमारे यहां आज तक 26,653 कम्पनियां हैं जब कि वहां केवल एक वर्ष में 1962-63 में 35,174 कम्पनियों का रजिस्ट्रेशन हुआ। यह सारी स्थिति क्यों है और इस सारी स्थिति में हमारे मध्य प्रदेश की हालत तो बहुत ही खराब है। मध्य प्रदेश में 1961-62 में 23 और 1964-65 में 16 कम्पनीज ही नई रजिस्टर्ड हुईं। वहां उल्टी दिशा में प्रगति होती जा रही है। कुल कम्पनीज अगर देखी जायं

तो मध्य प्रदेश में 358 हैं, जब कि गुजरात में, जो कि मध्य प्रदेश के मुकाबिले में एक छोटा सा प्रान्त है, 944 हैं, महाराष्ट्र में 5,405 हैं, केरल में 1,058 हैं, मद्रास में 3,094 हैं, बंगाल में 9,031 हैं और देहली में 2,240 हैं तो मध्य प्रदेश की बिल्कुल उपेक्षा है और सारे भारतवर्ष को भी देखा जाये तो कम्पनीज के निर्माण से संतोष हो, ऐसा लगता नहीं। तो इसका कारण क्या है? हमारे मंत्री जी प्लानिंग विभाग के भी इंचार्ज हैं और कम्पनीज के एडमिनिस्ट्रेशन के भी इंचार्ज हैं। क्या वह यह आवश्यक नहीं समझते कि हमारे यहां पर देश के विकास के लिए नवीन कम्पनियों का निर्माण हो। अभी तक ऐसा क्यों नहीं हो पा रहा है और उस दिशा में धीमी गति से क्यों चल रहे हैं? इसके ऊपर अभी तक विचार किया होता तो उसका परिणाम मालूम पड़ता, किन्तु अभी तक उस दिशा में विचार किया नहीं ऐसा लगता है।

इसके दो कारण हो सकते हैं। एक तो कम्पनी बनाने के लिए पूंजी चाहिए और दूसरे यह कि जो कानून है, जिसके अन्तर्गत कम्पनीज का नियंत्रण होता है वह कुछ ऐसा डिफिकल्ट तो नहीं है कि लोग कम्पनी बनाने के लिए आकर्षित नहीं होते? जहां तक पहला प्रश्न है, पूंजी का तो वित्त विभाग भी आपके जिम्मे है तो क्या वित्त विभाग द्वारा जो कर-पद्धति चलाई जा रही है, वह कुछ ऐसी है कि जिसके परिणामस्वरूप नई कम्पनीज के निर्माण के लिए जो सरप्लस पूंजी चाहिए, जो अधिक पूंजी चाहिए कि लोगों के पास इतनी पूंजी हो कि नई कम्पनियों को खोलने में लगा सकें, वह हमारे यहां दीखती नहीं है। अगर पूंजी होती तो हमारे देश में बहुत सी कम्पनियों का निर्माण होता; क्योंकि हमारे यहां कम्पनीज बहुत कम हैं। हमें देश का विकास करना है। अगर हमारा यह लक्ष्य है तो उस दृष्टि से हमारे जो नियम हैं, हमारे जो विधान हैं उनमें कुछ ऐसे संशोधन करने चाहिए या कुछ ऐसी व्यवस्था करनी चाहिए, जिससे कि लोग

कुछ सरप्लस पूंजी रख सकें और कम्पनीज के निर्माण में 10 रु० या 100 रु० या 1000 रु० का शेयर जैसा भी हो, बैसा रख कर कम्पनी का निर्माण कर सकें, उसमें ध्यान लगा सकें।

दूसरी बात यह कि कम्पनी के कानून में बार बार परिवर्तन नियमों में बार बार परिवर्तन, कानून के अन्तर्गत रेगुलेशन द्वारा परिवर्तन, प्रेसिडेंशियल आर्डर के द्वारा परिवर्तन, इन सारे परिवर्तनों के परिणामस्वरूप क्या होता है कि लोग घबड़ाते हैं, यह सिर दर्द कौन पाले और नई कम्पनियों का निर्माण कौन करे? तो हमें इसको भी सरल बनाना होगा। हम यह नहीं चाहते कि जो घोटाले करते हैं, उनको रोका न जाय।

श्री रामकुमार भुवालका : मैं यह पूछूंगा कि और प्रान्तों में हजारों कम्पनियां हुईं तो खाली मध्य प्रदेश में क्यों नहीं हुईं ?

श्री अर्जुन अरोड़ा : यही तो वह बता रहे हैं।

**श्री विमलकुमार मन्नालालजी चौर-
डिया :** सम्भवतः वहां पर श्री भुवालका सरीखे लोग नहीं हैं, नहीं तो अब तक बहुत सी कम्पनियां बन जातीं।

उपसभापति महोदया, तो ये जो दो प्वाइंट्स हैं इन पर हमारी सरकार को विचार करना चाहिए। शिकायतें भी रोकी जानी चाहिए। हमारे यहां किसी कम्पनी में अच्छा काम होता है और किसी में खराब होता है, अगर इनकी मेरिट और डिमेरिट में जाएंगे तो केवल यह कहना कि सिर्फ डालमिया जैन कम्पनी में बेईमानी थी और अन्य कम्पनियों में नहीं थी, तो यह मानने के लिए मैं तैयार नहीं हूं। सभी कम्पनियों में कानून के अन्तर्गत कानूनी गलतियां निकाल कर अपने व्यक्तिगत स्वार्थ के अनुसार कार्य होता है। कहीं अधिक मात्रा में कहीं कम। मनुष्य जहां पर है, उसकी कमजोरी उसके साथ है, लोभ उसके

साथ लगा हुआ है, चाहे वह डाइरेक्टर बन जाये चाहे मिनिस्टर या नेता बन जाये। उपसभापति महोदया, हम देखते हैं कि उत्तर प्रदेश में कांग्रेस का कैसा झगड़ा है, बड़े त्यागी, तपस्वी लोग वहां बैठते हैं और तपस्वी नेता लोग आपस में एक दूसरे को टांग खींचने में लगते हैं, यह क्या कारण है।

श्री अर्जुन अरोड़ा : फिलहाल वह काम बन्द कर दिया।

**श्री विमलकुमार मन्नालालजी चौर-
डिया :** अरोड़ा साहब, "फिलहाल" कहेंगे तो आपकी बात मान ली जा सकती है। तो इसका कारण क्या है? कहीं भी देखिए, एक दूसरे की टांग खींचने में लगे हुए हैं व्यक्तिगत स्वार्थ के लिए। तो मनुष्य को यह कमजोरी है कि अपने स्वार्थ के लिए कुछ कुछ करता है, सारे मनुष्यों में यह है चाहे वह कम्पनी का डाइरेक्टर बन जाये, चाहे वह मिनिस्टर बन जाये, चाहे वह चपरासी बन जाये, या कोई भी बन जाये, अपने स्वार्थ की कमजोरी उसको इस बात के लिए प्रेरित करती है कि जहां भी जो मिल सके वहां पर खींचने का प्रयत्न करे। अच्छे संस्कार ही उस पर नियंत्रण कर सकते हैं। पाकिस्तान यह चाहता था कि भारतवर्ष की कमजोरी के कारण जितनी यहां की जमीन खींच सके उतनी खींच ले, जितने पर कब्जा कर सके उतने पर कब्जा कर ले, हमारी जो पहले की पालिसी थी कि हम झगड़ा नहीं करना चाहते, उसके परिणाम-स्वरूप उसका जो हौसला था, उसका जो जो नाखून था, उसकी जो बुरी नीयत थी वह बढ़ती गई, वही हालत कम्पनीज एडमिनिस्ट्रेशन की भी ले लीजिए और जिस रोज श्री लाल बहादुर शास्त्री जी ने, हमारी सरकार ने, इस बात का निश्चय किया कि पाकिस्तान को खदेड़ कर भगाना है और अपनी भूमि पर जो उसने अनधिकार कब्जा कर लिया है, उस पर अपना कब्जा वापिस लेना है तो वह ठीक ठीकाने आ गया। वैसे ही अगर हमारी सरकार यह

[श्री विमलकुमार मन्नालालजी चौरड़िया]

निश्चय कर ल कि चाहे वह बैंक का डाइरेक्टर हो, मिनिस्टर हो, कोई भी हो, वह अगर अपनी मानवीय कमजोरियों के परिणामस्वरूप कोई नाजायज लाभ लेना चाहता है या दूसरे लोगों को नुकसान पहुंचा कर अपना स्वार्थ सिद्ध करना चाहता है तो उसके खिलाफ कार्यवाही होगी, तो सब कुछ ठीक ठिकाने लग जाये। यह कोई बड़ी भारी बात नहीं है, मगर दुःख यह होता है कि जिस कम्पनी से कांग्रेस सरकार नाराज उसके खिलाफ तो कार्यवाही शुरू हो जाती है और जिस कम्पनी से प्रेम, जिस कम्पनी से खुश, जिस कम्पनी से लाभ मिल जाये, चुनाव के दिनों में पैसा मिल जाये, उस कम्पनी के लिए 'बुद्धिम् शरणम् गच्छामि' की तरह 'कांग्रेस शरणम् गच्छामि' की बात और उसको मुक्ति मिल जाती है। तो यह जो हमारी सरकार की दुर्नीति है, उसके परिणामस्वरूप लोग घबराते हैं कि कब हमारी सरकार के, कांग्रेस के, लिटिल लिटिल नेता नाराज हो जायेंगे, और हार्डी कमण्ड में जाकर हमारी शिकायत कर देंगे, कम्पनी एडमिनिस्ट्रेशन के माध्यम से हमको नुकसान पहुंचा देंगे और आश्चर्य तो यह है कि आज हमारा यह कंपनी एडमिनिस्ट्रेशन का डिपार्टमेंट राजस्व विभाग के, वित्त मंत्रालय के अन्तर्गत है। अब शिकायत की जांच-पड़ताल करने वाला भी कौन—वित्त मंत्रालय? उस पर हुकम देने वाला कौन—वित्त मंत्रालय? दोनों ही एक ही डिपार्टमेंट के अन्तर्गत। अब इससे कई तरह की शंकाएं लोगों के मन में पैदा होती हैं। (Time bell rings.) थोड़ा और टाइम लूंगा।

उपसभापति : सब ने पन्द्रह मिनट लिया है।

श्री विमलकुमार मन्नालाल जी चौरड़िया : यह तो उन्होंने बड़ी कृपा की, लेकिन मैं आपसे चाहूंगा...

उपसभापति : लिस्ट बड़ी लम्बी है।

श्रीविमलकुमार मन्नालालजी चौरड़िया : तो जल्दी खत्म करने की कोशिश करूंगा।

THE DEPUTY CHAIRMAN: You have taken fifteen minutes. Please be relevant to the Bill and finish as quickly as possible.

श्री विमलकुमार मन्नालालजी चौरड़िया : अच्छा, कोशिश करूंगा। तो इस तरह से यह वित्त मंत्रालय के अन्तर्गत होने के परिणामस्वरूप प्रोसीक्यूट करने वाले भी वही, जज भी वही। दोनों एक ही के अन्तर्गत होने से वह न्याय का पक्ष लें, यह संभव नहीं और इसलिये मैं प्रार्थना करूंगा कि हमने जहां तक कंपनी ला एडमिनिस्ट्रेशन का सवाल है, इसको ला डिपार्टमेंट के अन्तर्गत दे देना चाहिये, जिससे कि इसकी व्यवस्था ठीक चल सके।

जुडीशल अप्रोच से और रेवेन्यू डिपार्टमेंट की पोल पट्टियां बूझ कर उसको सारे मामले का निर्णय करना चाहिये, तभी संभव है कि इस दिशा में हम कुछ कर सकें।

जहां तक इस बिल का सवाल है, इस बिल में कुछ संशोधन अच्छे भी हुए हैं, कुछ बुरे भी हुए हैं। कुछ नाम तो डालमिया जैन का बहुत हो गया और उनके परिणामस्वरूप रिपोर्ट भी खूब भर गई, अच्छा है। कई नमूनों में एक नमूना व्यक्तिगत द्वेष से या कई कारणों से लिया गया हो, लेकिन वह लेकर के सरकार ने जांच कमेटी बैठाई और जांच करके कंपनी ला एडमिनिस्ट्रेशन की कमजोरियां देखीं। अच्छा किया, खाली डालमिया जैन के लिये कानून नहीं बनाया, नहीं तो शंका होती तो यह खुशी की बात है कि सारी कंपनियों के लिये इस तरह का संशोधन किया। सभी जगह इस तरह की बुराइयां हैं, अपवादस्वरूप कोई छूटा रह गया हो, तो दूसरी बात है।

विधेयक के लिये एक प्रवर समिति बैठी, मुझे भी प्रवर समिति में रहने का मौका मिला। वहाँ पर जब जब चर्चा की गई, लोगों ने अपने पक्षों का समर्थन करने के लिये अपने अपने विचार रखे और उन सारी बातों पर गौर करके प्रवर समिति ने जो संशोधन किये उनमें से बहुत अच्छे हैं, काफी संशोधन हुए हैं, यद्यपि कुछ से मेरा मतभेद था और उसके लिये मैंने असहमति पत्र दिया है। मुख्यतः जो मेमोरेण्डम आफ एसोसियेशन में वे सारे मेन आब्जेक्ट्स, सर्वसीडियरी आब्जेक्ट्स पुरानी कंपनियों में बंधन लगाया था उसी तरह से नई कंपनी के लिये किया, वह ठीक है। इसी तरह से मिनिमम सब्सक्रिप्शन का आज तक जो बंधन था, बड़ा व्यापक था, उसके लिये जो बंधन पहले उन्होंने लगाया था... [Time bell rings.] वह ठीक कर दिया, यह प्रसन्नता की बात है। इसी तरह से मिनिमम सेफगार्ड्स के लिये और कास्ट आफ आडिटिंग के लिये भी व्यवस्था की गई है। आज हमारे यहाँ देखिये तो लगभग 1,300 के करीब कास्ट एकाउन्टेन्ट हैं। अगर सारी कंपनियों पर यह बंधन लगाएँ, चाहे कोई उत्पादन करने वाला हो, प्रोसेस करने वाला हो, चीजों का निर्माण करने वाला हो, उनके बारे में सरकार यह निर्णय करे कि हमें सब के लिये लगाना है तो इतना हिसाब रखने वाले कितने ही कास्ट एकाउन्टेन्ट, आडिट करने वाले, चाहियें और जो अभी हैं उससे अधिक योग्यता रखने वाले होने चाहियें। तो ऐसी स्थिति में वहाँ व्यवस्था रहेगी नहीं और अव्यवस्था फैलेगी। इसी प्रकार हर एक कंपनी का अपना अपना टेक्नीक होता है और उसी के अनुसार वे सारा हिसाब किताब रखते हैं उसमें आप जो बंधन लगा रहे हैं कि मजदूर कितने रहेंगे, मास कितना रहेगा, इत्यादि सारा हिसाब रखे या एक कंपनी की जानकारी दूसरी कंपनी को न दी जाये जिससे कि अपने बिजनेस के जो लाभ हैं, उनको दूसरे नहीं उठा सकें, इन सब के बारे में भी अगर ध्यान रखा जाये तो ज्यादा अच्छा होगा।

दो बार घंटी बज चुकी है। मैं अच्छा नहीं समझता कि बार बार घंटी बजे, इसलिये अभी तो बैठे जाता हूँ, मगर जब अमेन्डमेन्ट पर चर्चा होगी, तब मैंने अपने जो अमेन्डमेन्ट्स दिये हैं, उनके ऊपर व्यापक रूप से चर्चा करूँगा।

SHRI BABUBHAI M. CHINAI: Madam Deputy Chairman, I am thankful to you, for giving me this opportunity to speak on this Bill. I was a Member of the Joint Select Committee, and I know that the Finance Minister was good enough to accept many suggestions of the Members, and the Bill as reported by the Joint Committee was very much improved than the original Bill. It is also a matter of satisfaction that the Finance Minister accepted some amendments moved by some Members in the Lok Sabha, with the result that there has been a further improvement except in one case, to which I shall presently refer. Among the welcome changes are that in the case of blank transfers, the time to lodge shares with the companies has been extended in some cases and that the provisions regarding blank transfers will not apply to shares deposited as security for repayment of loans advanced to or for the performance of any obligation undertaken by the holders of shares. However, the change to which I take strong exception is the one removing the age limit for directors. I have my full sympathies with my friend, Shri Suresh Desai, and Shri Bhuwarka, and also my friend, Mr. Himatsingka of the Lok Sabha, who has been outside in the lobby lobbying for opposing the amendment which I intend to move tomorrow.

SHRI SIJRESH J. DESAI: You have forgotten Shri G. S. Pathak.

SHRI BABUBHAI M. CHINAI: I am coming. But I have also to point out, Madam, that there existed a law before this Bill was introduced, under which anybody can become a director even after the age of sixty-five after

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a special resolution was passed to that effect. This law existed for several years, and yet I have to find even a single instance where the shareholders have thrown away a director who stood for election after sixty-five years. I do not want to say for a moment that anybody who is above the age of seventy-five objected to in my amendment—is not fit to be a director; there may be some exceptions, who may be good people, who may be intelligent and whose minds may be working as before. But by and large one will have to accept that there should be a limit beyond which the mind of a person, so far as financial, so far as economic and so far as administrative problems are concerned, cannot be expected to work as it ought to work and the limit is when one reaches the age of seventy-five years and therefore, in the wisdom of the Joint Select Committee, in spite of the fact that there was very great pressure on the hon. the Finance Minister, the members of the Joint Select Committee decided that we should adhere to the provision of the original Bill of having the age limit of seventy-five for anybody to be a director, that he should 'automatically cease to be a director at the age of seventy-five. The Bill came before the Lok Sabha and, as usual, many pressures were brought to bear on the subject, and I must admit that the question was thrown open for free discussion by the hon. the Finance Minister with the result that that clause was dropped there, and now we are having the Bill without that clause. Under these circumstances, if this is called a House of Elders, a House which has maturer thoughts, and if we are allowed to be a revising Chamber, then we have every right to revive the clause which the Lok Sabha Members have taken a decision on. If we are wrong, it would be in the fitness of things that both the Houses jointly discuss this and come to some decision. But till then, if we are of the view that, yes, the amendment which has been made

by the Lok Sabha requires revision, we are fully entitled to it. But it is not my intention at this stage to go in detail into this amendment which I propose to move.

SHRI SURESH J. DESAI: May I ask the hon. Member a question? Suppose the provision is made and a person is stopped from being a director because he reaches the age of seventy-five, what prevents him from putting his wife, who may be seventy-two, in his place? Instead of his being there, his wife will be there. That will be worse.

SHRI BABUBHAI M. CHINAI: I am glad that the cat is out of the bag, Madam, and that Mr. Suresh Desai, who is also himself a lawyer, is finding out ways and means to circumscribe the law which this House intends to pass, and I am sure his advice, though valuable generally, will not be heeded to here by those concerned with such problems.

Coming to the point again, what I shall emphasise is that it should not be presumed that this House is only a rubber stamp of the other House. We have our own independence and if, we, in our wisdom and in our judgment, feel that some decision which the other House has taken, requires revision, we are bound to consider it again—as it is called, this is a House of Elders—and tender our advice for whatever it is worth. I feel that this is a retrograde step and I would be moving an amendment for restoring the original provision in the Bill. By doing so I will only be supporting the hon. Finance Minister who piloted the original Bill in the Lok Sabha and who was a party to this decision in the Joint Select Committee. Therefore, in doing so, myself and other friends who are going to move amendments of which they have given notice, will only be doing the right thing and supporting the Government and the hon. Finance Minister.

Before dealing with certain provisions of the Bill, I would like to make some general observations regarding frequent modifications of a basic law like the Company Law. Frequent amendments to the Act create an atmosphere of uncertainty. Between 1956 and 1965, the Company Law has been amended four times and the present is the fifth in the series. Amending measures in respect of a basic law are justifiable only when it fails to fulfil the ends in view or when the Law in force has become outdated. I am not convinced that the present law does not serve the purposes in view and that the Vivian Bose Commission's recommendations which were made with reference to the law and conditions prevailing under the 1913 Act, required to be incorporated in the Act. There are various legislations like the Industries (Development and Regulation) Act, 1951, the Capital Issues Control Act, 1947, the Foreign Exchange Regulation Act, 1947, etc. which confer power on the Government to exercise control over the affairs of companies. The amendments in the Bill tightening the law are, therefore, not necessary.

The present Company Law is a very comprehensive enactment regulating corporate enterprise in regard to minute details and matters of day-to-day administration. Many of its provisions are very complicated and difficult of comprehension by managements particularly of small companies. Companies and managements have felt many difficulties and doubts in trying to comply with the provisions of the Act. The interpretations of the provisions of the Companies Act by the Company Law Department sometimes are at variance with the spirit and letter of the law. They are also sometimes at variance with the interpretations of High Courts.

The Companies Act Amendment Committee, 1957, had referred in its Report to the criticisms made by businessmen, company managements, shareholders, accountants, lawyers

and judges, regarding the complexity of the structure of the Act, the involved language, the vagueness and obscurity of many of its material provisions, the inter-position of the Government control even in apparently minor matters, the plethora of returns and forms required to be furnished by the management without any corresponding utility, the loopholes it has left, and many other features which make the enactment cumbersome or defective and difficult of application. The Estimates Committee in its Fifty-third Report on the Working of the Department of Company Law, has also referred to this observation. The Act, therefore, should be reviewed for the purpose of simplifying it. All provisions which have not served any useful purpose should be deleted. Restrictions and curbs under various sections of the Companies Act which come in the way of the smooth functioning and management of companies or create difficulties in the day-to-day working or interfere with their production or plans of expansion, should be done away with. Provisions vesting discretion and decision-making in the Government which afford opportunities for corrupt practices should be removed. If the Company Law is simplified and made helpful, it will play an important part in helping the formation of companies.

Companies have also felt that they have to maintain too many registers, file many returns, documents and accounts with the Registrar of Companies and that they have also to contain unnecessary details. In addition to the work being time-consuming, it is also expensive to the companies. The Department has not justified or shown to what extent the registers, returns and the details which are called for, have been found to be of use either to the members of the company or to Government, to frame economic policies. If the intention is to suitably frame the economic policies of Government, section 615 of the Companies Act gives wide powers to collect necessary information and

[Shri Babubhai M. Chinai.] statistics from the companies. The Government should, therefore, go into the details of the information collected from the companies, analyse their implications and usefulness and take a decision to reject those numerous particulars which are found to be not of much use either to the members of the companies or to Government.

The Finance Minister himself stated in the Lok Sabha on the 28th September, 1963, that in the proposed Bill, embodying the recommendations of the Vivian Bose Commission or of the Daphtary-Sastri Committee, he would endeavour to satisfy the desire to simplify the law relating to joint stock companies. The present Bill, however, contains only a few provisions intended to simplify the procedural requirements. They mostly provide "a uniform time limit of 30 days for the filing of various documents by the company before the Registrar, I hope that the Finance Minister would take early action to simplify the existing law. He has already gone some way in simplifying the Income-tax Law. He has also attempted to rationalise and simplify the structure of import duties. Company Law needs his attention now.

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Coming now to the various provisions of the Bill, it has been proposed that the books of accounts should be open to inspection by the Registrar or by any officer authorised by Government. The proviso originally introduced in clause 20 that no such inspection shall be made by the Officer concerned, unless he is of the opinion that sufficient cause exists for such inspection, has been done away with. No reasons have been adduced for the same. This is not reasonable and I strongly oppose this.

Clause 23 of the amending Bill provides for compulsory audit of cost accounts of companies: Unfortunately,

nately, the Finance Minister has turned down the objection made against the clause. Generally speaking, audit of cost accounts presupposes a sophisticated stage of industrial development and management accounting which it will take considerable time to reach in this country. Further, to prescribe audit of cost accounts independently of the financial accounts could lead to conflict and confusion between the two.

The disclosure of cost structure of companies engaged in competitive enterprises would place better-managed companies at a serious disadvantage. I am aware of the argument that since the cost audit would be submitted only to the Central Government and not filed with the Registrar of Companies, the necessary guarantee for maintaining the cost audit report confidential has been ensured. But it should not be forgotten that once a statutory cost audit has been undertaken every shareholder would be entitled to have a copy of the same with the result that the confidential character of the cost data would not possibly be preserved.

THE DEPUTY CHAIRMAN: Your time is running out.

SHRI BABUBHAI M. CHINAI: Only two more minutes, Madam.

Clause 27 which amends section 241 provides that interim reports submitted by an Inspector need not be sent to the Company. I do not consider this to be fair because it will not be possible for a company to make suitable representations to correct any misapprehension on the part of the Inspector unless the interim report is submitted to the company also.

Another controversial provision relates to the proposal to abolish the Company Law Advisory Commission and to appoint instead an Advisory Committee for advising upon such matters arising out of the administration of the Act as may be referred to it by the Central Government or the

Company Law Board. I would like to recall that originally, the Commission was intended to be developed into a permanent body. I do not think that the Commission which was set up after careful examination by the Joint Committee on the Companies Bill, 1953, and was approved by Parliament subsequently, should be done away with.

The reports on the working and the administration of the Companies Act furnish ample proof of the usefulness of the Commission over the years. Sections 410 to 415 of the principal Act, which are now sought to be deleted, made it obligatory on Government to refer certain important matters to the Advisory Commission for their advice. In the discharge of its duties, the Commission has done much to inspire confidence in the corporate sector *vis-a-vis* the exercise of purely executive powers by Government in a field in which such powers are vast and all-pervasive and the scope for arbitrary decisions extensive.

THE DEPUTY CHAIRMAN: Your time is over.

SHRI BABUBHAI M. CHINAI: One minute, Madam, and I finish.

Clause 56 of the amending Bill proposes to insert a new provision which enables the Government or any person not to disclose the sources of information received by it or by him to any court, tribunal or any other authority. I consider this to be an extraordinary provision and I do not think that this is in consonance with sound judicial principles. It will open up opportunities for supplying false information by interested parties in order to blackmail a company or those in management of a company.

I hope the hon. the Finance Minister will examine again the various objections made against certain provisions of the Bill, the objections which I have raised, and make suitable modifications. Thank you.

SHRI R. P. JAIN (Bihar): Madam Deputy Chairman, as some of my colleagues have mentioned, we have had too many amendments to this enactment. From 1962, we have been having amendments almost every year, in 1963, in 1964 and now again in 1965. It appears that the Government, and especially the Company Law Board and the Ministry which controls it, is not very clear in its objective. We have for guidance on such a measure a British law but still we are not able to bring in a comprehensive measure so that for a few years we can work without any disturbance from the department. As I pointed out the other day, probably the amendments are forthcoming not only to plug the loophole, which have been desired to be plugged—this was done in 1956 when a comprehensive Act was passed—but for some personal reasons also. Probably a Minister or the Board which controls the companies is not satisfied with the working of certain individuals or groups. They do not find it possible to punish them sufficiently or disturb their working under the present Act although it is very comprehensive . . .

SHRI ARJUN ARORA: No punishment is sufficient for Sahu-Jain?

SHRI R. P. JAIN: My friend, Mr. Babubhai Chinai, has mentioned that the Act is already very comprehensive. They want more amendments as the present Act does not give them all powers, but leave some powers with bodies like the courts. Therefore, they want certain changes to be made by which possibly they can interfere with the companies without giving them the remedy of going to courts. The amendments now proposed give unlimited powers to the inspectors, as some other colleagues of mine have pointed out. I would not like to go into the details of each and every clause but I would only like to say one thing, as I mentioned the other day, whatever amendments we make in the law must be with the *bona fide* intention and not with the

[Shri R. P. Jain.] intention of completely wiping out anyone who makes a mistake. That should not be our objective. If somebody makes a mistake, the law should take its own course. The nien concerned should be prosecuted, penalised and he should be given an opportunity to defend himself. If the idea in bringing forward this amendment is that the law as it is not sufficient to book certain people, then I for one would certainly not support the amendments. We must regulate the corporate sector properly and we must make the law more comprehensive but what I find is that some of the amendments now sought to be made, instead of clarifying the position, instead of reducing the discretion given to the department, make, the position worse. The authorities get unfettered powers to prosecute anybody they like. My friend, Mr. Mulka Govinda Reddy, mentioned the case of a company. In spite of the fact that the State Government brought certain things to the notice of the Finance Minister, nothing was done and that concern was let off. It is not, therefore, that power is not there under the Act. The power is there to make enquiries and investigations to start prosecution also but the point is that they do not want to make use of it in certain cases. In some cases these powers are not utilised at all; the reasons may be political or the interests of the ruling party. So many factors may be there. In spite of the fact that for the past seventeen or eighteen years one party has been ruling the country, we have not been able to raise the morals of the people. Thousands of Acts have been enacted and an equal number of amendments but we have not been able to make the moral of the people go up. There is something inherently wrong because we are acting more or less as the guardian of the people. It is our duty to raise the moral of the people but no amount of laws or amendments would do that. The race between the citizens and the Government would never mme to a" end un-

loss and until we first raise our moral and by our actions and our special behaviour create a better feeling in the minds of those who take undue advantage of the law. Taking advantage of the law, within its four corners, I would not call it bad. Every one has got a right to save income-tax within the four corners of the law. We cannot say that this is illegal. We must put forward before the people that there are certain things which we do not consider correct or proper in the interests of the public. What I find is that those who make the law do not put before the public a pattern of exemplary behaviour. The result is that people start abusing the law. They go to senior lawyers and try to find loopholes to make certain adjustments here and there. Please some of the people in the Government.

SHRI A. D. MANI: Is it easy to please them?

SHRI R. P. JAIN: That is what we lind. In these seventeen years our moral has gone down. We are increasing daily the number of laws and regulations on the same subject. If we do not put up a better behaviour before the people, people's moral will never come up. Partly, why partly, solely Government is responsible for this. If they cannot create conditions by which we can become more honest, certainly there is something wrong somewhere. During the last seventeen years so much law has been passed that it is even impossible to have physical possession of the same. If one wants to get some of the Acts, even from the Government Publications Depot he finds it difficult. It is out of stock, copies not available. There is no objection to plugging loopholes if it is done with a *bona fide* objective with some specific purpose, not simply because some people are annoyed with A or B. Because of such annoyance we should not have a race of enactments, rules, regulations and Bills. That way you will never achieve your objective. Our objec-

tive should be to improve the social conditions by which people would start behaving better, start respecting laws. If the race for twisting the laws is there, no amount of legislation would end it- I would give you an example. In olden times in our society if a person did not behave properly, the neighbours without applying any law or regulation would simply not associate with him with the result that the man would not then behave in that way. In spite of the fact that we have a law for everything, people do not behave well. Why? The difficulty is that there is so much of discretion used in its enforcement. The law is not applied in the case of one set of people while it is used severely in the case of another set of people. When a person knows that the law is being applied to the advantage of the other man and to his own disadvantage he does not respect the law. Why should he respect it? He would utilise the loopholes in it. Therefore, I would like to request the Government not to be guided by individual feelings while making enactments. Government should be guided by an overall feeling for the whole country. Mr. Chordia has given the example of his State, Madhya Pradesh, where the people are not able to come forward in the private sector as fast as people in other States. While making enactments, we have to see that we do not make these so clumsy that people of a particular State are put to a great disadvantage and are unable to keep pace with the laws you are enacting.

Another point that I would like to mention is that while you are giving so much thought and consideration for plugging loopholes or for regulating the public limited companies in the corporate sector, nothing has been done to check what is being done in the private limited companies. After all that is also a corporate sector. It is not a separate thing. The whole attention of the House, of the Government, of the Company Law Board is focussed only on the public limited

companies. Nothing has been done to regulate the working of the private limited companies. I will give one example.- The present section 220 as stands at present does not allow a person other than a member to obtain even a copy of the profit and loss account of a private limited company. We are framing so much laws and so many heavy books for the purpose of regulating public limited companies. Quite a large business today is controlled, managed and done by the private limited companies also. We must not totally omit them. We must see, that any person who has dealings with a private limited company, is able to obtain some information about its working. Today as the law is, if you will kindly see sub-section (1) of section 220 there are two provisos under which no one can even inspect or have a profit and loss account. No doubt one can have a glimpse of the balance sheet but the balance sheet does not disclose what they are doing, what items they are dealing in, what their turnover is, what their expenses are and how much money they are hiding. Therefore I would request the Finance Minister to bring forward an amendment by which a person other than a member of the company, that is, other than the shareholder of the company, can also have an inspection and get a copy of the profit and loss account of a private limited company also just as he can have it in the case of a public limited company. In fact, for a non-member, whether it is a public limited company or a private limited company, there is no difference. He should be able to have the profit and loss account and other things in the same manner as in the case of a public limited company. In modern times when so much of business is done by the private limited companies also why should there be a distinction between a private limited company and a public limited company in the matter of inspection and in the matter of obtaining copies of the profit and loss account? I hope the Finance Minister will take into account this aspect of

[Shri R. P. Jain.] the matter and see that these provisos to section 220 are deleted so that a non-member can also have the same idea of the working of the private limited companies.

SHRI LOKANATH MISRA (Orissa): But you cannot expect the Finance Minister to do something that would expose his own companies.

SHRI R. P. JAIN: Well, we have to do it in the larger interests of the country. Up till now in spite of the fact that so much has been thought of for the public limited companies, this simple thing of allowing non-members to have copies of the profit and loss account of private limited companies has not been provided for in the Companies Act. I would like to bring to the notice of the hon. Minister that nowadays the private limited companies are dealing with the State Governments, the P.W.D., the State Electricity Boards, the Supply Department and so many other things and they are having contracts worth crores of rupees and therefore it is necessary that we at least know what their working is—profits and losses are. Anyway, I would not say much about it and I would leave it to the Finance Minister to do the needful.

THE DEPUTY CHAIRMAN: Your time is almost over.

SHRI R. P. JAIN: The next point is about clause 27. The proposed amendment, as has been pointed out by Mr. Chinai also, is unwarranted and copies of any report as presently stipulated under section 241 sub-section (2) (a) should continue to be available to the company and to any one else dealt with in the report. There should be no exception made in respect of interim reports. It has just now been pointed out that unless the company gets a copy of the interim report also it would have no chance of getting natural justice or of placing before the Company Law Board their view point. Somebody might make some representation or some wrong complaint; the Inspector might submit

a wrong report and the company would not know it at all and it would be just faced with a prosecution. It is a very awkward position. Therefore the copy of the interim report also should be made available to the company so that it can get natural justice and it would be in a position to place its point of view before the Company Law Board.

As I said the other day some of the sections of the Companies Act at the moment are so wide and they overlap each other that it is necessary that where a section provides a specific power, that power should not be utilised for any other purpose under some other section. What is happening at present is, the Company Law Board is not making use of all these sections which have been provided for use in specific cases. For example when a complaint is made by a member of the company there is a specific section providing for investigation. Now instead of using the powers under that section when a complaint is made to the Company Law Board, they make use of some other section which is meant for some other circumstances. Therefore they should see that the powers provided in specific sections are made use of for the circumstances specified in those sections instead of utilising other sections which do not apply in particular cases. So as I mentioned before, the discretion should be minimised.

Madam, I had some more things to say but I could not finish them in five or ten minutes. So I would rather conclude here.

SHRI ARJUN ARORA: Madam Deputy Chairman, so long as private enterprise is allowed to exist in the country the working of joint stock companies is of great public concern. Joint stock companies continue to play a vital role in the country's economic life. How ill or well they function will vitally affect the national economy. The company law was de-

vised to ensure proper functioning of joint stock companies, to safeguard the interests of the investor and to prevent those in control of the companies from exploiting the people or cheating the exchequer. That was the purpose of the company law. Since 1956 the company law has been made more and more stringent. A vast bureaucratic apparatus has grown to enforce the law. The Government have vested in themselves large powers of control over the joint stock companies and in this respect at least these powers are exercised by a few bureaucrats. This has not prevented the growing malpractices in the operation of joint stock companies. Among other things, the chief cause is the failure to implement as well as we plan. That of course is true of many other things in the country. The enforcement agency grows bigger and bigger but enforcement unfortunately becomes poorer and poorer. Every time the enforcement agency is found at fault it asks for more powers and we readily grant those powers.

THE DEPUTY CHAIRMAN: You may continue tomorrow. There is a Message.

MESSAGE FROM LOK SABHA

THE PAYMENT OF BONUS BILL, 1965

SECRETARY: Madam, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary of the Lok Sabha:—

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Payment of Bonus Bill, 1965, as passed by Lok Sabha at its sitting held on the 9th September, 1965."

Madam, I lay the Bill on the Table.

THE DEPUTY CHAIRMAN: The House stands adjourned till 10.00 A.M. tomorrow.

The House adjourned at four of the clock till ten of the clock on Tuesday, the 14th September 1965.