

Provident Funds Act, 1952, a copy of the Ministry of Labour and Employment Notification G.S.R. No. 1443, dated the 24th November, 1960, adding certain industries to Schedule I of the said Act. [Placed in Library. See No. LT-2531/60]

**THE EMPLOYEES' PROVIDENT FUNDS
(AMENDMENT) SCHEME, 1960**

SHRI L. N. MISHRA: I also beg to lay on the Table, under sub-section (2) of section 7 of the Employees' Provident Funds Act, 1952 a copy of the Ministry of Labour and Employment Notification G.S.R. No. 1444, dated the 24th November, 1960, publishing the Employees' Provident Funds (Amendment) Scheme, 1960. [Placed in Library. See No. LT-2532/60.]

**THE INDUSTRIAL DISPUTES (CENTRAL)
AMENDMENT RULES, 1960**

SHRI L. N. MISHRA: I also beg to lay on the Table, under sub-section (4) of section 38 of the Industrial Disputes Act, 1947, a copy of the Ministry of Labour and Employment Notification G.S.R. No. 1466, dated the 30th November, 1960, publishing the Industrial Disputes (Central) Amendment Rules, 1960. [Placed in Library. See No. LT-2544/60.]

**ALLOTMENT OF TIME FOR CONSIDERATION OF (I) THE APPROPRIATION (No. 5) BILL, 1960
AND (II) THE INDIAN POST OFFICE (AMENDMENT) BILL, 1960**

MR. CHAIRMAN: I have to inform Members that under rule 162(2) of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I have allotted thirty minutes each for the completion of all stages involved in the consideration and return by the Rajya Sabha of the following Bills:—

1. The Appropriation (No. 5) Bill, 1960.
2. The Indian Post office (Amendment) Bill, 1960.

REQUEST RE. SUPPLY OF COPIES OF THE CONSTITUTION (AMENDMENT) BILL AND THE ACQUIRED TERRITORIES (MERGER) BILL TO MEMBERS OF PARLIAMENT

SHRI BHUPESH GUPTA (West Bengal): Sir, I want to draw your attention to a matter which concerns the House. You will find here that the Acquired Territories (Merger) Bill has been circulated to the Members of the West Bengal Legislature under article 3. We do not object to this kind of thing and its being discussed there. We do not object to it. Whatever they may do, it is their affair. But we have not received any copy. I do not say that it should be introduced. Normally, when the States Reorganisation Bill was circulated to the State Legislatures for their opinion, we were supplied copies of the Bill even before it was formally introduced. I think we considered it simultaneously. Now, I do not know as to why in this particular case, when it involves such an important Constitutional point—and it has given rise to so much controversy, the President has been pleased to send it to the State Legislature, things are in the papers—we, Members of Parliament are not being given copies of the same. Therefore, I would request you to kindly convey it to the quarters which are responsible for it, so that even before the introduction of the Bill we get the Constitution (Amendment) Bill and this Acquired Territories (Merger) Bill, which are being discussed there. It is not good for us . . .

MR. CHAIRMAN: Shri Lal Bahadur Shastri.

12 Noon

THE COMPANIES (AMENDMENT) BILL, 1960—continued

THE MINISTER OF COMMERCE AND INDUSTRY (SHRI LAL BAHADUR): Mr. Chairman, it is obvious from the speeches made by hon. Members from this side and also from the opposit

SHRI LAL BAHADUR It is not advisable to accept that approach, and

The House will see and Mr. Dahyabhai Patel also that the Sastri Committee was given limited terms of reference. They were asked to suggest ways and means to simplify the Companies Act of 1956 and to plug the loopholes wherever they found it necessary. In fact the Committee was appointed with a view to reducing the difficulties or inconveniences which the corporate sector had to face on account of the 1956 Act. But what has been their recommendation? They have suggested various measures for plugging loopholes and also for simplifying the Act here and there. But the changes taking place were so rapid and quick that they had to suggest or rather they had to make various proposals which in a way could be said to have gone beyond the terms of reference. It may not be technically so, but the changes that were taking place were so vital and important that even the Sastri Committee could not ignore them, could not ignore the facts and the evidence that were placed before them in regard to the working of the companies. The Sastri Committee was not a political Committee or an official Committee; it was a Committee composed of able non-officials, and of course presided over by an eminent Judge. So, that Committee has put forward proposals which have more or less been incorporated in this Bill. In the circumstances I do not know how some Members have suggested that the Government wants to take over more powers and thus interfere in the working of the companies. It is true that Government have also suggested new amendments, and they were suggested in the Select Committee itself. Some of them are very important like special audit and inter-company investments, but the whole Bill is more or less based on the report of the Sastri Committee.

It has been said that we have taken large powers, and mention has been made in this connection of clause 71 which empowers the Central Government to direct a special audit in certain cases. Mention has also been made of clause 101 regarding the appointment of sole selling agents, of clause 113 about directors being permitted to draw remuneration within the prescribed limit without the permission of the Government, of clause 132 requiring the approval of the Government for a contract between a company and an associate of its managing agent for the supply or rendering of any service other than that of managing agent, and of clause 138 extending the present provisions about inter-company investments within the same group to all investments. These provisions are incorporated in the Bill no doubt. Some hon. Members have said that these powers should not be taken by the Government because they have some doubt about the proper implementation or execution of these powers by the Company Law Administration Department. Of course, a suggestion was made that the powers should be delegated to a statutory body and that the Department should have little to do with them. This suggestion was perhaps made only by Shri Santhanam and that too he mentioned about it casually. However, this suggestion was seriously made in the other House by Shri Asoka Mehta and he said that a statutory body should be set up which should look after the companies and implement the law.

SHRI BHUPESH GUPTA: I also suggested that independent authority should be given to the Company Law Administration. I did not go into the legal question to save some trouble and also to keep it free from political and other influences.

MR. CHAIRMAN: He is very considerate.

SHRI BHUPESH GUPTA: He is used to looking after elections, companies and the Ministry.

SHRI LAL BAHADUR: But Sir, when Shri Asoka Mehta made this suggestion this was greatly welcomed by Shri Masani. I am surprised that it should also be welcomed by Shri Bhupesh Gupta.

SHRI BHUPESH GUPTA: No, Sir. Don't be afraid. I have nothing to do with Shri Masani. I say it should be armed with such powers as would enable it to strike against the very forces that bolster up Shri Masani and big money. That is what I want.

SHRI LAL BAHADUR: But when it was welcomed by Shri Masani, Shri Asoka Mehta came up with another suggestion, and he said that along with a statutory body, a tribunal should also be appointed and that it should be a permanent statutory tribunal. That tribunal should dispose of the applications and the appeals of the companies against the orders of the statutory body. So, he thought that these were two complementary bodies which should be established, and not one without the other. When it referred to the appointment of a tribunal, there was a great protest from Shri Masani and he said that it would be a wrong thing and that only the High Courts should be allowed to deal with applications or appeals made by the companies. I personally think that for quick and prompt work, some kind of a tribunal will also be necessary, not only for quick and prompt work but also for truly safeguarding the interests of the corporate sector, some kind of a tribunal has to be appointed. These are basic matters and very important ones. I do not want to say one way or the other about this proposal at the present moment, but it will have to be considered very carefully and what form of organisation should be there will have to be given very careful thought before coming to a final decision. In the existing circumstances, I feel that we will have to strengthen the Company Law Department. Of course, it is not correct to suggest that the officers will merely function in an arbitrary way.

SHRI SUDHIR GHOSH (West Bengal) May I interrupt the hon Minister just one moment?

MR CHAIRMAN Why don't you wait till the end and then put your question?

SHRI SUDHIR GHOSH I will take just one moment. When an entrepreneur tries to promote a company, he first goes to the Development Wing of the Ministry of Commerce and Industry and runs from pillar to post and then goes to the Secretariat of the Ministry. Then he goes to the Ministry of Finance because the Controller of Capital Issues is a part of the Ministry of Finance. Then there is the Company Law Administration responsible for the overall

MR CHAIRMAN What are you saying?

SHRI SUDHIR GHOSH I am only making a suggestion to the hon Minister to kindly consider the possibility of greater co-ordination between these different parts of the Government in order that those who want to promote these companies—and there will be a very large number of them in the Third Five Year Plan period—may be saved a very great deal of harassment and bother. This is only an appeal that I am making.

MR CHAIRMAN Why do you make the appeal in the course of the speech? It is not interruption, it is not asking for illumination or clarification but you are making another speech about it.

SHRI LAL BAHADUR The hon Member has referred to certain matters which are not very relevant in this connection, yet what he said is right, and every effort should be made to co-ordinate the activities of the different Departments in so far as the promotion or setting up of a company is concerned. This is a different matter altogether.

I was saying that it is not quite correct to suggest that the officers

generally take an arbitrary view or that they will not give a fair and just deal to the companies or to the corporate sector. The other day I said that the services should function in a way which will create confidence in the people about them because it is the services who are in a way the permanent rulers. Government, of course, is there for five years. Governments may change but they still remain there and it is very essential that the day-to-day activities and working of the Department should be regulated and controlled by them. Of course, in policy matters the Government should have the final say and whatever the policy, it must be implemented by the Departmental officers. It will be a bad day if our people have no confidence, or their confidence is reduced, in the services and it is therefore that Lord Cohen, Chairman of the Cohen Committee, who is considered to be a great authority on company law, observed some time back that—

“No modern system of company law can be satisfactorily administered except through a strong and competent civil service for it is of the essence of any such system that effective power must be given to the executive and a large measure of discretionary authority must be necessarily vested in the organisation responsible for the administration of the Companies Act.”

This is what Lord Cohen had to say.

SHRI BHUPESH GUPTA You listen to what we have to say.

SHRI LAL BAHADUR But sometimes there are other people who are wiser than we or the Leader of the Communist Party.

I do not want to formally pay a tribute to my Department, the Department of Company Law Administration, but I can with confidence say that we have not received any serious complaints or complaints of any

major nature against any of the orders of our Department. They have done very well indeed, and I am surprised that no such complaint was made either in this House or in the other House except for Mr Shervani who unfortunately sits on these Benches. But I must say that I was amazed to hear his speech, and he mentioned a case which was his own a personal case. It is always better for the Members of the House, when they make speeches on such measures, to avoid making references to their own or to their personal cases, and even in that case, the matter was considered twice by the Company Law Advisory Commission . . .

SHRI BHUPESH GUPTA. Probably he did not find some other Congressman to take it up.

SHRI LAL BAHADUR . . . and not by the Department. And those two cases were referred to the Company Law Advisory Commission and the decision of the Company Law Advisory Commission was with the approval of the Government, conveyed to them. Otherwise too, Sir, I must say I was disappointed with his speech, because there was hardly any impact of our Congress policy or Congress objectives on the criticisms and observations he made. However I do not wait to suggest that our officers are not liable to err. They may make mistakes; they are fallible, and we have to be extremely careful in our actions. In fact I have myself been advising them about their shortcomings and I have been pointing them out. I am prepared sometimes to put up with the shortcomings or mistakes of non-officials or of the managing directors of the companies, but it is very painful for me when I find that our officers are not fair or just to them sometimes, I mean those who are in power and in authority have to be extra careful and they must function in a way which will give a fair deal to those who come in contact with them. In this background, Sir there is at the

present moment no other alternative but to allow the Company Law Department to function as it does and there is no other alternative for the Government but to take discretionary powers. Shri Santhanam criticised the latter. On the one hand we have to administer the law and then Shri Santhanam also wants that it should be so administered that there is no harassment to the people, that it should be tempered with justice or mercy or whatever he might like to say. Well if you want that we should exercise our powers in a sympathetic manner, then Government will have to take some discretionary power as Lord Cohen has said. The only point is that these powers have to be used in a fair and just way and should not be discriminatory. That is . . .

SHRI K. SANTHANAM (Madras): May I point out to the hon. Minister that that was not the main point. To give the officials power in regard to matters in which they have to discriminate in favour of one person against another may tend to lead them to temptation and may give scope for a charge of discrimination against them which whether justified or not, will damage the Government.

SHRI LAL BAHADUR. It is inevitable. I wanted to mention about that later. For example there is the question of the remuneration of different companies or of their managing agents or managing directors; you have to make some distinction in so far as the remuneration of different companies is concerned. For the future we have prescribed a *s'ab* and we have prescribed a ceiling. Within those limits the remuneration has to be fixed. But there are companies and companies. Some have got very large investments and some have got comparatively small investments, some make very high profits and some comparatively low profits. All these matters have to be gone into and different scales prescribed, and in so

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far as future companies are concerned it is easier, because we have prescribed the limits. But what are we to do about the old companies or the existing companies, the big companies, the big managing agents which are expanding? For example, there are the Tatas, the IISCO and the TISCO, and if you reduce their remuneration to a level lower than what they were getting up till now well, it may not be fair, and they may naturally feel discouraged. Even when the Government prescribes new scales of pay the existing incumbents are not touched, then continue to get the old scales of pay, but the new scales of pay apply to the new incumbents. Similarly we have been faced here with some specific cases and where we have tried to reduce their remuneration they have come up with strong protests and I felt there what they said was reasonable, and in those circumstances we had to make some distinction between the remuneration given to one and that given to another.

SHRI BHUPESH GUPTA In some cases the remuneration has been raised by the Company Law Administration. Why did they raise it?

SHRI LAL BAHADUR There also Shri Bhupesh Gupta will have to look into the cases and then come to the right decision. I am prepared to explain each and every case to him, because I am fully convinced that what we have done is right and I say so because we have not received any complaints. These big people, they are very jealous of each other, and if there is any unfairness on the part of the Department in fixing the remuneration I have no doubt I shall receive a number of complaints from the other parties. But we have not received any complaints and it proves

SHRI K. SANTHANAM I appreciate the argument, but are the discretionary powers not applicable to

future companies? They are not only applicable to present companies but also to future companies.

SHRI LAL BAHADUR It is so, and I said so, but it would be easier in future because this kind of slab which we have now introduced was not there before, I mean in the 1956 Act, so it will make our tasks easier. Still, as I said, there will be some discretion with the Department to prescribe the remuneration. Besides this, I might inform Shri Santhanam and Shri Bhupesh Gupta that the question of remuneration is not decided directly by the Department. There are other discretionary powers also besides the remuneration. Those applications are immediately sent to the Company Law Advisory Commission. The Company Law Advisory Commission is an independent body with one of the retired Judges as Chairman and there is a professor of economics, head of the department, of the Madras University, and a representative of labour, who happens to be a Member of the Lok Sabha, a representative of the industry, and a very senior chartered accountant. This is the composition of the Company Law Advisory Commission. It is this representative body that considers all these applications and passes the orders. Of course Government have got the power to modify their orders, but generally our practice is to accept what the Company Law Advisory Commission recommends. So this is the position. We take all care. In these circumstances, Sir, I do not think we can be charged that the discretionary powers are being misused or might be misused in future. In this connection I might refer to what Shri Chettiar has said. He criticised that certain powers which were delegated to the Company Law Advisory Commission were being withdrawn, but he must accept that when he pointed it out to us in the Select Committee we amended it. It is true that there were two such clauses and they had to be modified, but I might assure him that we do

not want to withdraw any powers of the Company Law Advisory Commission. In fact, if necessary we might consult the Company Law Advisory Commission in many other matters also.

Sir, in regard to certain provisions about which criticisms have been made, I shall refer first to special audit. Personally I feel that the special audit clause is absolutely necessary both for the companies as well as for the Government. It is no use, Sir, to interfere in any company administration or in any company matter when things have gone beyond redemption. I could have quoted a number of cases but there is hardly any time. I am in possession of reports of different companies which go to show that they have either gone into liquidation or they have closed down because of gross mismanagement or bad investments. These reports are not given by Government officers, but they have been given by committees generally consisting of one officer, a representative of the industry and the third, either a chartered accountant or another representative of the industry. So, these are practically non-official committees. They have looked into a number of concerns, and they have come to the conclusion that the company concerned was mismanaged and there were other failings also. When all that had happened, the Government was asked to intervene or was asked to take over, which is not a very good proposition for the Government. There are cases of textile mills and others also. So, it is better that the Government should be armed with powers to intervene at a stage when it might be possible to prevent the company from being closed down or from deteriorating further. That is, its deterioration is to be checked. Therefore, we feel that it is necessary that the Government should intervene at the proper time. But I must say that great care has to be taken in taking this step.

Sir, this special audit is not going to be a normal affair. I do not agree

with what Shri Santhanam said, that special audit should almost be made a regular feature. There should be a dozen or two dozen special auditors who should go about visiting companies, he said. I have no doubts that there are many companies which are managing their affairs very well indeed. They will consider it an encroachment on their right for any other auditor to go and look into their accounts. Therefore, I do not favour that idea. But if reports are available with us, if there is a *prima facie* case, Government should send a special auditor to look into those concerns. But, as I said, it will have to be done very carefully.

SHRI BAIRAGI DWIVEDY (Orissa): Has it been done in the case of Orissa Textile Mills?

SHRI LAL BAHADUR: So much discussion took place about that, and I have met almost all the Members of Parliament from Orissa in that regard. I do not want to deal with that case at present.

SHRI BHUPESH GUPTA: May I seek a clarification to a little point? Quite apart from the provision that is there in the Bill, in the other House, Mr. Kanungo went out of his way to give an assurance that only in exceptional cases, and that too by the Minister himself, this special audit will be ordered. What is the idea of giving such an assurance when the provision is there that it is at the discretion of the Minister to see that the auditor is appointed. The hon. Minister gave this assurance to whom, to please whom?

SHRI LAL BAHADUR: The question of giving such assurance is like this. It is to be admitted that when special audit takes place, it brings discredit to that company. It cannot be denied. It must be admitted that it does bring a bad name to the company. So we had to take special care that only when the Department or the Government was satisfied that there had been a *prima facie* case we should intervene. Purely on conjectures or on indirect allegations or

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general complaints, we cannot go into the accounts of a particular concern and arrange for a special audit.

SHRI AKBAR ALI KHAN: (Andhra Pradesh): Or on the reports of Communists.

SHRI LAL BAHADUR: Therefore, two or three things have to be done. It is better that the party concerned should first be given an opportunity to explain its point of view. There may be two things. The Department can ask that party to come and explain about the charges or allegations.

SHRI BHUPESH GUPTA: Where is the provision in the Bill?

SHRI LAL BAHADUR: It will be by an executive order.

SHRI BHUPESH GUPTA: Why should it be by an executive order? It is a very important thing and the hon. Minister should clarify that point. He is adding to the Bill by saying that the company would be asked to give an explanation. Thereby the whole purpose will be lost because the company will be notified that the Government have received certain allegations against them, that a special audit would go to them. Therefore, they should settle their affairs. They would go in for double book-keeping and so on. Why should it be done? The hon. Minister should not add to the law. That is the danger.

SHRI LAL BAHADUR: If Shri Bhupesh Gupta had allowed me to proceed further, he would not have got so angry.

SHRI BHUPESH GUPTA: I am sometimes frightened.

Mr. CHAIRMAN: He is sometimes frightened.

SHRI LAL BAHADUR: Well, Mr. Bhupesh Gupta would certainly like us to be fair to everybody. Whosoever is guilty must be given an opportunity to explain. There are two ways of doing it.

[MR. DEPUTY CHAIRMAN in the Chair.]

There may be a preliminary enquiry or a preliminary investigation by the Department through their staff, inspectors, etc. Supposing we get some complaints. We have got our Regional Inspectors. We can ask them to make investigations and send their report.

In some cases we can ask the party concerned to come and explain. If their explanation is not satisfactory, we can ask for a special audit or we can hold further investigations. Or if there is sufficient material with us, we can go direct to the court and launch a prosecution.

The other thing is that we may not hold any enquiry and we may not give the party any chance to explain. For example, if we have got some specific evidence in our possession and the charges are of a serious nature, we need not ask the party to come and give any explanation. If we have got sufficient data and material with us, we can go direct to the court and launch a prosecution against that party. So, these are different ways, and some kind of instruction will have to be given to the department in so far as the implementation of this clause is concerned.

SHRI BHUPESH GUPTA: From what the hon. Minister has said, it is clear that this process of special audit will not be instituted unless the authorities concerned are satisfied that there is a *prima facie* case for it. Once they are satisfied that this matter should be looked into, why should all this notification be issued asking them to come and explain and so on? For example, if the Government thinks that my house contains certain prejudicial things, or my press, or my party for that matter, they do not send a notice to me asking me to come and explain. On the basis of that information they send a search party. They come and raid the houses of even Members of Parliament. But why is this softness being shown in the case of companies? This point

should be clarified because this is a new point. Mr. Shastri, please do not say things which will please them but will make the whole thing a farce.

SHRI LAL BAHADUR: Shri Bhupesh Gupta has to hear what the other Members have to say on this clause. There are two different points of view expressed. Mr. Chettiar, behind me . . .

SHRI BHUPESH GUPTA: Reject him.

SHRI LAL BAHADUR: Accept what he says in your favour and reject what you do not like. If he holds a strong opinion on a particular matter with which Shri Bhupesh Gupta does not agree, he should not be rejected. I cannot take an one-sided view. I must take a balanced view. Mr. Chettiar even went to the length of saying that he had very little faith in the bureaucracy or in the officers who are running the different departments.

SHRI BHUPESH GUPTA: He has faith in the managing directors.

SHRI LAL BAHADUR: For example, he said that all the cases should come up before the Minister, that is, the Minister should . . .

SHRI T. S. AVINASHILINGAM CHETTIAR (Madras): I object to this interpretation. We must have faith in our officers, but what I said was that when large powers are exercised, there is a possibility of their being prejudiced. That must be guarded against. That is what I said.

SHRI LAL BAHADUR: Therefore, we have to see . . .

SHRI BHUPESH GUPTA: Now say whose advice are taking, his or mine?

SHRI LAL BAHADUR: I shall take the advice of both and do whatever is correct. As I said, we will have

to act in a different way in different cases, and I personally feel that it would be better that these cases concerning special audit come up before the Minister. There may not be many cases, and I think the officers themselves would like this, that is, before taking such action they would like to get the approval of the Minister so that the responsibility should be that of the Minister and not of the officers.

SHRI T. S. AVINASHILINGAM CHETTIAR: That is a formality.

SHRI LAL BAHADUR: That is formal, of course. I did not want to say, but in certain cases, if necessary, we may consult the Company Law Advisory Commission. Of course, we cannot do so in each and every case, but where we are in doubt we can consult the Company Law Advisory Commission in an informal way. However, I must say that this clause is absolutely necessary but the only thing is that it has got to be implemented as carefully as possible.

SHRI BHUPESH GUPTA: And with courage.

SHRI LAL BAHADUR: Of course, with courage, with determination, with grit.

SHRI AKBAR ALI KHAN: With justice.

SHRI LAL BAHADUR: About the managing agency system, much has been said by Shri Bhupesh Gupta. He has said that we have not abolished the managing agency system. I do not know, as section 324 of the Act is not before me, but there is no provision for the abolition of the managing agency system.

SHRI BHUPESH GUPTA: I did not say that there was any provision like that. I referred to Mr. Deshmukh's assurance in this House and the other. Let me make the point clear, Sir. He is the only co-operative Minister in such matters.

SHRI K. SANTHANAM: He objects to the other assurances. Why should he now refer to that assurance?

SHRI LAL BAHADUR: Whatever Shri Deshmukh might have said, the managing agency system has not been abolished, it is true, but if Shri Bhupesh Gupta would see the restrictions and checks we have imposed on the managing agents and the managing agency system, he would find that these have proved as a disincentive for the setting up of new managing agents. I was just now referring to the remuneration we have fixed. We have fixed a slab system both for the managing agents as well as for the directors and managing directors. We have restricted the period of renewal to five years. Formerly it used to be ten years. Now, of course in some cases we have made it ten years but generally we have restricted it to five years subject to renewal after five years, and in every order that it issued, it is made clear that it will depend entirely on Government policy as to what they will do after five years. It might be terminated altogether.

SHRI BHUPESH GUPTA: It is something like the Preventive Detention Act. It was for three years but it goes on. Likewise, here it will be for five years and it will go on.

SHRI LAL BAHADUR: The powers of the managing agents have been restricted. No managing agent can control or can manage more than ten companies. Similarly, it has been provided that no managing agent can take up any sole selling agency within a period of three years after the termination of his managing agency.

SHRI K. SANTHANAM: Except with permission.

SHRI BHUPESH GUPTA: Here again, you have the proviso. Why?

SHRI LAL BAHADUR: Those discretions are there not in one but in many matters.

SHRI BHUPESH GUPTA: Why this discretion?

SHRI LAL BAHADUR: I shall say something about this later on. The commission in respect of promotional expenses has been limited. It has to be found within the 10 per cent. which is prescribed. These are the various steps that we have taken during the last two years. Besides, if Shri Bhupesh Gupta will read section 324 of the 1956 Act which deals with managing agents, he would find that it is a very cumbersome procedure. For the Government to take a final decision about the termination of the managing agency system in a particular industry, not as a whole but for a particular industry, a certain procedure has to be followed and the procedure does not take less than two to three years.

SHRI BHUPESH GUPTA: Then you can amend the law.

SHRI LAL BAHADUR: Now, as Shri Bhupesh Gupta is enamoured of what is provided in the old Act and what Shri Deshmukh has said, I am merely referring to what is provided in the old Act.

SHRI BHUPESH GUPTA: I am not enamoured of that.

SHRI LAL BAHADUR: Instead of referring the matter to a committee for investigation, having the report examined in the Government and then, placing it before Parliament for a prescribed period and then taking a final decision after Parliament had considered and gone through it, what I did was this. It is a longdrawn out procedure and it would take a long time. I thought that it would be better to impose checks and restrictions on the managing agency system and try to reduce their powers as far as it was possible and reasonable. I think that the House would appreciate what we have done so far in this regard. I might also inform Shri Bhupesh Gupta—perhaps he has seen these figures—that out of 4356 companies formed, about 3105 are proposed to be managed directly by the boards of directors, that is, 71

per cent. of the companies are proposed to be managed directly by boards of directors.

SHRI BHUPESH GUPTA: I concede that.

SHRI LAL BAHADUR: About 1182 prefer management by managing directors. So, only 50 companies have managing agents.

SHRI BHUPESH GUPTA: Why were fifty sanctioned? What about the past ones?

MR. DEPUTY CHAIRMAN: Let him continue.

SHRI LAL BAHADUR: This at least is the trend. Shri Bhupesh Gupta, in a reasonable frame of mind, said that he wanted to see the trend as to which side the wind was blowing. In that reasonable frame of mind, I hope he would accept that the trend is entirely in that direction.

SHRI BHUPESH GUPTA: You will take two centuries at this rate.

SHRI LAL BAHADUR: Anyhow, this is undoubtedly a trend in the right direction because personally I feel that it is much better to have companies managed by Boards of Directors or Managing Directors and we should not perpetuate the system of managing agencies for a long time to come.

SHRI BHUPESH GUPTA: You are.

SHRI LAL BAHADUR: But I might also add that it has to be realised that we are passing through a transition period and in the economic field particularly, we are passing through a very difficult or critical period. Purely on ideological grounds or purely on certain whims of ours, we cannot take a decision which will in any way damage our economy. I will quote the names of two. Of course Shri Bhupesh Gupta will not like to mention the names of TISCO and IISCO. They are engaged in a very

vital industry, steel industry, and they are expanding their concerns on a very big scale. We want steel and our capacity will have to be doubled or trebled in due course of time. If there are concerns which are producing these vital goods, it would be wrong to take any steps which will come in the way of their development. As I said, they are going in for big expansion costing Rs. 20 or 25 or even Rs. 30 crores and those concerns are being managed by managing agents. If, for example, we decide that that managing agency should come to an end or should be terminated, what will be the effect on the production of steel itself?

SHRI BHUPESH GUPTA: Is it the Minister's contention that if the managing agencies are stopped, the production will stop and the steel mills will not produce steel but will produce some powder or some such things? Steel will be produced.

SHRI LAL BAHADUR: It will be produced but who will do that? After all, these people have got the technical knowledge. They have the skill and they are doing this thing for some time past. Of course the Government have their projects, not one but 2 or 3 and may have even the 4th soon but is it advisable in the existing circumstances to discourage them and not get the goods which we badly need or want? It is not only in the case of Tatas but I say it in the case of drugs or chemicals. These are important industries. In chemicals we are in a bad way. Our import bill is exceedingly heavy in so far as chemicals are concerned. It would not be really possible to take up each and every industry. You cannot deal with everything in the public sector. It is better that others are given opportunities. In that case, it becomes necessary in the initial stages, to allow the companies to manage their affairs in the way they consider best. Therefore, as I said, in certain cases we may allow the managing agency to continue but, as I said, the trend

[Shri Lal Bahadur.]

is in the other direction and out of thousands of companies, only 50 companies have come up with the proposal of managing agency being introduced in their concerns.

I am sorry that there is not much time left. About the public and private companies I shall not say much but Khandubhaiji suggested that private companies should be abolished and Shri Avinashilingam Chettiar expressed the view that private companies should be prohibited from obtaining deposits from the public. This is also another question which deserves cool consideration. I do not think Khandubhaiji will advise the abolition of private companies altogether or immediately. The figure of 50 has been prescribed. I think it is a reasonably small number. Shri Bhupesh Gupta was also critical of this figure. He says that if there are 51 or 52, it becomes a public company and if it is restricted to 50, it will mean a private company. Anyhow, a figure will have to be prescribed, some figure must be there but I do not see any reason again in coming in the way of individuals or families taking initiative in the matter of putting up factories or concerns. If there are groups of people who want to set up an industry, they can certainly form a private company and now in the case of private companies also, we have provided that they must submit their accounts and balance-sheets to the Registrar. Till now the private companies did not submit their accounts and balance-sheets to the Registrar. So they will now be submitted to him and the Government will be able to know something about the working of those companies.

In so far as the private companies are concerned, if they come within the definition of the law, I do not think it would be advisable to take any other step at the present moment. The clause, in the Bill, has put certain restrictions and on account of that, a large number of private com-

panies will have to be converted into public companies. If more than 25 per cent. of shares have come from any public company or corporate sector. What Chettiarji has suggested is a matter which deserves further consideration but anyhow, these things can only be considered when we come up for another amendment of the law but I think both Mr. Santhanam and Shri Chettiar said that they were not enamoured of new amending Bills being brought to the House soon. Both of them wanted that we should give a fairly good trial to the existing law and then alone think of amending it. If they hold that opinion, naturally, it will take time before we come up with any further amendments.

As regards Government companies, Shri Patel pointed out—and I agree with him and I must accept—that the Government companies in the initial stages did not submit their accounts, etc. in time. They were warned. The Company Law Department wrote to them and advised them that they must organise their accounts and the writing of their reports etc. in a methodical manner as prescribed and that both finance as well as administration should be looked after in a better way.

We did show some indulgence, 1 P.M. because these companies were in their initial stages. They had just been formed and they were new to this work. So we were somewhat soft with them in the beginning.

SHRI DAHYABHAI V. PATEL: (Gujarat): Sir, does the hon. Minister consider that the new entrepreneurs who start a business are experienced in their lines and they could be dealt with severely and that the government officers who deal with public money should be dealt with lightly?

SHRI LAL BAHADUR: I may inform the hon. Member that we are very lenient to all, to these others also so far as technical mistakes are concerned. If technical mistakes

are there, say the non-submission of reports in time or the non-submission of accounts in time and so on, they are warned and advised. We do not go further than that. And even if cases are sent to court, the parties are called upon to pay fines of Rs. 5 or Rs. 10 or Re. 1/-. Such small fines are imposed. Anyhow, we have now written to the government companies and to the government concerns that henceforth we are not going to be lenient and proper action will be taken against them if they defaulted, in the submission of reports, and balance-sheets, etc.

One word about the Department itself. As I mentioned at the beginning, there is no doubt that the Department has to be strengthened and there should be decentralisation also, as suggested by Shri Santhanam. Our difficulty is that at the present moment Government does not think in terms of expanding any department. Parliament is also insistent that there should be economy and no further commitments should be made. So we are really placed in a very difficult position. But I have already advised the Company Law Department to delegate as much power as they can to the Registrar and to the Regional Inspectors who are appointed in the different port towns. We may have to appoint officers at higher levels and with greater powers delegated to them in these port towns, at least to begin with. If we pass this law and it is found that we are not able to implement its provisions properly, fully and effectively, then naturally the House will come upon us and say that though we had taken these powers, we had really done nothing but only wasted the time of the House for no purpose. So it is essential that we should consider about strengthening the Company Law Department.

AN HON. MEMBER: Sir, it is one o'clock.

MR. DEPUTY CHAIRMAN: We sit through the Lunch Hour, for we have to complete this today.

SHRI LAL BAHADUR: I shall try to finish soon, Sir.

MR. DEPUTY CHAIRMAN: And we may have to go up to 6 o'clock.

SHRI LAL BAHADUR: Sir, Shri Bhupesh Gupta said something about the concentration of wealth in a few hands. There also if he will see the provisions of the Bill, he will find that for the first time we have imposed restrictions on inter-company investments and restrictions on the transfer of shares and we have also provided that Government will have power to appoint directors in particular conditions where the transfer of shares, etc. has taken place.

SHRI BHUPESH GUPTA: What are you going to do with regard to Jessops? There, shares are being transferred.

SHRI LAL BAHADUR: Well, you cannot prevent transfer of shares altogether and sometimes, in spite of what has been provided in this Bill—I am not talking of Jessops—these transfers are good and in the interest of the company. Sometimes inter-company investments are important and necessary in the interest of the particular concern, which either gets the transferred shares or transfers the money or shares. You should then give some latitude to the companies to work and cooperate among themselves. But if the transfers are with a view to cornering the shares and to get control over the concern and thus harass the minority shareholders, then the Government will have to come in and take action.

SHRI BHUPESH GUPTA: They are doing that with Jessops' shares. This is my complaint.

SHRI LAL BAHADUR: I do not exactly know the names of the parties. Some parties or one party may not get the majority of the shares in their hands.

SHRI BHUPESH GUPTA: Yes, Sahu and Jains.

SHRI DAHYABHAI V. PATEL: Sahu-Jains are their special favourites.

SHRI LAL BAHADUR: At present Jessops are being controlled by the Government under the Industries (Development and Regulation) Act and whosoever may have a majority of shares, so long as it is being administered by the Board appointed by the Government, it does no matter.

SHRI BHUPESH GUPTA: It does.

SHRI LAL BAHADUR: No, not so long as we are in charge of it under section 18 of the Industries (Development and Regulation) Act. What may happen after a period of, say, 3 or 5 years, I can't say. We control for this period and what will happen later on, Government will then decide. We take over a concern for a prescribed period under that Act and later on we leave it to the owners of the company and if in the meantime shares have exchanged, we cannot prevent it.

SHRI BHUPESH GUPTA: Shastriji is a very intelligent person and he knows that Rohtas are buying shares for Sahu-Jain with a view to getting control of it when the Government quits. They have been saying that they are in a better position to manage it and so why should the Government bother? It is only a question of time when the private concern will come in. They will do so when the Government quits. So it is wise to stop it even now. That is better than leaving it to come to that stage.

SHRI LAL BAHADUR: Anyhow, we know about these facts but we are not concerned with that at the present moment. As I said, we hold it at the present moment and propose to continue holding it for some time. So that question does not arise. What will happen later on, whether one Mundhra gives way to another Mundhra, Mr. Bhupesh Gupta is perhaps

hardly concerned with that. If later on it is mismanaged, then of course, the special audit is there and we can take action under the Act and whatever else is thought proper.

SHRI BHUPESH GUPTA: But the Government is . . .

MR. DEPUTY CHAIRMAN: Order, order. Let him finish. He is replying to the debate and you cannot make another speech.

SHRI BHUPESH GUPTA: I am not, I am not making another speech.

MR. DEPUTY CHAIRMAN: Let him finish his speech.

SHRI BHUPESH GUPTA: But the hon. Minister has yielded. If he does not yield, then, Sir, you can ask me . . .

MR. DEPUTY CHAIRMAN: You are disturbing so many times.

SHRI BHUPESH GUPTA: I am disturbing you, I can see that.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI BHUPESH GUPTA: There are methods in Parliament also. If he had not yielded . . .

MR. DEPUTY CHAIRMAN: Sit down, Mr. Gupta.

SHRI BHUPESH GUPTA: I will sit down and obey you; but sometimes we must remember rules. The hon. Minister has yielded . . .

MR. DEPUTY CHAIRMAN: He is replying to the debate and you are getting up every now and then. Let us get on with the business.

SHRI BHUPESH GUPTA: We are getting on with the business . . .

SHRI M. GOVINDA REDDY (Mysore): You are taking up the time of the House unnecessarily.

SHRI LAL BAHADUR: I am sorry I am giving opportunities for Mr. Gupta to get upset.

SHRI BHUPESH GUPTA: Well, we go on till 6 o'clock.

SHRI LAL BAHADUR: The provisions in the Bill are made with a view to preventing the concentration of wealth in a few hands. Of course, it is not something that only the Company Law Department has to do. There are other Departments and other Ministries also which will have to cooperate to effectively implement that policy.

Sir, I do not want to detain the House any further. I must say a few words about political contributions. I do not want to refer to what Shri Dahyabhai Patel said about a particular company and all that. That will take much time. Before I conclude, I wish, however, to say a few words on political contributions. Here again, it will be seen that it is a restrictive clause and we have imposed a ceiling which was not there before. The shareholders at the general body meeting could make any contribution, could vote any amount for political purposes or for any other welfare activity. So we have now imposed a ceiling and we have also provided for the disclosure. I think what we have done should be welcomed. In fact, when this Bill was being framed, I had suggested that a certain percentage of the profits should be earmarked for welfare of labour or for other social activities. I do not see any reason why that should not be done and I cannot appreciate the argument which is often advanced that a company is not a living body, and only an organisation and so it cannot think in terms of making any contributions and so on. Well, Sir, the companies are very much alive and they consider important and vital matters about the development of industries, etc. So I had a feeling that a certain percentage should be earmarked not for political purposes but for other activities. However, I was advised by the Department that this will be a radical departure from the past. I had suggested this perhaps at the end when the Bill was about to be introduced

and there was not much time. So I could not give much thought to it.

So far as such contribution by the companies is concerned, I consider that to be a good thing and I personally feel that we should go if possible further than what we have done in this Bill. But in so far as political contribution is concerned, there again every time we take the name of elections. It is not only for elections, but there are a number of other activities for which the companies may be interested to contribute. There is constructive work; there are developmental activities and there is perhaps no harm in any party getting some funds for such work. All parties are engaged in doing some kind of constructive or developmental activity and if they can get contribution from the companies, there should be no objection to that. There are papers, weeklies, dailies—perhaps Shri Bhupesh Gupta's daily also—and they also get contribution from companies.

SHRI BHUPESH GUPTA: We don't get.

SHRI LAL BAHADUR: And I do not think anyone should object to that. Seminars are held; training centres are run. There are many activities for which the companies could easily contribute although it will be a contribution to a political party. Elections do also come in and I agree that we should as far as possible make smaller collections. It is true that the Congress has never refused taking contribution from any group or party or any individual provided of course it is voluntary. Again, Sir, the question is how you do it. There is coercive method. Then there is another method. If a particular party has completely identified itself with a particular policy or with a particular set of people, it will get contributions automatically and the third is the method we have proposed in this Bill. Coercive methods of course are adopted sometimes in this country also. Shri Bhupesh Gupta will get angry but I do not know; they did not nationalise

[Shri Lal Bahadur.]
the concerns in Kerala and yet had a tremendous hold over those concerns.

SHRI BHUPESH GUPTA: What are they?

SHRI LAL BAHADUR: I do not know. In spite of the best efforts of the Chief Minister who is a very good man, he was not able to restrain his colleagues and workers. All kinds of complaints we received; I cannot go into all those complaints.

SHRI BHUPESH GUPTA: Did the Company Law Administration receive any complaints from Kerala that the Communists were coercing? Let them state it; otherwise the hon. Minister should not bring in such things. It is not fair.

SHRI LAL BAHADUR: Well, I am speaking here also as a Minister of the Government of India, not merely as the Minister of Commerce and Industry. I received complaints from other sources also, not the Company Law Department. What has been the result? The result has been that the Communist Government has been ousted by the people. Why? Because of a number of things which the Communist Party or the Communists did were wholly disliked by the people. Anyhow there were some complaints and as I said in spite of the best efforts of the Chief Minister he was not able to put a restraint on their people. Without nationalising, some kind of methods were adopted.

SHRI BHUPESH GUPTA: What are those methods?

SHRI LAL BAHADUR: We cannot adopt such methods. Well, Mr. Dahyabhai Patel will automatically get money from the companies because his views and policies are completely at one with the companies or the concerns.

SHRI BHUPESH GUPTA: We raised money from the streets of Calcutta and from the villages for election. Beyond our expectations money came in.

SHRI LAL BAHADUR: You do that also, but, Mr. Bhupesh Gupta, it is

better to be honest within ourselves. Publicly we may say anything but let us think honestly within ourselves and I have no doubt . . .

SHRI BHUPESH GUPTA: I would like you to share this honesty.

SHRI LAL BAHADUR: As I said in the other House, I do not want to hide my shortcomings. I do not say that I am above all shortcomings and that I make no mistake.

SHRI BHUPESH GUPTA: You are the best of the lot.

SHRI LAL BAHADUR: No, no. Therefore to say that you are making only small collections will not be quite correct. Small collections you do make; you have got devoted workers; there is no doubt about that. Yet, the failings are there; the deficiencies are there; they need not be denied. Therefore I suggest that the best method is what we have proposed. It is a voluntary method giving opportunity to any company to contribute what it thinks best. There is no element of compulsion in it. As it is getting late, I shall not take further time of the House. I have already expressed my views on this matter a number of times before but one thing is quite obvious. Any contribution does not produce an adverse effect on us; it does not touch our policies. It is obvious from the fact that I have come up with this Bill at this moment when the elections are not far off. Shri Bhupesh Gupta the other day said that the Government does not bring forward such measures when the elections are to take place. But here is a Bill which has been severely criticised by the vested interests, if you might like to say so, or by the capitalists or by big business. Yet we have boldly come up with this Bill both in the interest of the corporate sector as well as in general public interest because we feel that for the fulfilment of our objectives we must impose certain regulations and restrictions on companies and have sound concerns. If we have taken this bold step now, it

is obvious that we do not do it with any ulterior motive or we have put in this clause in the Bill with any other purpose. In the circumstances I think that it would be advisable to agree to this. Of course the decision on this matter was left to the members of the Select Committee. They have all agreed to it. Well, naturally it will be for the House . . .

SHRI BHUPESH GUPTA: Not all.

SHRI LAL BAHADUR: . . . to decide as it thinks best. Of course there are some amendments moved which will be considered later on but in order to save the time of the House I would request hon. Members not to press their amendments. In so far as verbal changes are concerned, they will be accommodated, only such changes, of course, which are in the power of the Chairman or the Speaker to accept.

SHRI BHUPESH GUPTA: You cannot change here the text.

SHRI LAL BAHADUR: Not here; anyhow we will have to consult the draftsman and then finally decide. As regards other amendments, I shall request hon. Members not to press them so that this Bill may be passed today.

MR. DEPUTY CHAIRMAN: Only patent errors will be corrected?

SHRI LAL BAHADUR: Yes, Sir.

MR. DEPUTY CHAIRMAN: The question is:

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

The motion was adopted.

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

Clause 2—Amendment of section 2.

SHRI K. SANTHANAM: Sir, I move:

1. "That at page 1, lines 14 to 18 be deleted".

2. "That at page 2, lines 8 to 12 be deleted".

The questions were proposed.

SHRI K. SANTHANAM: Sir, with your permission I will take up both the amendments together. Either they are accepted together or rejected together. I am moving them only for this purpose. This amendment was not recommended by the Sastri Committee; this was not in the original Bill but it had been brought in in the Joint Select Committee. The result of this is that many of the other regulations are nullified by these two provisos. I shall not take much time. I know the value of time. If company 'A' is the managing agent of company 'B', and company 'C' is a subsidiary of company 'B', 'A' can appoint 'C' as its sole selling agent, or 'C' can appoint 'A' as its sole selling agent, and all the relations who have been denied can be dumped in the subsidiary company and many of the provisions become null and void. I want to know whether the hon. Minister has contemplated this complication, this nullification of many of the provisions which he has introduced in the other Bill. If he is satisfied, then I will not press it.

THE MINISTER OF COMMERCE (SHRI N. KANUNGO): Yes, Sir. Those matters were considered and considering the other provisions of the Bill about selling agency and other inter-company relations we have deliberately liberalised it, the Joint Select Committee had liberalised it, in the sense that in certain relations between companies this should not be so rigid.

SHRI K. SANTHANAM: Sir, I beg leave to withdraw my amendments.

**Amendment Nos. 1 and 2 were, by leave, withdrawn.*

MR. DEPUTY CHAIRMAN: The question is:

**For texts of amendments, vide col. 1950 supra.*

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3—Amendment of section 4.

SHRI K. SANTHANAM: Sir, I beg to move:

3. "That at page 4, lines 38 to 41, the words 'if the entire share capital in that private company is not held by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India' be deleted."

Here again, the Sastri Committee said that this was not ordinarily desirable. But if you want to favour foreigners, to give them special privileges, this may be done. This shows that a private company in which Indians participate is penalised, while a private company which is purely foreign is given special favour. I think this is a wrong policy. I think this should not be done.

The question was proposed.

SHRI N. KANUNGO: This has been done deliberately, because the conception of the restrictions is not penalisation. It is more of what you call ethical management of financial relations between companies. Therefore, a private company in certain circumstances is to be deemed as a public company. Now, where the entire share capital of a private company is held by a body corporate elsewhere, we do not know what the laws are in those countries and how they change. Therefore, the interests of shareholders in India are not concerned. If the share capital of the company is held by corporations in other countries, whose nature and conditions are dissimilar to ours, we want to give preference. We want investment in our enterprises by people outside India. Therefore, this privilege has been provided for.

MR. DEPUTY CHAIRMAN: Do you press your amendment?

SHRI K. SANTHANAM: I do not press my amendment.

MR. DEPUTY CHAIRMAN: Has he the leave of the House to withdraw his amendment?

SHRI BHUPESH GUPTA: No, Sir. I oppose the leave.

MR. DEPUTY CHAIRMAN: I will put it to the vote. The question is:

3. "That at page 4, lines 38 to 41, the words 'if the entire share capital in that private company is not held by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India' be deleted."

The motion was negatived

MR. DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clauses 4 and 5 were added to the Bill.

New Clause 5A

SHRI DAHYABHAI V. PATEL: Sir, I move:

21. "That at page 5, after line 14, the following new clause be inserted, namely:—

'Amendment of section 13.

5A. In section 13 of the principal Act, in sub-section (1), after clause (c), the following proviso shall be inserted, namely:—

Provided that the objects set out in the memorandum of a company shall not include the making of any contribution to any political party or political fund.' "

The question was proposed.

SHRI N. KANUNGO: If my hon. friend wants only to elucidate this particular portion, then may I suggest that we can hold it back and discuss it with clause 100, because the same principles are involved.

SHRI BHUPESH GUPTA: We shall discuss it here and also in clause 100.

SHRI N. KANUNGO: I agree to that.

SHRI DAHYABHAI V. PATEL I will not take much time. I have only a few observations to make on this point. The hon. Minister, in his speech, particularly referred to me on two or three occasions and, therefore, I thought that in moving this amendment I would be justified in taking a little time of the House. The hon. Minister repeated again and again that contributions to political parties in this country are voluntary. It used to be voluntary at one time, when this country was fighting for freedom. People came forward to give voluntarily money for the fight for freedom. After that things have changed. Today the country is free. Every party is free to propagate its own policy and do its own propaganda. The distinction is that the ruling party, the party in power, has the power, has the prestige to press, to browbeat and, if I may say so, extort contributions. I am sorry that with the knowledge that I have I cannot say that it is not done.

SHRI BHUPESH GUPTA: And you have a rich knowledge of that.

SHRI DAHYABHAI V. PATEL: Therefore, I am opposed to it and I would press my amendment. I hope at least friends on this side would support me. I know many friends on the opposite side have the same feeling.

SHRI BHUPESH GUPTA I support this amendment wholeheartedly. After hearing the hon. Member, Shri Dahyabhai Patel, who has a very rich experience, as a Congressman of the

past, of how to get money and where to get money, you have to take him seriously. Today he may not be in the Congress Party, but he has got experience of the Congress Party. He speaks from knowledge and experience. And as you know he is a very tough man and he must have done a good job of it in his own time.

SHRI DAHYABHAI V. PATEL: I was not a Minister. You know that. My experience was when recently Rajaji came and they said: 'No, we cannot give any money'.

SHRI BHUPESH GUPTA: Here all that we want is this. Let it not be stated in the memorandum. It is a good suggestion that such things are not to be provided for. We are giving consolation prizes in this matter. What are the consolation prizes? Firstly, the memorandum provides for it. Secondly, after giving money to the Congress Party, they will publish it in their balance-sheets. So much has been paid . . .

SHRI N. SRI RAMA REDDY (Mysore): Why Congress Party only? Is it the only party that gets it?

(Interruptions)

SHRI BHUPESH GUPTA: This is not right. Therefore, let it go. I was amazed, because I have very great respect, personal regard, for Shri Lal Bahadur Shastri.

SHRI AKBAR ALI KHAN: Thank you.

SHRI BHUPESH GUPTA: Apart from being very modest in his attitude, he is also accommodating. The substance may not be there in that accommodation, but at least the form is there and forms are also good. He said that these things were voluntary. Well, everything is voluntary today. But then, he brought in other funds also. I say and I challenge that our party does not use it and I am prepared to go before any enquiry if any charge is there. We say money should be taken voluntarily. What did you do? You should follow that

[Shri Bhupesh Gupta.] pattern. You should announce it in the papers. I know it from my experience in Calcutta, when we thought of raising Rs. 50,000 for the Kerala fund. When it was Rs. 40,000 with two days to go and I was to leave for Kerala, I went round to my friends, lawyers and others, thinking that it would not be fulfilled and we published appeals in the papers. The next day, would you believe it, showers came; from the Dalhousie Square streams of employees came and filled in. We went with Rs. 81,000. That is how we collected from the offices and factories. Let the Congress collect like this. Here it is not what we do or do not do, but the company should not pay. Now, Sir, the company should not, in its memorandum, include that provision. It should not be given that right, as a company. Mr. Tata might give to the Congress Party and Mr. Naval Tata might give to the Swatantra Party and some other Tata might give to some other party. That is not the point. But a company should not. Among the shareholders there may be Congress supporters, there may be Communist supporters, there may be Swatantra Party supporters. Why should it go to one Party? How do you judge? Every rupee, every single unit of that fund represents the contribution of the whole or represents the whole thing in a fiduciary capacity of all the shareholders who may belong to various Parties. Why one Party and directors should decide it? So, this should not be permitted. The hon. Minister, Shri Lal Bahadur, should not bring in an extraneous thing. It has been said that it is a voluntary thing. You may ask Shri Biren Mukherjee of Martin Burn Company. After giving Rs. 2½ lakhs to the Congress fund, to Dr. B. C. Roy, did he or did he not say at the shareholders' meeting that he gave money because the Congress wanted it for elections and that it was a kind of blackmail? I put it to him, let him write a letter. In that case it is open to me to catch all shareholders and others and bring

in other types of evidence. Therefore, Sir, I do not say that Shri Lal Bahadur personally exerts his influence, that he will do something or not.

SHRI DAHYABHAI V. PATEL: I did not say either.

SHRI BHUPESH GUPTA: I do not blame this particular Minister. But, Sir, when they give money, they have expectations. There is a temptation after giving that money. Everybody may not be "Caesar's Wife" like Shri Lal Bahadur. Others may not be so virtuous as he is. Others may do some other thing. Therefore, this whole thing is wrong, the very concept is wrong.

MR. DEPUTY CHAIRMAN: That will do.

SHRI BHUPESH GUPTA: I have no quarrel, but Tata Iron and Steel Company should not be authorised to give any money to any political fund.

SHRI N. KANUNGO: I would submit that this clause is actually tied up as far as the idea is concerned with clause 100, and I am grateful to my friend, Mr. Bhupesh Gupta, that on the decision of this House on this clause the fate of clause 100 will be decided.

SHRI BHUPESH GUPTA: No. I never make such foolish remarks. I never made such a remark.

MR. DEPUTY CHAIRMAN: We will see about it. We will see what the effect will be afterwards.

SHRI BHUPESH GUPTA: You know very well what the effect will be. It has no relevance to the other thing.

SHRI N. KANUNGO: Anyway, the principles involved are the same. I would submit, Sir, that clause 100 is permissive. It is not obligatory on companies to contribute. As far as the ethical justification of companies contributing to political parties or political funds or individuals is con-

cerned, it has been discussed widely, and in the other House the clause has been accepted. It is merely permissive. I would go further and say that it is within the competence of the shareholders to direct the directors by passing a resolution that no contribution should be made. It is open to them to do that. Therefore, Sir, according to this particular clause where memoranda are already there, they have to go to the courts for their amendment. Therefore, I would submit that this principle should not be accepted, and I do not accept the amendment.

MR. DEPUTY CHAIRMAN: The question is:

21. "That at page 5, after line 14, the following new clause be inserted, namely:—

"Amendment 13. "5A. In section 13 of the Principal Act, in sub-section (1), after clause (c), the following proviso shall be inserted, namely:—

Provided that the objects set out in the memorandum of a company shall not include the making of any contribution to any political party or political fund."

(After taking a count)

Ayes: 5

Noes: 28

The motion was negatived.

Clauses 6 to 8 were added to the Bill.

Clause 9—Amendment of section 25

SHRI BHUPESH GUPTA: Sir, I move:

70. "That at page 6, lines 12—16, the words 'and, unless its articles otherwise provide, such body shall, if the Central Government by general or special order so directs and to the extent specified in the direction, be exempt from such of the provisions of this Act as may be specified therein' be deleted."

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

Sir, in the principal Act in section 25 the objects were specifically stated. The proposed amendment of the section gives blanket power to Government to exempt companies from the operation of a number of provisions of the Companies Act. In the principal Act the exemptions were specific. Everybody knew where the exemptions might be given, whereas in the Amending Bill the exemptions are left to the complete discretion of the Government. We think this may lead to a widespread misuse of the power. I do not know why this section should be changed. Many other things can come in. It was there all right so far as it went in the original Act, and why should this extension be given? Only when it comes to giving exemption to the companies, only when it comes to throwing the door open for malpractices and undue influences the Government yields to them, gives exemption. When it comes to tightening it, it does not do such a thing. Therefore, I commend my amendment to this House knowing full well that hon. Members may not see the wisdom today of accepting my amendment.

The question was proposed.

SHRI N. KANUNGO: Sir, I would merely say that the section in the original Act was certainly rigid. In the course of working it was found that it was too rigid, because all these types of associations which are registered as companies have got wide varieties of interests, and there are various grounds for the ceasing of membership, and all that. Therefore, the discretion has been kept. The variations in the conditions cannot be visualised and somebody has got to judge them, and therefore the discretion has naturally been kept with the Government. I do not accept the amendment.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): The question is:

70. "That at page 6, lines 12—16, the words 'and, unless its articles otherwise provide, such body shall, if the Central Government by gene-

(The Vice Chairman)
ral or special order so directs and to the extent specified in the direction, be exempt from such of the provisions of this Act as may be specified therein' be deleted"

The motion was negatived

THE VICE CHAIRMAN (SHRI M P BHARGAVA) The question is

"That clause 9 stand part of the Bill"

The motion was adopted.

Clause 9 was added to the Bill.

Clauses 10 and 11 were added to the Bill

Clause 12—Amendment of section 38

SHRI K SANTHANAM Sir, I move

4 "That at page 7, at the end of line 28, after the word 'alteration' the following be inserted, namely:—

'Provided that a member who does not agree to pay the higher rate shall be at liberty to terminate his membership on such terms as may be laid down in the Articles of Association''

Sir, I think the entire basis of Company Law is agreement. Nobody should have more liability than he has contracted for. By this amendment in the Bill a man is forced to undertake more liabilities than he can contract. He should not be asked to pay beyond that liability. I want an explanation as to how this compulsory liability is enforced on him.

The question was proposed.

SHRI N KANUNGO This is not a company in general in which case the principles which my friend has laid down are certainly salutary. The clause reads as follows:

"in any case where the company is a club or the company is any other association and the alteration requires the member to pay recurring or periodical subscriptions or charges at a higher rate although

he does not agree in writing to be bound by the alteration"

It envisages a type of association particularly a corporation type. Naturally the articles will provide it and the question of raising the subscriptions and all the charges will be there. The majority view will prevail.

SHRI K SANTHANAM He must have the right to withdraw. I do not say that the company should not do it. He must have the right to withdraw.

SHRI N KANUNGO That ought to have been provided in the Articles of Association normally, and if it is not, then he is bound by the obligations.

SHRI K SANTHANAM If it is not provided, what will happen? That is why I am giving the proviso, only for that purpose.

SHRI N KANUNGO If it is not provided in the Articles, I should not be a member of that association. It is my option, and once I have joined with the Articles of Association as they are, then I submit myself to the obligation on my own volition. Therefore, this type of association is not that type where the principles which my friend enunciated are obligatory.

SHRI K SANTHANAM I am wholly dissatisfied with the explanation.

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) Do you want to press your amendment?

SHRI K SANTHANAM I do not want to press my amendment. I shall withdraw it by leave of the House.

**Amendment No. 4 was, by leave, withdrawn*

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is

"That clause 12 stand part of the Bill"

The motion was adopted.

**For text of amendment, vide col. 1959 supra*

Clause 12 was added to the Bill.

Clause 13 was added to the Bill.

Clause 14—Insertion of new section 43A.

SHRI DAHYABHAI V. PATEL: Sir, I beg to move:

22. "That at page 7, line 34, for the words 'twenty-five per cent.' the words 'forty per cent.' be substituted."

23. "That at page 9, line 22, for the word 'or' the words 'and/or' be substituted."

SHRI BHUPESH GUPTA: Sir, I beg to move:

71. "That at page 8, lines 9 to 36 be deleted."

The questions were proposed.

SHRI DAHYABHAI V. PATEL: Sir, I do not think that a detailed explanation of the point is necessary. This is in regard to the existing practice pertaining to what are called wholly-held or private companies and they are trying to convert them into public companies by the force of law, by a piece of legislation, which is a sort of compulsion, and I am opposed to that type of compulsion. Yesterday in my absence, the hon. Mr. Sapru said something about my ideas being of the seveneenth century. I do not know what Mr. Sapru considers to be of the seventeenth century. He is an eminent lawyer, and I thought he would be able to express himself better. But I began my speech with a very recent quotation from Gandhiji, what he said two years before his death. What was law for the Congress Party till recently, is that of the seventeenth century? That is what I want to know.

SHRI BHUPESH GUPTA: Sir, my amendment is No. 71. Here is a very interesting thing. This provision, that is to say clause 14, creates a new

type of companies known as 43A companies. That is to say, under certain circumstances depending upon the holding of shares by a private company in a public company, the private company would be considered as a public company. In principle, as you know, we are opposed to having a set of companies called private companies. Therefore, whatever brings a large number of private companies under the category of public companies, we naturally support it. But here after making that provision for twenty-five per cent. shares being held in a private company by a public company to become a public company, a whole list of provisos has come. It is just like the Congress. They say a good thing and then say so many other things that the good is completely ousted and some other thing is provided. We have got private limited companies and public limited companies; we have got State-owned companies; we have now got these companies. But as far as big business is concerned, I have only one term for them—they are all 420 companies, if you like this expression. But here it will apply generally to big companies because such things do not happen in the case of the smaller fry, a company holding another company's shares and getting linked up with it. Here is a mechanism of concentration, but it is perhaps to bring under some kind of greater and wider control by the authorities certain private companies under certain contingencies. Well, having done that, there is fraud in page 8. You see, the entire thing—lines 9 to 36—deals with provisos, that in such and such cases it will not be so, private companies will not be treated as public companies, etc. and special care has been taken to placate this or that group of monopolists. Here if you analyse this thing, you will find that a large number of concerns with monopolistic elements who indulge in this kind of thing would escape the liability under this particular section of the law, relying upon the provisos that we find here. Why there is this fun, I

[Shri Bhupesh Gupta.]

cannot understand. And now, he wants 40 per cent. In the other House Mr Masani wanted 33 3 per cent and in this House the Swatantra Party being a little older and wiser, they want the figure to be a little higher, 40 per cent. Good. They are wiser men. They will not be satisfied. He wanted the figure to be raised. When the shares of the private limited company to be held in a public limited company are prescribed to the extent of twenty-five per cent, he wants the figure to be raised to 40 per cent. Well, Sir, it is all right. We are a House of Elders and therefore such things are understandable but then that is their wisdom. But my quarrel is with the Government. Why is this provision here? And Mr Kanungo made a lengthy speech and he read out parts of his speech, but he did not explain why it became necessary to make such a provision. The provisos say—

Provided that even after the private company has so become a public company.

Mind you, it is conceded that it has become a public company—

its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced below seven.

Provided further that in computing the aforesaid percentage, account shall not be taken of any share in the private company held by a banking company, if, but only if the following conditions are satisfied in respect of such share, namely—

(a) that the share—

(i) forms part of the subject-matter of a trust.

And everybody knows, who are involved in these trusts—

(ii) has not been set apart for the benefit of any body corporate, and

It is again a question who will benefit from this—

(iii) is held by the banking company either as a trustee of that trust or in its own name on behalf of a trustee of that trust, or

(b) that the share—

(1) forms part of the estate of a deceased person,

(ii) has not been bequeathed by the deceased person by his will to any body corporate, and

(iii) is held by the banking company either as an executor or administrator of the deceased person or in its own name on behalf of an executor or administrator of the deceased person,

“and the Registrar may, for the purpose of satisfying himself that any share is held in the private company by a banking company as aforesaid, call for at any time from the banking company such books and papers as he considers necessary.”

This rignarole is not so rignarole if you go deeper into it. Here after the provision was made pressure was brought to bear upon the hon Minister. And they are very pliable, they are very amenable to pressure so long as it comes from big money. And here, since those people started grousing over this matter, they have made certain provisions for exemption. Now, the exemptions will come in many cases why is that so? Why should this thing not be deleted? Have a straight deal, Mr Kanungo, if I may appeal to him through you. Why this circuitous way of moving? Why not straight? Either you say: “We do not want to create 43A companies because 420’ and big money will have to be satisfied”, or you

say: "We have created it without any exemption." Let them look after their interests otherwise; there are a hundred ways of safeguarding their interests. Why should the law itself provide for this kind of thing? It is not fair. Therefore I suggest that any amendment which only deletes the obnoxious and fraudulent provisos of this otherwise salutary provision, namely the proposed section 43A may be accepted. Only the provisos should be eliminated. Let the section go without the provisos, without Mr. Kanungo's solicitude for big money, and they will know how to look after their interests. I do not know how many times I beg of the Congress Party to take a little courage in their hands and do something in a straight and plain manner rather than try to create the impression as if they are hitting big money while in fact they are trying to placate it, trying to build up their pockets.

SHRI N. KANUNGO: I presume that all the amendments by both the Members have been moved. Sir, it is easy for me more or less, because the basic idea behind this clause is accepted, and the arguments for and against advanced by the movers have cancelled each other. So my job is simple.

SHRI BHUPESH GUPTA: But we have not cancelled you.

SHRI N. KANUNGO: But Mr. Bhupesh Gupta takes objection to these exceptions, and all I can tell him is—since I have no time to go to prove my *bona fides*, I mean my party's *bona fides*—if I had the time I could certainly do so—that a careful reading of the clause as it is will convince any fair-minded person that it is a salutary, workable, honest and fair provision.

SHRI BHUPESH GUPTA: Bad provision.

SHRI N. KANUNGO: No, because, after all what is the purpose of this clause? The purpose of this clause

is to provide a definition of the character of a private company, whether it is really a private company. A private company should not be permitted to be masquerading as a private company if there funds from public companies or from a very large number of people are invested, and while drawing up the clause you have to provide those conditions in which a *bona fide* private company is able to operate as a private company. Once you decide—as Parliament has decided—that there should be a category of private companies—the purpose of this clause being that a private company should be a fair private company and should not be on the border line of a public company and a private company—then I think these exceptions are necessary, irrespective of the motives which my friend attributes.

SHRI BHUPESH GUPTA: So you are not cancelled.

SHRI N. KANUNGO: I do not accept the amendments.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): The question is:

22. "That at page 7, line 34. for the words 'twenty-five per cent.' the words 'forty per cent.' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): The question is:

23. "That at page 9, line 22. for the word 'or' the words 'and/or' be substituted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): The question is:

71. "That at page 8, lines 9 to 36 be deleted".

The motion was negatived.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): The question is:

"That clause 14 stand part of the Bill."

The motion was adopted.

Clause 14 was added to the Bill.

Clauses 15 to 35 were added to the Bill.

New Clause 35A

SHRI BHUPESH GUPTA: Sir, I move:

73. "That at page 17, after line 24, the following new clause be inserted, namely:—

'Amendment 35A. In section 154 of the principal Act,—

(i) In sub-section (1), the following proviso shall be added at the end, namely:—

Provided that a company shall not close the register of members for a period of fifteen days next on which dividends are due ;

(ii) in sub-section (2), after the words 'specified in that sub-section', the following words, brackets and figure shall be inserted, namely :—

'or if a register of members is closed before the expiry of the period of fifteen days referred to in the proviso to sub-section (1),'

SHRI KISHORI RAM (Bihar): Sir, I move:

74. "That at page 17, after line 24, the following new clause be inserted, namely:—

'Omission of 35A. Section 155 of the principle act 155. shall be omitted'

The questions were proposed.

SHRI BHUPESH GUPTA: I want a proviso to be added at the end of sub-

section 154(1) and some words to be added in sub-section 154(2). Now the reasons for it are obvious from our point of view. We want greater scope. That is all. It does not change the structure or the tenor of the legislation. It only widens the scope in the interests of the public and the shareholders. That is why I am proposing this thing.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): You can reply to both the amendments, Nos. 73 and 74.

SHRI N. KANUNGO: Yes, Sir. This deals with the main section 154. I do not think, as Mr. Bhupesh Gupta has suggested, that this restricts unduly, because this clause has got to be read with the appropriate section in the Securities Act. Therefore, as the clause stands, it gives the widest opportunity for any fair claims. I do not accept his amendment. Nor do I accept amendment No. 74.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): The question is:

73. "That at page 17, after line 24, the following new clause be inserted, namely:—

'Amendment 35A. In section 154 of the of section principal Act,—

154.

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

'Provided that a company shall not close the register of members for a period of fifteen days next on which dividends are due.';

(ii) in sub-section (2), after the words "specified in that sub-section", the following words, brackets and figures shall be inserted namely : —

'or if a register of members is closed before the expiry of the period of fifteen days referred to in the proviso to sub-section (1),''.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): What about your amendment, Shri Kishori Ram?

SHRI KISHORI RAM: Sir, I beg leave to withdraw my amendment No. 74.

*Amendment No. 74 was, by leave, withdrawn.

Clauses 36 to 42 were added to the Bill.

Clause 43—Amendment of section 166.

SHRI K. SANTHANAM: Sir, I move:

5. "That at page 20, line 1, for the words 'in each year' the words 'in each calendar year' be substituted."

Sir, this is purely a drafting amendment. Here 'year' no doubt means 'calendar year' under the General Clauses Act, but I do not think that the Company Law Administration expects every auditor and every managing director to know anything about the General Clauses Act. Sir, in the original Act, in certain sections, like 360, the words "calendar year" have been used. I know that in the particular section concerned the amendment has taken away that "calendar year" and put in the word "year". But in all such cases an attempt should be made to make this clear throughout the Act as except in two or three places only the words "financial year" are used. Ordinarily any auditor or any company director will understand by this word "year" only the financial year, and so I thought it was best to make it quite clear, but if the hon. Minister thinks that it is better to be obscure, I have no objection, Sir.

The question was proposed.

SHRI N. KANUNGO: I would submit, Sir, that 'financial year' has been defined in the definition clause and 'year' is defined also in the General

Clauses Act. So there is no obscurity, I should say.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Do you press your amendment, Mr. Santhanam?

SHRI K. SANTHANAM: Sir, I beg leave to withdraw my amendment.

†Amendment No. 5 was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): The question is:

"That clause 43 stand part of the Bill."

The motion was adopted.

Clause 43 was added to the Bill.

Clauses 44 to 48 were added to the Bill.

Clause 49—Insertion of new section 187A

SHRI K. SANTHANAM: Sir, I move:

7. "That at page 21, line 43, after the words 'if he is a member of the company,' the words 'in his official capacity' be inserted."

Sir, the President and the Governors have two capacities, their individual capacity and their official capacity, and in clause 49 I do not know in which capacity they can be represented. It appears that a proper interpretation will mean both capacities, that as persons or as President and Governors they would be able to take advantage of this clause, but here I do not want that as citizens they should have any more privileges than any other citizen of India.

The question was proposed.

2 P.M.

SHRI N. KANUNGO: As citizens they cannot have special privileges. The shares are held in the name of the office and not in their own names. Therefore, there is no necessity for Mr. Santhanam to have, what you call, doubts as he has raised.

*For texts of amendments, vide col. 1967 supra.

†For text of amendment, vide col. 1969 supra.

SHRI K SANTHANAM Sir, I beg leave to withdraw my amendment.

'Amendment No 7 was by leave withdrawn'

THE VICE CHAIRMAN (SHRI M P BHARGAVA) The question is

"That clause 49 stand part of the Bill

The motion was adopted

Clause 49 was added to the Bill.

Clauses 50 and 51 were added to the Bill

Clause 52—Amendment of section 193

SHRI K SANTHANAM Sir, the present drafting is very poor but I do not want to move the amendment

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is

"That clause 52 stand part of the Bill"

The motion was adopted

Clause 52 was added to the Bill.

Clause 53 and 54 were added to the Bill

Clause 55—Insertion of new heading and new section 197A

SHRI M R SHERVANI (Uttar Pradesh) Sir I am sorry that the hon Minister has been made unhappy by my speech yesterday. All I tried to do was to place the various practical difficulties that are being faced by the corporate sector

SHRI BHUPESH GUPTA Sir, is there any provision in the Bill for giving satisfaction to the hon Minister?

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) Please move your amendment first

**For text of amendment, vide col 1970 supra.*

SHRI M R SHERVANI Sir I move:

25 That at page 24,—

(i) in line 18 the word 'and' be deleted, and

(ii) line 19 be deleted"

Sir, it is of vital importance to the smooth working and healthy growth of any organisation that there should be at least a No 2 man in every organisation. This amendment seeks to restrict the appointment of either a managing director or a manager. I feel that a manager who has some experience of dealing with the board of directors should be there, ready to take the place of the managing director, if the office is vacated due to any reasons so that the company does not have to find an outsider who will obviously take some time to get acquainted with the affairs of the company and during this period the work of the company will suffer

The question was proposed

SHRI N KANUNGO I think there is a misconception in the mind of the hon Member because in the clause only four categories of management are provided for, and the word "manager" used here is in the context of a specific definition given earlier in the Act, where it says

"'manager' means an individual who has the management of the whole or substantially the whole of the affairs of a company"

Therefore, a factory manager, a floor manager, a sales manager or purchase manager is not covered by the word 'manager'. Therefore, a company can have only one type of management. It cannot have a mixed type of management. The conception of a manager is not that of the general conception of manager, but of a limited quality of manager which is defined. Therefore, I do not accept this amendment

SHRI M R SHERVANI The point is that a manager is a person who manages . .

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) You cannot make another speech or give a reply to the reply.

SHRI M R SHERVANI I beg leave to withdraw my amendment

*Amendment No. 25 was, by leave, withdrawn

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is,

"That clause 55 stand part of the Bill."

The motion was adopted

Clause 55 was added to the Bill.

Clause 56—Substitution of new section for section 198—Overall maximum managerial remuneration in case of absence or inadequacy of profits.

SHRI M. R. SHERVANI Sir, I move:

27. "That at page 25, lines 20 to 36 be deleted."

SHRI BHUPESH GUPTA: Sir, I move:

76. "That at page 24, lines 32 and 33 be deleted."

77 "That at page 25, lines 8-9, the words '[exclusive of any fees payable to directors under sub-section (2) of section 309]' be deleted."

The questions were proposed

SHRI M R. SHERVANI Sir, this amendment has not taken into consideration a situation which obtains in a large number of small companies with a capital of say Rs. 10 lakhs and which make a profit of say about Rs. 2 lakhs Here the remuneration of the managerial personnel is confined

to Rs. 10,000. Now, Sir, this amendment seeks to include the rent-free accommodation or the rent for a house within that remuneration In a place like Delhi, Bombay and Calcutta, housing accommodation is not available for less than Rs. 400 or Rs 500 and, therefore, such person has to live within Rs 400 per month I feel that the small companies will not be able to find able men of integrity to come and work on this remuneration. Therefore, I feel that this amendment would cause great hardship to small companies situated particularly in big cities

SHRI BHUPESH GUPTA. I have to make a speech exactly opposite from the hon. Member's who just spoke before me He is upset because people would not be satisfied with Rs 4,000 a month. How much must we give him? Rs four lakhs a month? It is a question that I should like to put to the hon Member

SHRI M R SHERVANI I did not say Rs 4000 I said Rs 400 a month.

SHRI BHUPESH GUPTA: For once at least he stands closer to me. He is somewhere near the truth as far as the amount is concerned Yesterday he was talking of big amounts. Therefore, I got a little wrong impression But his contention I cannot accept He says that he wants the restriction to be removed What should be done really? As a matter of fact, more restriction should be put. But what has the Government done in the matter of managerial remuneration? The Companies Act provides for a maximum of 10 per cent of the net profit for the managing agents. I want deletion of this:

"The percentage aforesaid shall be exclusive of any fees payable to directors under sub-section (2) of section 309"

That is, they will not be taken into the calculations in computing his remuneration or in working out the

*For text of amendment, vide col. 1972 *supra*.

[Shri Bhupesh Gupta.]

percentage My amendment No 76 is about page 25 and I want the deletion of the words:

"exclusive of any fees payable to directors under sub-section (2) of section 309".

It is a strange way of dealing with these people. First of all defying all that we have said, you have amply provided for remuneration of the managing agency and for the managerial remuneration generally. You say 10 per cent. What does it mean? It means Rs. 5 lakhs. This will affect only the big concerns. After giving them Rs. 10 lakhs, you say that certain other things will not be calculated.

SHRI M R SHERVANI: There is a sliding scale. The 10 per cent is only upon Rs. 10 lakhs profit.

SHRI BHUPESH GUPTA. He deals with lakhs. He talks of Rs. 10 lakhs. One lakh is not a small sum. I do not know if I will ever see one lakh naye paise. To me, I know, it is a big sum. Whether he or some others, the question is, who gets the better of the Indian economic policy? Here these things will not apply. In their cases they will come to be applied, I mean in the case of richer concerns. There it is Rs. 50,000 minimum. He can get Rs. 50,000. Naturally it is possible. After providing a minimum of Rs. 50,000, they will get more exemptions and they are utilised by these people under different pretexts and heads with a view to getting calculations done by the Government. In effect, they get far greater remuneration than provided for under the Company Law. That is to say, this is an invitation to fraud, these phrases—"excluding this and that." It means they will take recourse to that particular section 309(2) to have calculations made to their advantage. Is it not pampering the upper classes? This is what they have been doing. You might get the impression that certain restrictions are there. Some hon. Members, sitting

on the other side, might feel—because people do not have the time to study these—that the Government is doing some drastic things but actually they smuggle in these little clauses. Sub-clause (2) of clause 56 is one such smuggling. Then towards the end of this particular clause, before the proviso comes another exclusion. Why? Who asked them? The managing agents certainly did ask for such things. They wanted as much exemption as possible, opportunities for fraud and further exemptions but did somebody else ask? I have gone through the evidence of the various witnesses that come from the various business quarters. All of them; in their evidence, were pressuring the Government to nullify the effect of some of the existing provisions and to accept some provisos and exemptions where the Government decided to make certain principal provisions. Those tactics seem to have worked very well. Why? Everybody knows that all kinds of tricks are perpetrated with a view to cheating the public and the shareholders. We say that the managerial remuneration has been fixed at a very high figure. Ten per cent is very high.

SHRI M R SHERVANI. I was not allowed to speak and he is speaking?

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA). You wanted to give a reply to the reply.

SHRI BHUPESH GUPTA. When you got up first, you should have followed me taking your chance and not waited for another reply. That you are not allowed.

SHRI M R SHERVANI. I will try to learn from you for the future.

SHRI BHUPESH GUPTA: We learn from each other. You learn from me that you must not go after lakhs of rupees. I learn from you that I should not speak for long. I ask the hon. Members to consider the exemptions. This is done deliberately to placate and help these very people

who have been at them ever since this Bill was proposed and sent to the Select Committee. I want to rescue Mr Kanungo from these undue influences, not that he has surrendered to them completely but since he is being pulled in that direction, it is time that we pull him to our direction.

SHRI M R SHERVANI I gave the example of small companies .

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) Shri Kanungo will reply

SHRI N KANUNGO As the House will see, there are two diametrically opposite views about the matter, which have been heard in the House which make my position very clear in the sense .

SHRI BHUPESH GUPTA You are like *Trishanku*

SHRI N KANUNGO that though I cannot prove the *bona fide* of my motives to Mr Gupta, I can say that considering all these things, this is a fair provision. The Director's fee is not a payment. It is reimbursing the person for sparing his time and labour as well as thought. Therefore in the law it has been exclusively taken out. At the same time the other items of perquisites including house rent, etc have been included. Therefore, taking the section as a whole, it is a fair provision.

SHRI M R SHERVANI Sir, I beg leave to withdraw my amendment.

*Amendment No 27 was, by leave withdrawn

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is

76 "That at page 24, lines 32 and 33 be deleted"

The motion was negatived

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is

*For text of amendment, vide col 1973 *supra*.

77 "That at page 25, lines 8-9, the words '[exclusive of any fees payable to directors under sub-section (2) of section 309]' be deleted"

The motion was negatived

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is

"That clause 56 stand part of the Bill"

The motion was adopted

Clause 56 was added to the Bill

Clause 57—Amendment of Section 204

SHRI K SANTHANAM Sir I move

9 That at page 26, lines 6 to 9 be deleted"

Sir, according to the original Act of 1956, a Corporation can be appointed for any place of profit other than the office of managing agent or treasurer, for a term of 5 years at a time, but now they have put in a new proviso saying

"Provided that the initial appointment or employment of a firm or body corporate to or in any office or place of profit as aforesaid may, with the approval of the Central Government, be made for a term not exceeding ten years"

I want to ask what was the experience, where was the difficulty, which company was found to be in great difficulty by not having these 10 years? Anybody can be appointed for 5 years and his term can be extended by 5 years. Now they say that they are imposing restrictions. The existing restrictions in the 1956 Act is being loosened. I cannot understand the rationale behind this new provision.

The question was proposed

SHRI P D HIMATSINGKA (West Bengal) These are provisions that have been introduced for the sake of

[Shri P D Himatsingka]

companies which are not yet started, big companies with a very large amount of capital. They take 3 or 4 years for setting up the thing for production and this provision has been required for that purpose.

SHRI K SANTHANAM All the companies can acquire a new office of profit in another company.

SHRI N KANUNGO Shri Santhanam's argument was that certain provisions, as they stood in the 1956 Act had been liberalised. That means the rigidity has been reduced. It has been reduced because at other places, more rigidity has been provided for. As far as this particular clause is concerned, take for example, a large manufacturing concern. It will need the services of another Corporation or several other Corporations for the supply of services and material and it may not be worth their while to enter into contracts for a shorter period. So somebody has to use the discretion whether a longer period is necessary. So it has been introduced.

THE VICE-CHAIRMAN (SHRI M P. BHARGAVA) Do you want to press your amendment, Mr. Santhanam?

SHRI K SANTHANAM No, Sir, I beg leave to withdraw my amendment.

SHRI BHUPESH GUPTA Sir, I oppose it.

THE VICE-CHAIRMAN (SHRI M P. BHARGAVA) The question is.

"That leave be granted to withdraw amendment No. 9"

The motion was adopted

*Amendment No. 9 was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI M P. BHARGAVA) The question is.

"That clause 57 stand part of the Bill"

The motion was adopted
Clause 57 was added to the Bill

*For text of amendment vide col. 1978 supra.

Clause 58—Substitution of new section for Section 205

SHRI K SANTHANAM Sir, I move.

10 "That at page 27, lines 5 to 10 be deleted"

11 "That at page 27, line 11, for the words 'Provided further that' the words 'Provided further that, subject to the provisions contained in clauses (a) and (b) of sub-section (1)' be substituted"

The question was proposed

SHRI K SANTHANAM Reading the clause as it is, it is defective. It is not my intention to change the substance but it is intended to make it coherent. Therefore I have moved my amendments.

SHRI N KANUNGO Sir, again it is a question of judgment and discretion, because conditions will vary from time to time. There are corporation programmes where there may not be any return or revenue for a number of years and it is unfair that the shareholders should be deprived of any return. Therefore, this has been provided that under given circumstances and if justified by the particular case, this can be exempted. Mr. Gupta, of course, says that too many exemptions are provided for. But it is necessary to do so, in fairness to the circumstances as they stand, and exemptions have got to be provided. So I do not accept the amendments.

SHRI K SANTHANAM Sir, I do not wish to press my amendments.

Amendment Nos. 10 and 11 were, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI M P. BHARGAVA) The question is.

"That clause 58 stand part of the Bill"

The motion was adopted

Clause 58 was added to the Bill.

Clause 59 was added to the Bill.

Clause 60 Amendment of Section 209

SHRI K SANTHANAM Sir, I move

12 That at page 29, lines 9-10, the words 'if in the opinion of the Registrar or such officer sufficient cause exists for the inspection of the books of accounts' be deleted'

Sir these words here— it in the opinion of the Registrar or such officer sufficient cause exists for the inspection of the books of accounts" are not necessary here and I feel it is bad drafting to put them here. If the provision was that it should be recorded by the Registrar that some such cause existed that I could have understood. Otherwise why should anybody, the Registrar or anyone else, go and inspect the books, if he did not think it necessary? What does the clause mean as it is? It is bad drafting and so I suggest that these words should be left out in the interest of common sense

The question was proposed.

SHRI N KANUNGO Sir, in these matters Shri Santhanam is a more competent judge than myself, but I prefer to be guided by the advice of the competent persons who are draftsmen and in this particular case, I am told that in view of several judicial decisions where the subjective mind of a person has been questioned, I am told this has got to be put in this particular way in order to make it quite clear that an objective mind has been brought to bear on it. I am not accepting the amendment

SHRI K SANTHANAM Sir, I do not want to press my amendment

Amendment No 12 was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is

"That clause 60 stand part of the Bill"

The motion was adopted.

Clause 60 was added to the Bill

Clauses 61 and 62 were added to the Bill.

Clause 63—Amendment of section 212

SHRI K SANTHANAM Sir I move.

13 That at page 31, for lines 28 to 31, the following be substituted, namely —

"(ii) as at the end of the last financial year of the subsidiary just preceding that of the holding company where such financial year of the subsidiary does not coincide with that of the holding company,"

The question was proposed

SHRI K SANTHANAM Sir, this again is a purely drafting amendment for as it is put in there in clause 63

"as at the end of the financial year of the subsidiary last before that of the holding company where the financial year of the subsidiary does not coincide with that of the holding company,"

I feel there is something really wrong with this drafting

SHRI N KANUNGO Sir, as I have already stated, in these matters I prefer to abide by the judgment of the Government draftsmen

SHRI K SANTHANAM I don't press the amendment

Amendment No. 13 was, by leave; withdrawn

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is

"That clause 63 stand part of the Bill"

The motion was adopted

Clause 63 was added to the Bill.

Clauses 64 to 70 were added to the Bill.

Clause 71—Insertion of new section 233 A, Power of Central Government to direct special audit in certain cases

SHRI DAHYABHAI V PATEL: Sir, I move.

28 "That at page 36, after line 24, the following be inserted namely:—

'Provided that before directing a special audit of the company's accounts the Central Government shall serve a notice on the company indicating the reasons why it proposes to appoint a special auditor and shall give the company an opportunity to show cause why such a special audit should not be directed and if the company shows such cause to the reasonable satisfaction of the Central Government, the said special audit shall not be directed

(1A) Where the Central Government makes an order under sub-section (1) or refuses to rescind any such order under the proviso thereof, the company or any person aggrieved thereby may apply, to the court and the court may, if it thinks fit, by order vacate any such order of the Central Government:

Provided that no order, whether interim or final, shall be made by the court without giving the Central Government an opportunity to show cause against any such application."

29 "That at page 37, lines 1-7 be deleted"

30 "That at page 37, line 9, after the words 'Central Government' the words 'shall furnish a copy of the report to the company and' be inserted"

31. "That at page 37, lines 14-16, for the words 'either a copy of, or

relevant extract from the report with its comments thereon' the words 'its comments thereon' be substituted"

32 "That at page 37, lines 16-18, for the words 'and require the company either to circulate that copy or those extracts to the members or to have such copy or extracts read before the company at its next general meeting,' the words 'and require the company either to circulate a copy of the report or such extract thereof as the Central Government shall indicate to the members or to have the report or such extracts read before the company at the next general meeting' be substituted"

The questions were proposed

SHRI DAHYABHAI V. PATEL: Sir, I move these amendments, because the provision at present in the Bill is very objectionable. Here a person is presumed to be guilty. That is a presumption that does not take place in the application of the criminal law and yet such a provision is sought to be put on the Statute Book in the matter of Company Law. It is the normal principal of law that a person must be presumed to be innocent as long as he is not proved guilty. But here you want to presume that the person is guilty and then the process of the law is directed against him, without even telling him what he is accused of and without giving him an opportunity to know what is the charge against him and then you want to hang him so to say to take action against him. This is fundamentally against law and also against human dignity and it is very unfair to have such a provision in this Bill. I do not know whether such a provision is there in Russia, but certainly there is none in this country and here there is no place for it. My hon friend, Shri P. N. Saprú, is not here now, for I would have liked to ask him whether he in his experience as a lawyer has come across such a provision and whether he would not consider it as belonging to the seventeenth century.

SHRI BHUPESH GUPTA: Sir, different points of view have been expressed here. The hon. Member just now was good enough to bring in the name of Russia also. Well, it is some 43 years since Russia disposed of big money.

SHRI DAHYABHAI V. PATEL: It is coming back the other way.

SHRI BHUPESH GUPTA: No, it is not, unless you go there. Only when you—I mean not the hon. Member—but persons like him go there, do they come across it.

SHRI DAHYABHAI V. PATEL: I am not invited, otherwise I would go there.

SHRI BHUPESH GUPTA: I would like to accompany my hon. friend, he is such a lovable person. But they do not see a capitalist there unless when someone of them goes there and then some of the children there like to see how they look like, the same as themselves or what. They are a little inflated, of course.

Anyway, here it is not a question of jurisprudence or dignity. We are dealing with certain socio-economic institutions, certain assumptions, certain experiences and certain realities. There are those that carry on profiteering, they carry on mal-practices, they carry on double book-keeping, they by-pass the law and they beg the Ministers.

SHRI DAHYABHAI V. PATEL: What do they do with the Ministers?

SHRI BHUPESH GUPTA: They bag the Ministers.

SHRI DAHYABHAI V. PATEL: Did the hon. Member say "b-e-g" or "b-a-g"?

SHRI BHUPESH GUPTA: Yes, sometimes beg and sometimes bag. They do both. And naturally, Sir, we are dealing with such a set of people. It is not an individual we are dealing with; it is not an ordinary criminal we are

dealing with. Since we are dealing with institutions which carry on such things, it is not a question of applying the personal law or the ordinary criminal law. Their operations have to be regulated and this is one of the ways of regulating their operations. Now, I do not wish to give the answer for the hon. Minister because he would not adopt my arguments and he is not listening to me either.

SHRI DAHYABHAI V. PATEL: But he is doing what you want without adopting your argument.

SHRI BHUPESH GUPTA: You people have formed the Swantara Party to have a lobby inside the Congress Party and push them continuously in the direction of big business and we have to sit through the lunch hour, as you know very well, in order to push them in other directions; otherwise, you see they take—these Treasury Benches—to the ways of sin very quickly. That is why virtuous people have to be there to show when the way of virtue. Therefore this should not be judged from this angle. And my friend knows very well where this kind of jurisprudence should be applied and where it should not be applied. Unfortunately such an able man as Mr. Dahyabhai Patel happens to be in a party that combines age with inefficiency.

SHRI N. KANUNGO: Sir, between the speeches of my two esteemed friends I have hardly anything to reply except that I do not accept either of the points of view.

SHRI BHUPESH GUPTA: Then you reply. If you had accepted my point of view, you need not give a reply.

SHRI N. KANUNGO: This clause is not for any punitive purpose or for any disciplinary purpose. This is merely for finding out facts. It is something which will keep the Government and if necessary the shareholders and the public informed of certain transactions as they happen in the companies. Therefore I am not prepared to accept any of the amendments.

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is:

2d That at page 36, after line 24, the following be inserted, namely —

'Provided that before directing a special audit of the company's accounts the Central Government shall serve a notice on the company indicating the reasons why it proposes to appoint a special auditor and shall give the company an opportunity to show cause why such a special audit should not be directed and if the company shows such cause to the reasonable satisfaction of the Central Government, the said special audit shall not be directed

(1A) Where the Central Government makes an order under sub-section (1) or refuses to rescind any such order under the proviso thereof, the company or any person aggrieved thereby may apply to the court and the court may, if it thinks fit, by order vacate any such order of the Central Government

Provided that no order, whether interim or final, shall be made by the court without giving the Central Government an opportunity to show cause against any such application "

The motion was negatived.

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is

29 "That at page 37, lines 1-7 be deleted "

The motion was negatived

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is

30 "That at page 37, line 9 after the words 'Central Government' the words 'shall furnish a copy of the reports to the company and' be inserted "

The motion was negatived

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is

31 "That at page 37, lines 14-16 for the words 'either a copy of or relevant extract from, the report with its comments thereon' the words 'its comments thereon be substituted "

The motion was negatived.

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is:

32 "That at page 37, 16-18 for the words 'and require the company either to circulate that copy or those extracts to the members or to have such copy or extracts read before the company at its next general meeting' the words 'and require the company either to circulate a copy of the report or such extract thereof as the Central Government shall indicate to the members or to have the report or such extracts read before the company at the next general meeting' be substituted "

The motion was negatived

THE VICE-CHAIRMAN (SHRI M P BHARGAVA) The question is

"That clause 71 stand part of the Bill "

The motion was adopted.

Clause 71 was added to the Bill

Clause 72 was added to the Bill

Clause 73—Insertion of new sect on 234A

SHRI K SANTHANAM Sir, I move

14 "That at page 40 lines 7-8 the words 'or deal with the same in such other manner as he considers necessary' be deleted "

Sir, I would like the House to read this clause and see if there is any sense in it

'Provided that the Registrar may, before returning such books and papers as aforesaid, take copies of.

or extracts from them or deal with the same in such other manner as he considers necessary."

[MR DEPUTY CHAIRMAN in the Chair]

He can take extracts, he can take copies. Beyond that I would like the hon Minister to say in what way he can deal with them. Can he deface a paper? Can he expunge anything from it? Can he destroy it? What is the thing that is contemplated by giving such wide powers to the Registrar to deal with them as he considers necessary? I would like to have a proper answer and if he does not give a proper answer I would like the House to accept my amendment so that the Government may feel that it cannot get anything passed by this House.

The question was proposed

SHRI DAHYABHAI V PATEL Sir, I support Mr Santhanam. Has the Minister given a proper answer to any thing since this morning?

SHRI N KANUNGO Sir I certainly plead guilty that I have not been able to give adequate satisfaction in way of replies to my esteemed friend, Mr Dahyabhai Patel, and I must confess that it is beyond my capacity.

About this particular amendment which has been moved by Mr Santhanam I have already said before that in the matter of drafting and elegance, perhaps Mr Santhanam's judgment and opinions are much better than mine.

SHRI K SANTHANAM It is not merely a matter of drafting.

SHRI N KANUNGO I am coming to it. After all it is a question of drafting when he asks whether it carries any sense or not. That is what Mr Santhanam has said. I can conceive of circumstances where actions other than those prescribed in the clause itself may be necessary. For one thing photostatic copies might be necessary.

SHRI K SANTHANAM That is a king of copies.

SHRI N KANUNGO Well signing or authentication of every page may be necessary or a particular binding may be necessary because if the hon Member goes through the evidence tendered before certain of the Commissions, he cannot imagine, as I have not been able to imagine, what ingenuities can be brought into play in the matter of tampering with the records. Therefore purposely this wide application has been provided for and the Registrar has been empowered, short of keeping the papers permanently in his possession, to see that the records are available for future inspection and when they are available they are not tampered with because the ways of tampering with records are so ingenious and so varied that you cannot mention all that sort of things in the clause itself. Sir I oppose this amendment.

MR DEPUTY CHAIRMAN Would you like to press your amendment?

SHRI RAJENDRA PRATAP SINHA (Bihar) Sir, I would object.

MR DEPUTY CHAIRMAN Not at this stage.

SHRI RAJENDRA PARTAP SINHA to his withdrawing the amendment.

MR DEPUTY CHAIRMAN All right, I will put it to the vote.

The question is

14 'That at page 40 lines 7-8, the words 'or deal with the same in such other manner as he considers necessary' be deleted.'

The motion was negatived.

MR DEPUTY CHAIRMAN The question is

'That clause 73 stand part of the Bill.'

The motion was adopted.

Clause 73 was added to the Bill.

Clauses 74 to 79 were added to the Bill.

Clause 80—Substitution of new section for section 250. Imposition of restrictions upon shares and debentures and prohibition of transfer of shares or debentures in certain cases.

SHRI DAHYABHAI V. PATEL: Sir, I move:

34. "That at pages 44 to 46 for the existing clause 80, the following be substituted, namely:—

"Amendment 80. In section 250 of the principal Act,—

(a) after sub-section (2), the following sub-sections shall be inserted, namely:—

(2A) (1) Where as a result of transfer of shares of a company, a change—

(a) in the composition of the Board of directors, or

(b) where the managing agent is an individual, of the managing agent, or

(c) where the managing agent is a firm or a body corporate in the constitution of the managing agent, of the company may take place, any members of the company who claim that such change would be prejudicial to the interest of the company may apply to the Court for an order under this section provided such members have a right so to apply in virtue of section 399.

(2) If on any such application the Court is of opinion that any such change would be prejudicial to the interests of the company, the Court may by order direct that the voting rights in respect of those shares shall not be exercisable by the transferees of those shares or any persons claiming through or under them for such period not exceeding three years as may be specified in the order.

(2B) (1) Where any members of a company have reasons to believe that a transfer of shares in a

company is likely to take place whereby a change:

(a) in the composition of the Board of directors, or

(b) where the managing agent is an individual, of the managing agent or

(c) where the managing agent is a firm or a body corporate, in the constitution of the managing agent, of the company may take place, such members may apply to the Court for an order under this section provided they have a right to so apply in virtue of section 399.

(2) If on any such application the Court is of opinion that any such change would be prejudicial to the interests of the company the Court may by order prohibit the transfer of the shares in the company for such period not exceeding three years as may be specified in the order."

The question was proposed.

SHRI DAHYABHAI V. PATEL: Sir, since the Minister says that he is not able to enlighten us any further, I do not think there is any use saying anything.

SHRI N. KANUNGO: No, Sir. I oppose the amendment because it goes completely against the particular clause in the Bill. The purpose of this clause is to freeze certain rights that will accrue.

SHRI BHUPESH GUPTA: He has not sought enlightenment.

SHRI DAHYABHAI V. PATEL: He is giving it now.

SHRI N. KANUNGO: At least I once agree with my friend, Mr. Bhupesh Gupta, that I cannot enlighten him or my friend, Mr. Dahyabhai, on this subject. I do not accept this, because it goes counter to the purpose of the clause.

MR DEPUTY CHAIRMAN The question is:

34. "That at pages 44 to 46, for the existing clause 80, the following be substituted, namely:—

'Amendment 80. In section 250 of the principal Act,—
250.

(a) after sub-section (2), the following sub-section shall be inserted, namely :—

(2A)(1) where as a result of transfer of shares of a company, a change—

(a) in the composition of the Board of directors, or

(b) where the managing agent is an individual, of the managing agent, or

(c) where the managing agent is a firm or a body corporate, in the constitution of the managing agent, of the company may take place any members of the company who claim that such change would be prejudicial to the interest of the company may apply to the Court for an order under this section provided such members have a right so to apply in virtue of section 399.

(2) If on any such application the Court is of opinion that any such change would be prejudicial to the interests of the company the Court may by order direct that the voting rights in respect of those shares shall not be exercisable by the transferees of those shares or any persons claiming through or under them for such period not exceeding three years as may be specified in the order.

(2B) (1) Where any member of a company have reason to believe that a transfer of shares in a company is likely to take place whereby a change—

(a) in the composition of the Board of directors, or

(b) where the managing agent is an individual, of the managing agent, or

(c) where the managing agent is a firm or a body corporate, in the constitution of the managing agent of the company may take place, such members may apply to the Court for an order under this section provided they have a right so to apply in virtue of section 399.

(2) If on any such application the Court is of opinion that any such change would be prejudicial to the interest of the company, the Court may by order prohibit the transfer of shares in the company for such period not exceeding three years as may be specified in the order."

The motion was negatived.

MR. DEPUTY CHAIRMAN. The question is:

"That clause 80 stand part of the Bill."

The motion was adopted.

Clause 80 was added to the Bill.

Clauses—81 to 93 were added to the Bill

Clause 94—Amendment of section 280.

MR. DEPUTY CHAIRMAN. Amendment No. 15 is a negative amendment. It is barred. You can speak against the clause.

SHRI K. SANTHANAM: Yes, Sir. That will do for me.

In the Act they have put the salutary age of 65. Now, they have added a proviso in this clause:—

"Provided further that where a person has been appointed as a director of a public company or of a private company which is a subsidiary of a public company, before he has attained the age of sixty-five years, he shall not be required to vacate his office within a period of three years after his appointment merely on the ground that he has attained that age within that period."

[Shri N. Kanungo.]

The result of this clause is bound to be that when he has attained the age of 64 years and 364 days, he will resign and on the 364th day he will get a life for three years. It is effectively continuing his age to 68. Why not do it honestly? Why give this loophole? I think this is not a proper way of legislation.

SHRI N KANUNGO: The ingenuity which Mr. Santhanam has foreseen, I expect, will be rarely used or even thought of. The clause has been provided merely because where a director has been inducted into a board at the age of 63 or 64, he should not be expected to vacate before completing his term. That is all. It is a deliberate provision for liberalising it and it is not a provision for providing an extension of three years. As Mr Santhanam has said, with ingenious use it can be done by knaves.

SHRI K SANTHANAM: If you were a director, will you not do it?

SHRI N. KANUNGO: That is what I said: By ingenious use by knaves it can be done.

SHRI P. D. HIMATSINGKA: Even in the present Act provision is there for three years.

SHRI RAJENDRA PRATAP SINHA: Sir, I oppose the clause.

MR DEPUTY CHAIRMAN: I am putting the clause to vote. The question is:

"That clause 94 stand part of the Bill."

The motion was adopted.

Clause 94 was added to the Bill

Clause 95 was added to the Bill.

Clause 96—Substitution of new section for section 285 Board to meet at least once every three calendar months

SHRI M. R. SHERVANI: Sir, I move:

35. "That at page 51, lines 5—7, the words 'and not more than two months shall intervene between the last day of the calendar month in which such meeting is held and the date of the next meeting' be deleted."

Sir, according to the original Act, there are four meetings which are statutorily to be called by each company. The result of this amendment is that there will have to be six meetings of the board of directors, which are compulsorily to be held every year. I would like the hon. Minister to explain to us the reason for increasing these meetings. In my humble opinion it will unnecessarily increase the expenses, the travelling allowance bill and it will particularly hit the small companies which they can ill afford. The discretion is there with the board of directors to meet six times, eight times or even every month, if necessary. But even that discretion is being sought to be taken away and compulsorily they will have to meet six times, whether there is any business or not. I would like the hon. Minister to tell us the reason for this and I would not press my amendment.

The question was proposed.

SHRI N KANUNGO: It is usual for every body corporate or group of people to have a provision that they should meet at specified intervals, because after all the entire responsibility of management rests with the board of directors. Though there may be four types of management, the responsibility vis-a-vis the shareholders lies with the directors. It has been observed that sometimes meetings of the board of directors are not held not only in the course of months but in the course of years. Therefore, the original provision was put in providing a certain spacing between the meetings. Now, the spacing, as Mr Shervani has mentioned, is reduced. There is also the point which Mr Shervani has made

mention of about the smaller companies, which may not have any business for their constant attention. That is so. So, the proviso has been provided there. Therefore, it is imperative that the clause should be accepted as it is.

SHRI M. R. SHERVANI: Sir, I beg leave to withdraw my amendment.

*Amendment No. 35 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN. The question is:

"That clause 96 stand part of the Bill."

The motion was adopted.

Clause 96 was added to the Bill.

Clauses 97 and 98 were added to the Bill.

Clause 99—Amendment of section 293

SHRI DAHYABHAI V. PATEL: Sir, I move:

37. "That at page 52, after line 24, the following be inserted, namely:—

'(bb) in clause (e), the following proviso shall be added at the end, namely:—

Provided however that nothing contained in this sub-section shall permit the Board of directors of any government company to contribute directly or indirectly any sums to any political party or political fund'."

The object of this amendment is very clear. It is to prevent at any stage contribution being made to any political party or fund as a result of the proceedings that are outlined in this clause. It is in conformity with the line that I have taken, that all friends of the Opposition have taken.

I would once again appeal to the Party in power to agree to this generally healthy principle. I might also

*For text of amendment, vide col 1995 *supra*.

point out here at this stage that I understand that in the Lok Sabha no whip was issued while in this House a whip has been issued to every Member, although amendments even in the matter of contributions are not subjected to a whip.

The question was proposed.

SHRI N. KANUNGO: It is wrong information. Every Member is subject to whip always. Sir, in connection with this matter which deals with the Government companies, my senior colleague in the other House really mentioned that it was not necessary to write it down in the Statute, because the Statute provides that the President or the Governor, as the case may be, can give directions to the companies to do something or to desist from doing something, and in this particular case directive can be given and will be given that the Government companies, as they are defined in the Companies Act, will not contribute to any political fund. Therefore, this is not necessary.

SHRI DAHYABHAI V. PATEL: Sir, I accept the assurance of the hon. Minister, and I move for leave to withdraw my amendment.

*Amendment No. 37 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN. The question is:

"That clause 99 stand part of the Bill."

The motion was adopted.

Clause 99 was added to the Bill.

Clause 100—Insertion of new section 293A. Restrictions on the power to make political contributions

SHRI K. SANTHANAM: Sir, I move:

16. "That at page 53 for lines 6 to 33, the following be substituted namely:—

293A. Notwithstanding anything contained in section 293, neither the company in general meeting nor its Board of directors

[Shri K. Santhanam.]

shall, after the commencement of the Companies (Amendment) Act, 1960, contribute any amount to any political party or for any political purpose to any individual or body’.”

17. “That at page 53, line 13, for the words ‘twenty-five thousand rupees’ the words ‘five thousand rupees’ be substituted.”

18. “That at page 53, line 16, for the words ‘whichever is greater’ the words ‘whichever is less’ be substituted.”

SHRI DAHYABHAI V. PATEL: Sir, I move:

38. “That at page 53, line 23, after the words ‘shall disclose’ the words ‘by advertisement in the leading daily newspapers, one published in Delhi in the English language and the other at the place where the registered office of the company is situated, within one month, and’ be inserted.”

SHRI BHUPESH GUPTA: Sir, I move:

78. “That at page 53, for the existing clause 100, the following be substituted, namely:—

Amendment 100. In section 293 of the principal Act, in clause (e) of sub-section (1), the following proviso shall be added at the end, namely:—

‘Provided however that nothing contained in this sub-section shall permit the Board of directors of any public company or a private company which is a subsidiary of a public company or any Government company to contribute directly or indirectly any sums to any political party or political fund.’”

SHRI RAJENDRA PRATAP SINHA: Sir, I move:

79. “That at page 53,—

(i) in lines 12—16, the words ‘or amounts which or the aggre-

gate of which will, in any financial year, exceed twenty-five thousand rupees or five per cent. of its average net profits as determined in accordance with the provisions of sections 349 and 350 during the three financial years immediately preceding, whichever is greater’ be deleted; and

(ii) lines 17 to 33 be deleted.”

The questions were proposed.

SHRI K. SANTHANAM: Sir, I have listened with great respect to the remarks of the Minister in defence of the new clause. There is no doubt that the clause as he has framed is more restrictive than the original, but the original section did not refer to any political contribution at all. It merely said general charitable and other bodies, and so political contribution was implied in that section, and ordinarily for many companies the matter would not have come explicitly. Now by introducing this clause he has brought this matter explicitly before every company. Therefore, I think, even though it is restrictive, it will cause a great deal of harm. Sir, speaking as a Congressman, I think this contribution is going to do a great harm to the Congress organisation, because what is going to happen is, if any company gives any contribution to the Congress, it will be advertised in all the press throughout India. When it gives to the Praja Socialist Party or to the Communist Party or to the Swatantra Party, it will be in some back page in some remote corner. So the impression will be given that it is only the Congress which is getting the subscriptions and that all the other Parties are not getting the subscriptions, while the truth may be quite the opposite. Therefore, Sir, I think that even in the interests of the Congress organisation this thing should go. I am sure that in his heart of hearts Mr. Lal Bahadur Shastri would himself like this to go, but he has been tied up with all other kinds of pulls and he has had to submit to this restriction.

SHRI RAJENDRA PRATAP SINHA Sir, this is a very important clause which is being debated and I would like the Minister of Commerce and Industry to be present

MR DEPUTY CHAIRMAN Mr Ibrahim is present.

SHRI RAJENDRA PRATAP SINHA I can see that my hon friend is there, but the Minister concerned must be here. There are three or four Ministers in this Ministry. This is a very important clause we are debating.

MR DEPUTY CHAIRMAN He will come immediately.

SHRI BHUPESH GUPTA Adjourn the House, Sir.

SHRI K. SANTHANAM We may adjourn for half an hour.

MR DEPUTY CHAIRMAN Every word that has been uttered will be taken down and passed on to him.

SHRI BHUPESH GUPTA He must be here as we will not return to this clause.

SHRI DAHYABHAI V. PATEL I support Mr. Santhanam's suggestion that we adjourn for half an hour.

MR DEPUTY CHAIRMAN Let us go on with it.

SHRI BHUPESH GUPTA On a point of order, Sir. When we make a speech, the Minister is coming.

MR DEPUTY CHAIRMAN He has been sitting here all along.

SHRI K. SANTHANAM Sir, I do not think the Government should feel that they are committed to this clause, and I am sure that it is the Congress organisation that is going to suffer by this clause, because all the other opposition Parties will now put on the mantle of virtue. They say that they do not want the contribution. I am sure they are going to get contributions as much as, if not more than, the Congress. They want

this clause to be passed, but they want to oppose it here and have it passed by the Congress. That is the whole strategy of the opposition. I think we are playing into their hands. I am sure that without these contributions by companies, the Congress will be much stronger. I do not want to elaborate the point here.

PROF. M. B. LAL (Uttar Pradesh): We are prepared to play in the hands of Mr. Santhanam.

SHRI BHUPESH GUPTA: They are good hands as far as this amendment is concerned.

SHRI K. SANTHANAM: I want to leave out this question of party politics. I want that our business and corporate sector should not be torn by dissensions, should not have this controversial issue at all. They should concentrate purely on their work, on making the most of the economic opportunities which our planning has opened to them. Instead of that, we are throwing this bone into their midst, and in every company in every Annual General Meeting this is going to become one of the controversies. It is not going to be a unanimous decision in any company.

SHRI BHUPESH GUPTA And we shall see to it if it comes.

SHRI AKBAR ALI KHAN That we know.

SHRI K. SANTHANAM There will be some shareholders opposing and there will be some shareholders supporting, and all these contributions are going to be given by a majority, and probably many people will go to the courts with all kinds of writs and petitions, and this is going to be a headache. I have not the least doubt that the very Minister who is now pressing this clause is going to come within three years' time before this very House and ask us to pass some clause in the form in which I have proposed. Sir, I do not want to play prophet but I have been in politics

[Shri K Santhanam]

for forty years and I know how things move, how public opinion moves, how public psychology works, and I also know how the Congress itself acts. Often it acts after the event because it has become the successor of the British Government. I am sure that the conscience of all Congressmen throughout the country is against this contribution. They do not want it, but somehow the organisation has got into a rut and it is not able easily to come out. Once more I wish to utter a word of warning and I would earnestly suggest to the Minister to accept my amendment and get the whole country clear of this foul atmosphere.

SHRI BHUPESH GUPTA Sir, I rise to fully support what my friend has said towards the end of his speech although he may have spoken partly guided by considerations of expediency in the Congress Party. When the balance sheets are published, all that we have to do is to collect the balance sheets—it will be a job for us—and publish what the great ones get as doles for fighting their election. That will be telling in that way as to what it is getting from where. I would not deny myself this advantage of exposing the ruling party and accept the amendment. Sir, it is true that my hon friend made a very legitimate point. Every company will be turned into a sort of small assembly where the shareholders belonging to the Congress Party, supporting the Congress Party will say one thing, will support the contributions. I can tell you that we shall bet as far as Clive Street is concerned that the shareholders, poor men, will go and contest and challenge the donations, and then we shall demand discussion of programmes, collections and various other things as to how they are valid. Therefore, political discussions will take place in the Annual General Meeting of a company, and for this thing the hon Ministers opposite are responsible. Let there be no mistake about it. They are taking partisan politics into company matters, and they think they can thrive on it

so long as they can get the cash. We say that the relationship between the shareholders will be worsened by this kind of thing, because it may be that some people support the Praja Socialist Party, others support the Congress Party and others support the Communist Party. They have got a small investment as far as companies are concerned. Their interest is identical, that is to say, security of the business, but they may not like politics to come in. Now they will be made to clash. Therefore a kind of civil 3 P.M. war will be started within each company among the shareholders. This is what they are providing for. All these things for what? For seeing that the Congress Party's election fund is there, millions of rupees. Here is Mr Santhanam, no less a Congressman than anybody sitting opposite. He has spent fifty years in public life. I believe some forty years he has spent in the Congress, once as a Minister, some time as a Governor or a Lieutenant-Governor. I take it that he has got ample experience in such matters, and he is no Communist at all. He is far from being a Communist and he says this thing. Therefore it should be taken into account and I have no doubt in my mind that many Congressmen in the country feel so. I have talked to them. They do not like such a thing. They think that the Congress organisation should be revived in a particular way, that money should be found from the contributions from the poorer people. They would impel the Congress leaders to go to the poorer people and look to their support, satisfy them and help them. That is how they view the position. Here the great ones sitting in New Delhi in the Secretariat with the pull from the chambers of commerce and so on and *vice versa* provide for such a thing. Why? They are not true to the Congress. Here is Mr Govinda Reddy. He spoke like a hero.

SHRI M GOVINDA REDDY He thought he was the only hero.

SHRI BHUPESH GUPTA He spoke as if he has won the battle of Water-

loo. But what is the speech he made? He asked: Are the other parties prepared not to accept contributions? Well, how many times must I say that as far as our Party is concerned, we hate to go to this monopolistic big business to get that money? That is not the question.

AN HON. MEMBER: You take it.

SHRI BHUPESH GUPTA: We did not; you brought about the downfall of the Palai Bank by this kind of thing. Do not misrepresent the issue. The point is, the law relates not to the parties but to the companies and their affairs. We say the companies should not be given this power irrespective of what Mr. Govinda Reddy likes or does not like or what I like or dislike. That is not the issue at all. Maybe there are some parties who would like to go to big business for money. The Congress Party is certainly one of them. There may be other sources. I am not concerned with that. All we are concerned with is we want to get the company out of it, we want the company finances to go out of it. That is all. But he would not say that. He made all kinds of challenges, and sometimes I feel very sorry for Mr. Govinda Reddy. There is an impression that he is a progressive man outside. I do not know why. Every time he speaks in Parliament, he speaks for reaction. Let it be known. A dual personality is permissible up to a limit but there should be a ceiling. He should not go too high. On everything he speaks—I have noted it during the past one year—he takes a reactionary view but outside he is a bit progressive.

SHRI M. GOVINDA REDDY: Everything is reactionary with you.

SHRI BHUPESH GUPTA: Transformation takes place. Good. We welcome him outside as a progressive man but we do not like him as a reactionary man and his views here. That is the position. Now let us not digress into that. Why blame each other? You know that the

Congress Party takes money. You have admitted that you take. Some people think that it is not harmful. Others think otherwise. At least one party—mine—thinks otherwise. Many others also think like that. I was reading the deliberations of the other House last night also. Some Congressmen opposed it. Therefore Mr. Govinda Reddy should not accuse me of bringing in something with a dishonest motive or something dishonest. If dishonesty is to be discovered, he should discover it there in their case, and certainly I would accuse Mr. Govinda Reddy of being dishonest.

SHRI M. GOVINDA REDDY: You have not accepted any contribution? Your party has not accepted any contribution?

SHRI BHUPESH GUPTA: What have I not accepted?

SHRI M. GOVINDA REDDY: Any contribution.

SHRI BHUPESH GUPTA: I will always yield to him. We have accepted, our Party has accepted, that this provision in the Company Law should go. We do not want it.

SHRI MAHESH SARAN (Bihar): You want secret deals.

SHRI BHUPESH GUPTA: Well, Sir, so far as secret deals are concerned, nobody can beat you. You are unbeatable. I think even if Al Capone were to be brought to India to carry on shady and secret deals, you will surpass him any day. Chicago is nothing compared to you. Chicago fellows are there. They do not talk about secret deals. If I make a secret deal or if you make a secret deal—and more deals you make, I know that—deal with it, punish us by all means. But we are not concerned with secret deals, we are concerned here with the provisions in the Company Law for committing open deals and deals in favour of the Congress Party. That is what we want to stop. Why are you talking of secret deals?

[Shri Bhupesh Gupta.] always? It is wrong. You draw a red herring to confuse the issue. Secret is secret. You do it, we do it, somebody does it. Punish them if such things are done. Therefore, I know the view of the hon. Mr. Santhanam is shared in the lobbies by many people who have expressed this opinion and outside many people have expressed this opinion. I never run down the Congressmen over such matter. I may differ with them; I may fight the Congressmen on political questions. I have respect for them. There, many of them are men of great dignity and self-respect. I never deny it and they want this. Whatever the political differences may be—they may like to shoot the Communists at sight—some of them do not like such kind of thing to be brought in. Why is it so? Why is the Congress Party and why are the Ministers so vehement about it, I would like to know. You say you have got a bigger organisation, you have got more resources, you have got so many things at your disposal. Others are nothing, according to you. Then why on earth do you think that unless this provision is there, you cannot get money for your election fund from big business, elections cannot be run and certain things cannot go on, etc.? It is perverting, prostituting, our democracy at the door of big business. That is why I say that such a thing should be stopped. I say, today it may not be so harmful because Jawaharlal is there. There are some good men there, I know that. Today it may not be so harmful. But what is the guarantee tomorrow that the minor fries, men not of such great calibre as Jawaharlal is, will not sell Indian democracy and parliamentary institution at the counter of millionaires and multi-millionaires? What is the guarantee? Have we not seen such things in France? The French parliamentary institution was sold to two hundred families, the families of the night club. That led to the ruination of France and the death of the Third Republic, and

everybody knows it. And we have seen such things happening in other countries. We have seen how institutions have been corrupted in South American countries and in the United States of America. We have seen it every where how big money comes into elections and how connection is established between the political parties and the organised corporate sector. There is corruption, there is decadence, there is pollution of parliamentary and democratic institutions. That is what they are doing, that is what they are saying. It is no use saying that. Mr. Kanungo is a religious man. Let him come with me to Jagannath Temple, touch the feet of Lord Jagannath and say that this is not being provided for in the self-interest of the Congress Party. I will take it. I cannot take him there by air, but I can take him by train, and let him say that. He will not be able to say that.

DR. H. N. KUNZRU (Uttar Pradesh): You will defile the temple by your presence.

SHRI BHUPESH GUPTA: No, I will not defile it. Here is our old veteran, a person who has very wrong and queer ideas. He thinks that the Jagannath Temple will be defiled by me. I say, your temples are not so great then. Anyway, I am a non-believer but the temple will not be defiled. It seems you have survived the Kala pahad in Puri and survived me also. You can go there.

That is the position.

MR. DEPUTY CHAIRMAN: That will do.

SHRI BHUPESH GUPTA: You are right. That will do. But the Congress Party is exercised over this matter, the third General Election and the big business money. They are aiming at it; they are making a bee-line for it. And in order to make it possible for the companies to give, in addition to what the directors individually may give, this provision is made, 5 per cent. or whichever is

higher. If an hon. Member says "whichever is less" I can understand that, but I cannot understand "whichever is higher". The Tata Company makes a profit of Rs. 10 crores, and you can imagine what 5 per cent. comes to. It comes to Rs. 50 lakhs, and if you mean to get this much of amount from the Tatas please say then. This is the position. Therefore in the self narrow interest of a decadent political party they are introducing some provision in the Bill which goes against all canons of right public life and the parliamentary institutions stand to ruin in future, and today is the time for you to accept his amendment, and we will not allow him to withdraw this amendment, and we support it. One word more. Mr. Santhanam, I am very grateful to you. You will see how a Congressman is supported by the opposition and the Communist when the Congressman turns his back.

SHRI N. SRI RAMA REDDY: You will support it when it suits you.

SHRI RAJENDRA PRATAP SINHA: Mr. Deputy Chairman, we have heard the views expressed on this very controversial issue from all sides of the House. I must say at the outset that I support the views expressed by my very learned friend, Mr. Santhanam. Sir, the Minister said this morning that the provisions that have now been introduced in this regard were an improvement on the provisions already existing in the present Act. My friend, Mr. Santhanam, has advanced arguments and I would not like to repeat those arguments that it is not an improvement in the sense of what the hon. Minister had said. He has already explained to you that now you have made it very clear in the provisions of this Bill that the companies may make political donations. So far as the one limited purpose is concerned, I welcome that you have made it obligatory on the companies to make public donations that they would like to make. I also welcome the ceiling that you have put,

which was not there in the present Act, but I do not like this "whichever is greater". But that is not enough. My amendment, as you will see, is this that we want to delete the entire clause after certain words, so that the companies are not entitled to make any political donations. Now, Sir, I have looked into the Company Law provisions in the various countries, and it is very surprising to me that India is the only country where we have such a provision. Nowhere else in the world Company Law makes such a provision.

SHRI P. D. HIMATSINGKA: Is there any bar in those countries?

SHRI RAJENDRA PRATAP SINHA: Yes, in certain countries there is a definite bar.

SHRI AKBAR ALI KHAN: Not in the United Kingdom.

SHRI RAJENDRA PRATAP SINHA: In the United Kingdom if a shareholder objects to donations being made for political purposes, his share will not be donated. I would have welcomed if you had made such a provision. When I was in England last, there was a debate going on on this very question. It is not merely a question of contributions to one political party or to other political parties. I was amazed by the arguments advanced by the Congress Benches. I had very great regard and respect for Mr. Reddy, but I must say that I was very much disappointed by the arguments that he advanced yesterday. It is no justification for them to say that because the Communist Party is getting secret funds, or they used to extract money from big business in Kerala while they were in power, the Congress Party must have that money. That is no justification.

SHRI M. GOVINDA REDDY: The hon. Member is misrepresenting me. That was not at all my argument.

SHRI RAJENDRA PRATAP SINHA: That was the argument from the Minister also this morning.

SHRI B. K. P. SINHA (Bihar): Other parties have also secret funds; it is not only the Communist Party.

SHRI RAJENDRA PRATAP SINHA: But that should be no justification. You should stop American money and the Communist money. As I said, that is no justification. You are making a very very cheap argument to justify a provision of this magnitude.

SHRI DAHYABHAI V. PATEL: I think Mr. Bhupesh Gupta, without the help of my friend, is able to look after his Party very ably in this House. He does not need any advocate from that side.

SHRI B. K. P. SINHA: Nor we from that side.

SHRI AKBAR ALI KHAN: At least on one occasion the Swatantra Party and the Communist Party are one and we are very happy really.

SHRI RAJENDRA PRATAP SINHA: What I was saying is this that the Congress Party should not justify this merely on the ground that the other parties are taking money and therefore 'we' will also take money. This is one of the points, but the real point that I was making was this, that the Congress Party being the ruling party, being an important party in this country has a moral responsibility to see that our political life is not debased. I have to say with great sorrow, Sir, that today money has started to play a very important role in our political life. If I am permitted to say, political donations are now amassed not only for purposes of fighting other political parties but also for ousting one group in favour of another.

SHRI BHUPESH GUPTA: In U.P., for example.

SHRI RAJENDRA PRATAP SINHA: Well, I would not like to name anything, but that is not only in one State but in several States. We know it is a fact that now political

donations and contributions are collected by the ruling party to oust some other group out of power and to usurp power. Just imagine, Sir, how things are going from bad to worse as days pass. I remember there were days in the pre-independence era when people were afraid to make donations, because if they gave money to the Congress, they would invite trouble to themselves, and at that time if the Congress Party got money, they got the money out of their love for the country and for the good work that they were doing. Can they say that with any amount of honesty that today the people who contribute to the political funds of the Congress Party are doing out of an ideology or doing so out of love for this party? Sir, I feel that they get the funds because they are in power and because the people who donate moneys to the Congress Party do feel that they can extract some concession or other from the ruling party.

MR. DEPUTY CHAIRMAN: There is a large number of speakers on this amendment.

SHRI RAJENDRA PRATAP SINHA: Does not matter, Sir. I would like to take a little more time.

MR. DEPUTY CHAIRMAN: You have already taken ten minutes.

SHRI RAJENDRA PRATAP SINHA: Does not matter, Sir. Let me have five minutes more.

SHRI DAHYABHAI V. PATEL: He may be given time, because that is the only amendment on which there will be debate. There is not likely to be that much of debate or, so to say, any long debate on other amendments.

SHRI RAJENDRA PRATAP SINHA: Sir, if I go today to ask for contribution I can say with confidence that I can bring no pressure upon anybody or any company. But it is quite different for the Minister of Commerce and Industry to be incharge of the

political fund of the ruling party and ask for donations either from individuals or from companies. It was quite a different story, when they were not in power, when they were fighting against the British government and asked for donations, from their asking for it today. That is the difference that I would like the House to understand. Mr. Santhanam very correctly says that they are interested because they belong to a major important political party. But, Sir, we are interested in the political life of the country and there we have to see that the Congress Party is not debased because it has its repercussions all over the country. Sir, we have to be very careful and watchful to preserve the infant parliamentary democracy that we are having in this country. We have to take these things from other countries. We have to take these things from the chapters of history. We all know how big money lobbies about and brings pressure. We have to guard against that. What have you done to guard against that?

Sir, there is another aspect of the question. Your asking for donations from companies is quite different from asking for donations from individuals. I may be a shareholder in a company. Now, 51% majority decides to make a donation. Why do you come and ask me to pay for your political purposes? This is most unfair and unjust. Sir, the majority party should not carry through this measure merely by the majority votes that they possess. Democracy can never be run merely by majority of votes. They must respect the wishes of the minority as well. Why do you want the 51 per cent. majority in a company to force the unwilling shareholders to part with their funds for political purposes of either the Communist Party or the Socialist Party or the Congress Party? That was exactly the debate which came up in England. They suggested a provision. They provided that all those who were opposed to such a political contribution should be

exempted and their share in the donation would not be paid. You would have suggested a provision to that effect if you were really honest about it. You have not provided that. Look at the Trade Union Act in India. There, no political donation can be made out of the funds of the trade union collection for membership. They have a separate political fund to which donations must be made and then alone for political purposes any donations can be made. You have not suggested a provision there. A member of the trade union can object to making any donation to the fund created for political purposes. Such a provision I would have welcomed, although on principle I am opposed to it. I am opposed to permitting the joint-stock companies making political contributions. Sir, I would appeal to our senior Congressmen, to our elder Congressmen who have gone through the fire, to reconsider it. We can trust them, I know.

SHRI BHUPESH GUPTA: Not all of them

SHRI B. K. P. SINHA: Trust us.

SHRI RAJENDRA PRATAP SINHA: Certainly. But it is very unwise. You are digging your own grave by having such a provision.

SHRI BHUPESH GUPTA: They want others to go into that political grave.

SHRI RAJENDRA PRATAP SINHA: Such a provision will bring your death. You should stand on your own legs, on the support of the masses. That you are not doing. You are not relying upon that. Weakness has crept into you. That is why you are having such a provision. You are sure that you will not get contributions out of the free will of the people and that is why you are having such a provision.

SHRI M. GOVINDA REDDY: Why do you object to it?

SHRI RAJENDRA PRATAP SINHA: That is our wish. Therefore, I would

[Shri Rajendra Pratap Sinha.] request this House to consider this matter very calmly and accept the proposal of a very senior Congressman who is not a Praja-Socialist member or a Communist or a Swatantra-man, but a very learned and respected Congressman, and above all a citizen of India.

DR. H. N. KUNZRU: Mr. Deputy Chairman, I rise to support the amendment moved by Shri Santhanam. Sir, it has been made out that section 293A is a great improvement on section 293 of the Indian Companies Act 1956. There are two differences between section 293A, as proposed, and section 293 of the Indian Companies Act. In the first place, the private companies which were exempted formerly will also be brought within the purview of section 293A. In the second place, the companies that make donations to political parties or for political purposes will have to disclose in their balance-sheets the amount donated by them for that purpose and the names of the parties or individuals or bodies to whom donations have been given. The law, as it stood before, has not been changed. Under the Act of 1956, the boards of directors of a company were allowed to donate Rs. 25,000 or 5% of the net profits computed in a particular manner, whichever was greater for this purpose. Now, Sir, it is obvious that funds are collected not from small companies but from big companies. To say, therefore that a limit of Rs. 25,000 has been laid down for subscriptions made for political purposes by public or private companies is totally unrealistic. The profits of the big companies will be much more than the net profits of the big companies. Five per cent. of their net profits will be much more than Rs. 25,000. Therefore, putting down the limit of Rs. 25,000 is really no safeguard either for the shareholders of the company or for keeping public life clean. Again, it may be said that this provision is not meant for the benefit of any particular Party. Any Party can take

advantage of it, it may be said, but we all know how, at the present time, political influence is exercised by certain prominent people. They have only to take up their telephone and ring up certain persons and tell them that they have to contribute Rs. 50,000 or Rs. 60,000 or Rs. 1 lakh and the particular persons concerned will have to, willy-nilly, make the contribution demanded by these influential men.

SHRI J. S. BISHT (Uttar Pradesh): It is based on mere rumour.

SHRI BHUPESH GUPTA: You can ask the Chief Minister of Bengal whether he uses his telephone or not.

SHRI M. GOVINDA REDDY: It does not lie in his mouth to say that.

DR. H. N. KUNZRU: It is a rumour which is much more correct than many of the facts that have come to the notice of my hon. friend. I do not want to mention any names but if you go to Bombay, at least half a dozen such names will be mentioned to you. In these circumstances, it is clear that section 293A, even though it is an improvement on section 293, will be used for the intimidation of the directors of companies. If really public life were so advanced here and people were so independent as to be able to act in accordance with their own judgment, one need not be afraid of the consequences of the clause that we are discussing, but knowing the State of things in this country, one cannot reconcile oneself to the provisions even of section 293A. It may be said, as was said by somebody, that in England there is no prohibition against companies making contribution for political purposes. That is quite true but there is a great deal of difference between the conditions prevailing in England and the conditions prevailing in our country. No one in England can today, however great he may be, telephone to the Chairman of the Board of Directors of a company and say that the Board Directors will have to agree to give

a certain sum for a particular purpose. They can approach, of course, always the Board of Directors, but the Board of Directors are not bound out of fear to accept their demand. Again, in England too, there has been a demand that the contributions should be made not by the Boards of Directors but by the shareholders. If that change had been made in section 293, it would have meant something. It would have been more difficult for any political party, particularly for the party which is in the majority at the present time, to put undue pressure on the Board of Directors or to compel it to yield to its wishes, but so long as it rests with the Board of Directors only to make or not to make a donation, we may be certain that the donation demanded by influential people of a particular persuasion will always be made.

Again, considering the state of public life, will a provision, like the one that we are discussing, not give undue advantage to one particular party and thus stand in the way of the development of democracy? You know how the election law was modified before the last general elections. We know what election expenses meant formerly. It meant not merely the expenses incurred by the candidate and his agent directly but all sums of money spent on behalf of the candidate by any person whatsoever. All that has been changed now and we know, therefore, that the return of election expenses does not represent the reality. We know of cases where the return of election expenses may show an expenditure only of Rs. 15,000 or Rs. 20,000 or Rs. 25,000, but the actual sum spent has been much greater.

SHRI AKHTAR HUSAIN (Uttar Pradesh): Can the hon. Member cite any reported decision of any tribunal to show that this evil prevails?

DR. H. N. KUNZRU: I think the hon. Member himself, if he asks the

All India Congress Committee and the Provincial Congress Committee, will find that my allegation is supported by them.

SHRI AKHTAR HUSAIN: As I am not aware of any reported cases on the point, I am asking the hon. Member to enlighten me before making this allegation.

SHRI RAJENDRA PRATAP SINHA: On a point of order. Is not the hon. Member entitled to discuss the realities and give what the legal facts are?

DR. H. N. KUNZRU: You see how bold the present state of things has made certain people who, knowing the facts, deny it.

SHRI RAJENDRA PRATAP SINHA: And also in Parliament.

DR. H. N. KUNZRU: Yes, I am sure that my hon. friend who interrupted me knows very well what has happened in his own State which is also mine. I am sure he does not want me to name the people who have spent much more than Rs. 25,000 on their election and they were big people indeed, people who would be regarded as big by the whole of India.

THE DEPUTY MINISTER OF LABOUR (SHRI ABD ALI): They may not be of the Congress Party.

DR. H. N. KUNZRU: Here is another apologist of the Congress Party. I am sure he wants to feel that there are no such people in the Congress Party, but I am sorry that his Party is not clean as he would like it to be. Obviously, a very large sum of money is needed to support the candidates. So, section 293A giving the power to make donations for political purposes is going to be accepted in order to allow political parties really to nullify the purpose of the Election Act. I do not want to prolong the discussion further but the case of opposition to section 293A

[Dr. H. N. Kunzru.]
is, both morally and politically, very strong. I, therefore, give my whole-hearted support to the amendment moved by Mr. Santhanam.

MR. DEPUTY CHAIRMAN: Shri Govinda Reddy, take 2 or 3 minutes only.

SHRI M. GOVINDA REDDY: No, Sir. My name has been dragged into the discussion.

SHRI BHUPESH GUPTA: I withdraw. He need not reply.

MR. DEPUTY CHAIRMAN: He is withdrawing his remarks.

SHRI BHUPESH GUPTA: No, I withdraw his name, not the remarks.

SHRI M. GOVINDA REDDY: Sir, I have great respect for the two friends who have moved the amendments to this clause but I have to oppose the amendments. I will first come to answer the points made by Shri Bhupesh Gupta. He referred to my politics. He said that I was one thing in and one thing out. He tried to fling mud in my face and I do not wonder at it because it is his politics to do that, it is his business and it is his profession but when one says 'one thing in and one thing out', I admire that man's cheekiness. Anybody should admire his cheekiness. Receiving funds in hundred clandestine ways and shouting in public and from the house tops 'We are not receiving funds and nobody is receiving, etc.' is something which is not respected, to say the least.

(Interruptions)

SHRI BHUPESH GUPTA: We can hear the Parliamentary Affairs Minister.

SHRI M. GOVINDA REDDY: There may be honest difference on this point. I do respect some friends like Mr. Santhanam, who have expressed a different opinion. I have honest respect for that opinion but for those people who received funds from

companies, not voluntarily but even through pressure, to have the cheek to come and say here that political contributions should not be received is something which is completely outside respectability. I think it is not practical politics also because people outside judge what they are. I will admire and I will take my hats off to the P.S.P., the Communist Party, the Swatantra Party or any other Party—it is a challenge that I am able to throw—if they can build up a political party mainly, as they say, on the contributions of their individual members.

SHRI BHUPESH GUPTA: I accept that challenge. That is what we are doing.

SHRI M. GOVINDA REDDY: They will have to prove it. My hon. friend may say it every day, but he is being put to the test every day.

SHRI BHUPESH GUPTA: Will the hon. Member come with me?

SHRI M. GOVINDA REDDY: So I need not pass judgment on them. As I said yesterday, Sir, I have no objection to his accepting funds from anywhere. But why should he throw the blame on others? That is something which is beneath the dignity of a party Member who does the same thing. Sir, there were some pandits and they were once tempted into eating garlic. And then each was trying to accuse the other of eating garlic. And then a third man, an outsider, pointed out to them that all had to shut their mouths before he could decide because one of them speaking there was smelling of garlic. Sir, my hon. friend himself lives in a glass house and so why should he throw stones at others? What is their history in Kerala? What is their history in West Bengal, and what is the history of the Communist Party everywhere? That history is belying whatever he says here today and whatever his party Members say here.

Apart from all that, I now come to the arguments of Shri Santhanam. He entertains all sorts of fears. First of all, he says that this will unnecessarily lead to disputes in the general body meetings, that this will be a matter of dispute there. But why should we be afraid of that? If a company is going to contribute to a political party, let it be discussed by the shareholders and if they feel like it, they may refuse to contribute to the political party. That is well and good. But when they do, instead of making the contribution without the shareholders' knowing about it, let it be discussed threadbare by the shareholders and knowingly let the contribution be given. I am not afraid of that. If the Congress Party does not get a pie, I don't mind, then it means it does not deserve to get a pie. After all, every party can take it. Why should we be afraid of this topic being discussed by the general body?

The other point was about the Congress being such and such an organisation, they should not receive these funds, that they should not accept donations. Well, I have great respect for Mr Sinha. But Mr Sinha is not a politician in the air. He is a practical politician. I suppose is it not practical expediency for his party to be supported by funds from whomsoever they can gather it, not only from the members of their Party, but from anywhere?

SHRI RAJENDRA PRATAP SINHA
That is not our policy. We will never do it.

SHRI M. GOVINDA REDDY
I don't want to say it here, but I know of some cases where Members of the PSP have come up with the support of others. I do not want to make that point here. What if he does not agree with me? It is a different matter. I do consider that it is an expediency for them now to say so.

PROF. M. B. LAL
The question under consideration is whether a company should contribute money or not. If the Congress Party says they will not accept such contributions, then on behalf of the PSP those present here promise that they will not accept it.

SHRI M. GOVINDA REDDY
Very good. It will be put to the test. As I said, I will take my hat off if tomorrow it is proved that you have not accepted it.

SHRI BHUPESH GUPTA
Accept the amendment and then we will go with our hats on and take them off.

SHRI M. GOVINDA REDDY
There are other friends who say that there are laws in other countries against such contributions. Dr. Kunzru says there is no such law in the United Kingdom. In the USA it appears that there is some restriction on eligibility of a candidate because of such contributions and all that. We need not go to the examples of other countries. Dr. Kunzru was saying that if it could be amended as the shareholders contributing the funds, he would have no objection.

DR. H. N. KUNZRU
I did not say that. I said that it would be a real improvement on the law as it stands at present. I did not say I will accept it.

SHRI M. GOVINDA REDDY
If the shareholders can give individual contributions, then they would be contributing as individuals and not as shareholders. I do not see anything morally wrong there. The hon. Minister was saying companies could make contributions for other purposes also. They may contribute to political parties. It may be for social work and so on. We have the Bharat Sevak Samaj and there are other activities also. So also the PSP may have other activities. If they are good nation-building activities if they be of service to the people, why should a company be prevented just because it is a political body, from

[Shri M. Govinda Reddy.] giving it funds? Why should the party be prevented from receiving the donation if they can use it for such laudable purposes? So I do not see how it can be called a wrong thing for any company to contribute to a political party. Hon. friends think that the Congress is the only party that goes in for contributions. Dr. Kunzru was saying that it was open to a Minister to pick up the telephone and ask a company to contribute.

DR. H. N. KUNZRU: Not necessarily a Minister.

SHRI M. GOVINDA REDDY: Anybody?

DR. H. N. KUNZRU: Not anybody, but an influential person in the Congress Party. So he need not be a Minister.

SHRI M. GOVINDA REDDY: That is a thing which we cannot do away with in the world. After all, if Dr. Kunzru and myself go out to collect donations for some charitable purpose, naturally Dr. Kunzru will get more than I. Each man will pay him more than he pays me. But that does not mean that I should grudge Dr. Kunzru or that because Dr. Kunzru goes with any pressure he brings to bear through a party, the funds are being collected. They pay him because of his worth and if people give to the Congress, it is because they know the Congress deserves it. After all the people know the Congress and they know that it is the Congress that has done good to the country. It is mainly the Congress which is responsible for all this.

DR. H. N. KUNZRU: But his work enables him to get no funds easily.

SHRI M. GOVINDA REDDY: I will not be sorry if the Congress does not get any money. If it does not deserve it, it will not get it.

SHRI BHUPESH GUPTA: Do I understand . . .

MR. DEPUTY CHAIRMAN: Order, order.

SHRI BHUPESH GUPTA: Do I understand that if he takes up the telephone the same amount will come in?

SHRI M. GOVINDA REDDY: I am not saying all this just for the sake of argument. I honestly say there is nothing wrong in it. If I do something good, I expect people to help me. If my Party has done good work, what is wrong in our people asking for contributions or in accepting contributions? I think it is an open book. If the Congress accepts donations, it is because it has proved its worth and this the country knows and the companies know. That is why they contribute to it. It is not because of any power. In these days nobody can cow down anyone else because of his office or power. So, Sir, I oppose this amendment.

SHRI T. S. PATTABIRAMAN (Madras): Mr. Deputy Chairman, I am surprised that such opposition should have been there to this very good clause that has been introduced. The country owes a lot to Shri Lal Bahadur Shastri for applying the Gandhian principle of making things open, instead of keeping them clandestine. The objection of the objectors is not really to section 293, sub-section (1) (a) but it is actually to sub-section (2). All political parties have been receiving money I am sure they will not deny it. But the difference is that Shri Shastriji has made it obligatory on the companies to publish in their annual accounts what has been given and to whom it has been given. That is why none of the hon. Members of the Opposition referred to the saving clause. The Congress is not afraid of facing the public. I know the Communist Party and the P.S.P. have collected a lot of money. Some hon. Member

of the P.S.P. said they would not accept any money. What about the Tibetan refugees Fund? Do they not need money? The Tibetan refugees want money and for aiding the Tibetan refugees funds were obtained from companies. They have been given money. Is it not a political purpose? If they are so much concerned about morals, the P.S.P. should have refused it. But whatever suits them suits them, they conveniently accept the same. Then I come to the Swatantra Party. Mr. Dahyabhai Patel was referring to Mr. Rajagopalachari. Mr. Rajagopalachari himself got money from businessmen. I am prepared to prove it. People talk of high things in public but do things to the contrary. It was in the year 1960 when Rajaji was celebrating his 82nd birthday at Madras that the businessmen of Madras at a tea party at Woodlands and one of the share brokers, a leading sharebroker in the country, presented on behalf of the businessmen and industrialists of India Rs. 1 lakh and Rajaji immediately handed it over to the Swatantra Party. If anybody denies it, I am prepared to prove every word of my statement.

MR DEPUTY CHAIRMAN: Don't bring in any names.

SHRI T. S. PATTABIRAMAN: That money has now gone to the Swatantra Party and it is being used by them. Let him deny it if he can.

SHRI DAHYABHAI V. PATEL: Sir, this gentleman is entirely confused. What I said was that during Rajaji's recent visit to Gujarat when I went to the industrialists, they said, 'We won't give you money for his visit'. He is confusing the issue. He has a confused mind like most people there.

SHRI T. S. PATTABIRAMAN: I am very clear that what happened in Gujarat did not happen in Madras because a sum of Rs. 1 lakh was contributed by the companies and I am prepared to name the companies if

anybody challenges me. My friend here only objects to companies giving donations but not to individuals giving donations. A company is after all an association of individuals and if you do not object to donation by an individual, what objection can there be if the company makes the donation? Take for example, 'X' is a Managing Director. He has got a lot of money. Mr. Bhupesh Gupta or Mr. Sinha does not object if 'X' gives money as 'X' but if he gives it on behalf of his company, then they object. Sir, I know Mr. Bhupesh Gupta and his partymen went to Mr. Mundhra for celebrating the Puja festival and there they had rasagullas and everything. (Interruptions) Was it company money or was it Mr. Mundhra's money? I am really surprised that people object to these things. If Mr. Mundhra gives money, it can be taken but if Mr. Mundhra gives it through a company, he does not want it; his party does not want it.

SHRI BHUPESH GUPTA: All right; let us have contribution of rasagullas. Put it there.

SHRI T. S. PATTABIRAMAN: Sir, I cannot argue with Mr. Bhupesh Gupta because his standards are always double. Then he asked, 'Can you prove that we have got money from anywhere? I can tell him this. In 1957-58 the Century Book House which is a subsidiary of the Communist Party gave accounts to the Madras Government under the Sales Tax Act that they received Rs. 30,000 worth of books from Russia and China and sold them for Rs. 1,20,000. Now, Sir, what is this Rs. 90,000? Is it not subsidy?' Sir, we are prepared to take from our own shareholders rather than from Mao Tse-tung or Comrade Khrushchev. Which is better, our shareholders or .

SHRI BHUPESH GUPTA: Sir, you have said that names should not be brought in.

SHRI T. S. PATTABIRAMAN: I know, Sir, he is very touchy.

SHRI BHUPESH GUPTA: I am not touchy; I am enjoying the fun, the histrionic fun.

SHRI T. S. PATTABIRAMAN: Sir, a person is judged by his past conduct. Sir, what people now object to is not really the principle. As a matter of fact, I am afraid the proposed subsection (2) will make it difficult for the Congress to get donations because most of the persons who were prepared to give donations silently will not now be prepared to face the music. My friend, Mr. Santhanam, need not be afraid that they will get more donations. I am afraid deliberately nobody will be prepared to face the music. The donations to the Congress Party will now certainly shrink and go down and the clandestine methods of other parties will succeed. Sir, Mr. Lal Bahadur has done a great service to the country and to the Congress organisation by bringing it to the open and by making it impossible to indulge in shady transactions and it is therefore absolutely necessary that we must give our wholehearted support to this clause.

SHRI T. S. AVINASHILINGAM CHETTIAR: After all that has been said, I have nothing much to say.

SHRI BHUPESH GUPTA: Let us have Tamil sobriety now.

SHRI T. S. AVINASHILINGAM CHETTIAR: Everybody accepts that every political party today is accepting donations from the companies. Mr. Bhupesh Gupta does not deny it; the Congress Benches do not deny it.

SHRI BHUPESH GUPTA: I deny it; we do not take money from the companies.

SHRI T. S. AVINASHILINGAM CHETTIAR: But nobody believes you because the position is otherwise. The Congress Benches have the strength to accept it but the Communist Benches do not have the strength and the straightforwardness to accept

it. What is really happening is what was then done under the articles of association and what could not be done by others because of the need for an amendment of the articles of association can now be done under the Companies Act itself. As you know, after the High Court judgment many cases went to the courts to amend their articles of association to enable them to make their contributions.

The second point is this. Previously they need not have been disclosed; now they have to be disclosed. That is an improvement in the position but there is one matter which makes the disclosure not very effective. Here 'companies' means private as well as other companies. In the case of the private limited companies publication means only the shareholders come to know because it is not published but in the case of a public limited company disclosure means it is published really and in the present set-up with the trend moving towards the formation of a larger number of private limited companies than public limited companies, the result will be that the contributions given by the private limited companies which are getting more and more numerous every year to that extent will not be effectively disclosed. It will not go beyond the shareholders; to the shareholders it will be a disclosure no doubt but in the case of public limited companies it will be a disclosure to everybody. In the case of the private limited companies it will be a very limited disclosure going only to the shareholders of the company concerned. So to say that this disclosure means disclosure to the public is not very real, and to that extent I think this clause is defective.

Now, Sir, let me come to another matter. When this matter was discussed in the Select Committee similar objections were taken. I would like to inform the House that I come from an industrial district. The Swatantra Party people made a

challenge that any day they would collect much more in that district than the Congress Party and I dare say, Mr. Deputy Chairman, that in Bombay, in Ahmedabad, wherever rich people are concentrated, the other parties have a very good chance of getting very good amounts. I am not prepared to say that the people are not affected by the Congress being in power. There is fear when they ask. It is there and it is but natural; I am not going to deny it but I am also prepared to say that it is the people in power who have offended them many times and whom they want to remove. One big industrialist in Madras said, 'You bring in this amendment but do not get offended when we give to other parties; we will give to other parties also.'

SHRI BHUPESH GUPTA: Let us have a joint fund in that case.

SHRI T. S. AVINASHILINGAM CHETTIAR: With the little time at my disposal, I do not want to be interrupted. Sir, I share in a large measure the misgivings mentioned by my friend, Mr. Santhanam. It is possible that in companies there will be quarrels; there may be jagadas. And most probably in many places they may give to many parties. The only point that you should consider in having this amendment is that contribution to a political party is not an offence. Anybody can give. If any individual can give, then why put a ban on the corporate sector? While I share the misgivings voiced by Mr. Santhanam—misgivings are there; maybe it is a question of degree; maybe less or great—I do not think that everywhere there will be trouble. I think the rich people are very clever; they always support both the sides. That is their way. So while I am not wholeheartedly able to accept the wisdom of this amendment, while I share with him in the fears as to what may happen in the companies, on the whole I think we can give this right to the directors to be approved later

on by the shareholders. As things go, what they have been doing secretly they have to disclose now publicly and to that extent I welcome this amendment.

4 P.M.

SHRI J. S. BISHT: Sir, please give me two minutes to speak.

MR. DEPUTY CHAIRMAN: I think we have already taken one hour.

SHRI BHUPESH GUPTA: Please give him some time. He is from Uttar Pradesh.

MR. DEPUTY CHAIRMAN: Two minutes.

SHRI SONUSING DHANSING PATIL (Maharashtra): Mr. Deputy Chairman, I oppose the amendment. Mr. Bhupesh Gupta and some of the Members of the Opposition have tried to convert themselves into self-appointed custodians of the chastity of the Congress. (Interruptions.)

SHRI BHUPESH GUPTA: We cannot look after their chastity. We have not that capacity.

(Interruptions.)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI SONUSING DHANSING PATIL: They have tried to tell this honourable House that by accepting this amendment something is going to happen on this earth, and they are going to bring some sort of a provision by which the Congress can be cleansed of its demerits. Even the mover of the amendment, if we go to amendment No. 17, is not clear in his mind. In spite of the fact that he has got an honest opinion on this point, he has got misgivings, because in the next amendment he says that the amount can be limited to five thousand rupees. So, the matter is not clear to him also. His only objection is that a political party like the Congress would be unnecessarily exposed to the whole of India, through newspapers, etc. The other conclu-

[Shri Sonusing Dhansing Patil.]
 sion is that the political purpose and the political parties are sought to be equated with the Congress and election alone. There are a number of political activities by political parties. Election is not the only thing. Some of the Members—I have got great regard for their opinion—have unnecessarily tried to bring out that the Congress is having a corrupting influence, because of a particular influence of Congressmen or Congress Ministers. If we look at the tenor of the Bill, the whole Bill goes to show that it has been rationalised in such a manner that there are a number of salutary restrictions on the companies and their management. Ever the special audit, which has been acceptable to the Opposition, goes to show that a number of rights have been curtailed. In spite of that the Congress is bold to show to the whole world that whichever company wants to contribute should contribute in an open manner. There should be no secrecy about it. So, that is the approach to the whole problem. Moreover, it is not compulsory. It is discretionary and that discretion is not to be exercised by a single individual, the manager or the managing director, but by a whole body, by the board of directors, again a responsible body. If a responsible body decides upon a particular course of action, why should that create fear in the minds of political parties? Because the Congress is wielding the Government. Mr. Bhupesh Gupta jumps to the conclusion that in a large measure it is going to be corrupted, it is going to be prostituted, etc. He has got strong words. I would say that instead of adopting the course of expropriation, divesting the people of their property, instead of hugging people who are in a better position like Mr. Dahyabhai Patel, who has now crossed over to another party, the Congress is trying to rationalise the whole law so as to bring it within the competence of every entrepreneur to take the consent of shareholders, as provided in the clause. If that is the approach

to the problem, why should there be any conflict, why should it be a sort of election campaign? It is not so. I can understand the honest misgivings of Mr. Santhanam, but his own amendment goes to show that he is agreeable to the extent of five thousand rupees. It only means that it takes away the wind out of the sail.

MR. DEPUTY CHAIRMAN: That will do.

SHRI J. S. BISHT: I oppose the amendment moved by Mr. Santhanam. This is a country which is governed by the rule of law. We have fundamental rights. Everybody and every group of people has got a right to express his political views as freely as any private citizen, be they a board of directors or a company. There is no reason at all why a group of people or the board of directors of a company should be deprived of the right of making a free choice of the political party which they prefer. Now, there is no point in getting excited over this matter. The matter was considered very coolly by the Joint Select Committee and all these amendments were tabled by the Opposition parties. The point is this. They should ask themselves honestly why it is that these people favour the Congress party. Why is it that they do not favour them? The fact remains that today in India, as we are situated, with all these fissiparous tendencies, with all these anarchic tendencies.

DR. H. N. KUNZRU: These are in your own party.

SHRI J. S. BISHT: It is because the Congress party is the only party that stands between an orderly India, progressive India, and chaos. That is why they prefer it. The companies or the board of directors do not like the Congress Party. The Congress Party has levied the Estate Duty, the Wealth Tax, the Expenditure Tax and a heavy super-tax. But they still favour us because we alone can main-

tain order in India and without order these companies cannot progress and cannot prosper; no group of people can prosper. That is why they favour us. That is what happens in every country. My friend, Pandit Kunzru, said that in England there is no such law. But then they should go before the shareholders. Section 293 says exactly the same thing. If it is above Rs. 25,000, it has got to go before the general body of shareholders. Where is the difficulty about that?

SHRI RAJENDRA PRATAP SINHA: No.

SHRI J. S. BISHT: Section 293 (1) says that the board of directors of a public company shall not, except with the consent of such a public company, make a contribution exceeding Rs. 25,000. That thing remains. Proposed section 293A is a further improvement, because it is going to disclose the names of the parties, the individuals and of everybody who makes a contribution.

SHRI BHUPESH GUPTA: May I know something about Uttar Pradesh?

SHRI J. S. BISHT: In fact, we enquired from the Britishers themselves as to what is the practice in England. They said they usually make contributions and mind you the Conservative Party has never disclosed so far and has refused to disclose who makes the contribution, the amount and from where they get it, not even about the expenditure. It is a great concession that the hon. Minister has made in this respect and I am sorry to say that the concession has been completely lost on them. The more they eat, the more the appetite grows. Instead of being grateful to the hon. Minister, they are crying hoarse about it.

SHRI N. KANUNGO: Sir, somehow or other this particular clause has provoked rather an interesting and lively discussion, unlike the more important clauses of this Bill, which deal with management, control and regulation of corporate business. One

thing struck me. The arguments which I heard today are nothing different, in fact they are exactly the same as they were in the discussions on the Bill of 1956. I believe if my esteemed friend, Mr. Santhanam's suggestion were accepted and embodied in the clause, the arguments would be the same. Neither I am capable nor am I competent to dilate upon the ethical purposes or the ethical duties of political parties. I would merely mention that section 293 as it stood gave unlimited powers for contributions to the shareholders of the company and to the directors. There was no obligation to report it to their shareholders even. As my senior colleague has said, this clause is enough as far as the rights of the shareholders *vis-a-vis* the directors are concerned, about the curiosity of the public and also the obligation of political parties to function in the blaze of publicity. It has put a ceiling and it has provided for disclosures. Therefore, I think the clause is more restrictive than the law which was before. I believe, Sir, the arguments which have been advanced about the ethical standing of the various political parties represented in this House have no bearing on this clause. Here, Sir, I would very humbly submit to you that I never expected that a respected Member of this hon. House, the hon. Mr. Kunzru, would go on record as repeating gossip. I say this because there were challenges and counter-challenges in the other House, and my senior colleague said categorically in the other House that there had not been a single instance where influence had been used on behalf of the Party of which I am a humble member, and where because of contributions any *quid pro quo* had been provided.

AN. HON. MEMBER: Not proved.

SHRI N. KANUNGO: It is up to you to say so, but I believe the bar of public opinion is open to you as well as to us.

SHRI BHUPESH GUPTA: That is why you are losing.

SHRI N. KANUNGO: I am merely stating facts as they are and as they are on record. Therefore, Sir, I would humbly submit that as far as the principle of corporate management is concerned, you cannot have any other or any better improvement than what is laid down in this clause, politics and ethics apart, and as we are considering corporate management and regulations therefor, I would humbly submit that we should confine ourselves to that aspect. We can take our political controversies and ethical controversies to other spheres. If necessary and if this House desires, if any Party desires, political laws and moral laws can be enacted in a suitable form. Therefore, I submit that this clause should be accepted as it is.

SHRI BHUPESH GUPTA: Amendment should be accepted?

SHRI N. KANUNGO: No, the clause should be accepted as it is, in spite of the warnings and forebodings to the Party which is sponsoring this clause, and I am sure, Sir, that this Party will not have anything on its conscience because whatever will happen will happen under the blaze of full publicity.

SHRI P. D. HIMATSINGKA: Sir, one important fact has been omitted. There is no restriction on private companies contributing any amount under the old Act. Now even the private companies come within this measure.

SHRI N. KANUNGO: That has been mentioned in the opening speech.

SHRI RAJENDRA PRATAP SINHA: Sir, before you put it to vote, may I appeal to my hon. friend, Mr. Santhanam, to keep the banner of the Congress Party flying by voting according to his conscience?

MR. DEPUTY CHAIRMAN: Mr. Santhanam, what about your amendment? Are you pressing your amendment?

SHRI K. SANTHANAM: I will leave it to the House, Sir.

SHRI BHUPESH GUPTA: It is pressed.

MR. DEPUTY CHAIRMAN: The question is:

16. "That at page 53, for lines 6 to 33, the following be substituted, namely:—

'293A. Notwithstanding anything contained in section 293, neither the company in general meeting nor its Board of directors shall, after the commencement of the Companies (Amendment) Act, 1960, contribute any amount to any political party or for any political purpose to any individual or body.'"

The House divided.

AYES

Ansari, Shri Faridul Haq
Dave, Shri Rohit M.
Desai, Shri Suresh J.
Gupta, Shri Bhupesh
Gurupada Swamy, Shri M. S.
Kunzru, Dr. H. N.
Lal, Prof. M. B.
Patel, Shri Dahyabhai V.
Santhanam, Shri K.
Singh, Shri Niranjana
Sinha, Shri Ganga Sharan
Sinha, Shri Rajendra Pratap

NOES

Abdul Rahim, Shri.
Abha Maity, Shrimati.
Abid Ali, Shri.
Agarwala, Shri R. G.
Agrawal, Shri J. P.
Ahmad, Shri Ansaruddin.
Ahmad Hussain, Kazi.
Akhtar Husain, Shri.
Ali, Shri Mohammad.
Anis Kidwai, Shrimati.
Bansi Lal, Shri.
Barlingay, Dr. W. S.
Bedavati Buragohain, Shrimati.
Bhargava, Shri M. P.
Bisht, Shri J. S.
Chaman Lall, Wewan.
Chavda, Shri K. S.
Chettiar, Shri T. S. Avinashilingam.
Doogar, Shri R. S.
Ghose, Shri Surendra Mohan.
Hardiker, Dr. N. S.
Himatsingka, Shri P. D.
Jalali, Aga S. M.
Joshi, Shri J. H.
Kapoor, Shri Jaspat Roy.

Keshvanand, Swami.
 Khan, Shri Akbar Ali.
 Kishori Ram, Shri
 Kumbha Ram, Shri.
 Kurre, Shri Dayaldas.
 Lakshmi Menon, Shrimati.
 Latif, Shri Abdul.
 Lohani, Shri I. T.
 Mahesh Saran, Shri.
 Mathen, Shri Joseph.
 Mazhar Imam, Syed.
 Misra, Shri S. D.
 Mohammad Ibrahim, Hafiz.
 Naik, Shri Maheswar.
 Nallamuthu Ramamurti, Shrimati T.
 Neki Ram, Shri.
 Paliwal, Shri Tikaram.
 Panjhazari, Sardar Raghubir Singh.
 Patil, Shri Sonusing Dhansing.
 Pattabiraman, Shri T. S.
 Pushpalata Das, Shrimati.
 Rajagopalan, Shri G.
 Reddy, Shri N. Sri Rama.
 Reddy, Shri M. Govinda.
 Sadiq Ali, Shri.
 Sapru, Shri P. N.
 Shakoor, Moulana Abdul.
 Sharma, Shri L. Lalit Madhob.
 Shervani, Shri M. R.
 Singh, Sardar Budh.
 Singh, Shri Ram Kripal.
 Tankha, Pandit S. S. N.
 Tripathi, Shri H. V.
 Venkateswara Rao, Shri N.
 Violet Alva, Shrimati.
 Yashoda Reddy, Shrimati.
 MR. DEPUTY CHAIRMAN: Ayes—
 12;

Noes.—61.

The motion was negatived.

SHRI K. SANTHANAM: Sir, I beg leave to withdraw my amendment Nos. 17 and 18.

**Amendment Nos. 17 and 18 were, by leave, withdrawn.*

SHRI DAHYABHAI V. PATEL: Sir, I beg leave to withdraw my amendment No. 38.

**Amendment No. 38 was, by leave, withdrawn.*

MR. DEPUTY CHAIRMAN: The question is:

**For texts of amendments, vide col. 1999 supra.*

78. "That at page 53, for the existing clause 100, the following be substituted, namely:—

Amendment 100. In section 293 of the principal Act, in clause (e) of section 293, of sub-section (1), the following proviso shall be added at the end, namely:—

'Provided however that nothing contained in this sub-section shall permit the Board of directors of any public company or a private company which is a subsidiary of a public company or any Government company to contribute directly or indirectly any sums to any political party or political fund.'

The motion was negatived.

MR. DEPUTY CHAIRMAN: Mr. R. P. Sinha's amendment No. 79 is barred.

The question is:

"That clause 100 stand part of the Bill."

The motion was adopted.

Clause 100 was added to the Bill.

Clause 101—Amendment of section 294.

SHRI K. SANTHANAM: Sir, I beg to move:

20. "That at page 56, after line 9, the following provisos be inserted, namely:—

'Provided that the company shall, at a general meeting, accept such declaration within a period of three months of such order and, if it does not do so, the appointment of that selling agent shall be deemed to have been terminated:

Provided further that the selling agent shall be entitled to terminate his agency if he is unwilling to accept the order of the Central Government declaring him to be the sole selling agent.'

SHRI DAHYABHAI V. PATEL: Sir, I beg to move:

39. "That at page 53, line 40, for the words 'for any area for a term exceeding five years at a time' the

[Shri Dahyabhai V. Patel.]
words 'for any area for the first time for a term exceeding ten years at a time' be substituted."

40. "That at page 54, line 38, for the words 'three years' the words 'one year' be substituted."

SHRI M. R. SHERVANI: Sir, I beg to move:

41. "That at page 55, lines 16-17, for the words 'by order, make' the words 'advise the company and the sole selling agent to make' be substituted."

SHRI BHUPESH GUPTA: Sir, I beg to move:

80. "That at page 53, for lines 38 to 44, the following be substituted, namely:—

'(1) No company shall, after the commencement of the Companies (Amendment) Act, 1960, appoint a sole agent for any area for a term exceeding three years at a time'."

The questions were proposed

SHRI K. SANTHANAM: Sir, the object of my moving amendment No. 20 is that where the Government has declared a person as the sole selling agent and has fixed his terms, then it should be referred to the company and the company should approve of it, and the sole selling agent also should have the option to say, "I do not want these terms." But now it is more or less a completely dictatorial arrangement. The Government has the right to declare somebody as the sole selling agent and also fix his terms without any reference to the company. I think it must be due to a mistake in the drafting. That is why I have put in this amendment.

SHRI T. S. AVINASHILINGAM CHETTIAR: Mr. Deputy Chairman, I referred to this point in my general observations also. The point is some people are resigning their managing agency and becoming selling agents to get exorbitant rates at a profit or commission. The attempt of this clause is to prevent them from getting the agency at unconscionable

rates. But the Government has the right to call for the papers and particulars about the conditions of selling the agency. They have also the power at all times to refer the matter back to the directors for their reconsideration if they consider it unconscionable. But what has happened is, Government have reserved to themselves this right without consulting either parties, either the company or the selling agent, to vary the terms of the agreement, and in that case, there is no agreement. Clause 101(6)(d) says—

"As from the date specified in clause (c) the appointment of the selling agent declared to be the sole selling agent shall be regulated by the terms and conditions as varied by the Central Government."

Nobody can compel any sole selling agent to continue his selling agency after the terms which have been offered by a company are varied by the Central Government. It looks absurd that the selling agent should accept it, and more than that this has got to be considered by the company itself, by the directors or by anybody else, competent people. And no chance for its consideration by the directors is being provided, and so, I should think that there is some absurdity in this matter. You cannot compel any selling agent to accept the terms as varied by the Government. So, I think there is a great deal in the amendment that has been moved by my friend, Mr. Santhanam.

SHRI BHUPESH GUPTA: Sir, here we want only to restrict it. It has been pointed out earlier—and we are just repeating it at the fag end of the Bill—that this institution of selling agents has now come to be a source of corruption. Mr. Govinda Reddy may not believe it, but managing agents resign or retire and then they want to become selling agents when the going is good. That is how they propose to function and we know that when the Company Law is being

changed, when new provisions are being made, they are also trying to adjust themselves to those provisions in such a manner as would not disturb their interests. These three years should be enough. After that it should not be done. Mine is a very simple proposition. I think it should be accepted. This business of selling agents has been subjected to many criticisms at the hands of Members of both Houses, and we have a suspicion about it. Let us see how it works and later on when we bring another amending Bill, we can change it. After five or six years of hibernation, we shall see how it stands.

SHRI N. KANUNGO: Sir, about the period during which the managing agent can be appointed as selling agent, this clause says that it should be three years. Appointment of managing agents as selling agents itself is not bad but under certain circumstances, if it is a *mala fide* transaction, then it becomes bad. Three-year period has been provided for as a cooling-off period during which the relationship between the managing agent and the managed company is expected to be severed. Now, the proviso has provided that within this period also, suitable selling agents can be appointed because there are companies where under particular circumstances, managing agents can be appointed as selling agents. It can be stated that they have not taken advantage of their relationship as managing agents for wangling this particular office of profit. And it is desirable that it should remain so.

Regarding the other amendment, it raises the question as to what would be the position if the Government asks for any amendment in the terms of contract between the selling agent and the company. Sir, it is difficult to visualise the condition of all commodities and all products and the nature of the effort made by the selling agents to sell them. True, in regard to most of the goods, today it is a seller's market and not much

effort has got to be made. At the same time we have to realise that we are fast going into a field of production where considerable effort, energy and investment have got to be made. Sometimes it may be necessary that the period should be extended and the conditions should be tailored to particular circumstances. Here I would remind the House that the clause as it was introduced in Parliament was much more restrictive. Now it has been liberalised in the sense that now there is considerable freedom between the corporation and the selling agent in arriving at a contract and the Government have only the power for calling for the documents and examining them, and if they find it onerous on companies which have been appointed the selling agents, then they will suggest amendments.

The suggested amendments are not acceptable too. We are not concerned with the selling agents, because in the case of a selling agent it is a contract between the selling agent and the company, and if the company does not accept it or the selling agent does not accept it, the contract falls through, because by the direction of the Central Government the contract is modified, and if it is modified, the contract is legal as far as modified, and it is open to either party to abrogate it if they like, but they cannot function under the old contract, because under the old contract if they function, it will be an offence. These amendments are therefore not necessary, Sir.

SHRI M. R. SHERVANI: I have not spoken on my amendment, Sir.

MR. DEPUTY CHAIRMAN: Well, you were not here.

SHRI M. R. SHERVANI: I just want to . . .

MR. DEPUTY CHAIRMAN: I am sorry; he has replied already.

SHRI M. R. SHERVANI: At least I want an assurance from the hon Minister that where the selling agents have been appointed unanimously

by the shareholders their terms will not be varied. At the most the Government can give advice and the matter can be referred back to the shareholders for reconsideration.

SHRI N. KANUNGO: No, Sir, because the conception of the whole Act is that under certain circumstances even the unanimous vote of the shareholders is not to the benefit of the company.

SHRI DAHYABHAI V. PATEL: You are going to be regimented. Do not be mistaken. Have a clear mind. We are going in for regimentation.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI K. SANTHANAM: Sir, I beg leave to withdraw my amendment.

*Amendment No. 20 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

39. "That at page 53, line 40, for the words 'for any area for a term exceeding five years at a time' the words 'for any area for the first time for a term exceeding ten years at a time' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

40. "That at page 54, line 38, for the words 'three years' the words 'one year' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

41. "That at page 55, lines 16-17, for the words 'by order, make' the words 'advise the company and the sole selling agent to make' be substituted."

The motion was negatived.

*For text of amendment, vide col. 2038 *supra*.

MR. DEPUTY CHAIRMAN: The question is:

80. "That at page 53, for lines 38 to 44, the following be substituted, namely:—

'(1) No company shall, after the commencement of the Companies (Amendment) Act, 1960, appoint a sole selling agent for any area for a term exceeding three years at a time.' "

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 101 stand part of the Bill."

The motion was adopted.

Clause 101 was added to the Bill.

Clauses 102 and 103 were added to the Bill.

Clause 104—Amendment of section 297

SHRI K. SANTHANAM: Sir, I move:

43. "That at page 58, line 15 for the words 'in circumstances of urgent necessity' the words 'in circumstances which make it urgently necessary in the interests of the company' be substituted."

Sir, the clause as it reads is:

"(3) Notwithstanding anything contained in sub-sections (1) and (2), a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter," . . .

Urgent necessity for whom? Is it for the relative, firm, partner or private company or director? It is intended that it should operate in circumstances of urgent necessity for the company, and here I think it is so badly drafted. I do not know if the hon. Minister is satisfied with it, but I would like an answer from him.

The question was proposed.

SHRI N. KANUNGO: I am advised that the clause as drafted includes

the purposes which the hon. Member has in mind.

SHRI K. SANTHANAM: Does it include the urgent necessity of the relative and partner also?

SHRI N. KANUNGO: No, Sir.

MR. DEPUTY CHAIRMAN: So what about your amendment?

SHRI K. SANTHANAM: Sir, I beg leave to withdraw my amendment.

**Amendment No. 43 was, by leave, withdrawn.*

MR. DEPUTY CHAIRMAN: The question is:

"That clause 104 stand part of the Bill."

The motion was adopted.

Clause 104 was added to the Bill.

Clause 105 was added to the Bill.

Clause 106—Amendment of section 299

SHRI K. SANTHANAM: Two per cent. may be lakhs of rupees, and I do not know why Government is so anxious to modify or dilute the wise restrictions which they had imposed.

SHRI N. KANUNGO: We do not want it to be so irksome, that where there is a nominal interest there should be this irksome provision there.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 106 stand part of the Bill."

The motion was adopted.

Clause 106 was added to the Bill.

Clauses 107 to 112 were added to the Bill.

Clause 113—Amendment of section 309

SHRI K. SANTHANAM: Sir, I move:

50. "That at page 63, line 3, after the words 'shall refund such sums

to the company' the words 'within three months of such excess being known or declared' be inserted."

SHRI P. D. H. MATSINGKA: Sir, I move:

81. "That at page 62, lines 16-18, for the words 'for a period of two years after such commencement or for the remainder of the term of office of such director, whichever is less, but no longer' the words 'for a period of two years and thereafter if the said basis is approved by the Central Government' be substituted."

The questions were proposed.

SHRI K. SANTHANAM: Only one remark. My amendment prescribes a time-limit. The clause simply says:

"shall refund such sums to the company" . . .

and so there is no time-limit. As such it will be a dead letter and so I would like to place a time-limit of three months for such refund.

SHRI P. D. HIMATSINGKA: At present section 309 provides:

"A director may receive remuneration either by way of a monthly payment, or by way of a fee for each meeting attended, or partly by the one way and partly by the other."

Now, Sir, this clause 113 removes this option to the company to pay a monthly remuneration to a director for meetings attended, and therefore I have proposed an amendment in the proviso where it reads "for a period of two years after such commencement or for the remainder of the term of office of such director, whichever is less, but no longer." I have suggested the deletion of this portion and in its place substitution of "for a period of two years and thereafter if the said basis is approved by the Central Government." Now the remuneration of directors of the companies that will be formed henceforward has

*For text of amendment, vide col. 2044 *supra*.

[Shri P D Himatsingka]
got to be approved by the Government, remuneration and everything, and therefore so far as new companies are concerned no director can have a monthly remuneration if it is not approved by the Government. There are certain existing companies the Boards whereof meet four times five times and even six times in a month and the directors whereof are paid monthly, in some cases Rs 200 Rs 300 and so on, and that also has to be approved by Government. So I do not see why in such small matters the discretion should not be left with the company, and my amendment suggests that that way they may continue to be paid in future, that is after the two-year period, if the basis of such payment is approved by the Central Government.

SHRI T S AVINASHILINGAM CHETTIAR: Sir, section 309 refers to the remuneration of directors and it says it may go up to five per cent for any managing director. The amendment now takes power for Government, gives greater latitude to them, and the proviso on page 62 of the Bill reads

"Provided that except with the approval of the Central Government such remuneration shall not exceed five per cent of the net profits for one such director, and if there is more than one such director, ten per cent for all of them together"

I am not able to understand this amendment. We want to put limits to the remuneration and in the Act as it is for the managing directors we fixed 5 per cent and for the managing agents ten per cent, but today when we want to limit the remuneration of the managing directors, what has been said in this amendment is that not only will the remuneration be five per cent if it is a case of one managing director or will be up to ten per cent in the case of more than one managing director but also that with the permission of the Central Government

it can go over ten per cent. I see shaking of heads and hands, but let me explain. The present Act says that except with the approval of the Central Government, such remuneration shall not exceed 5%. I would like the Government to explain to us why this remuneration of managing directors, which was 5% in the original Act, has been made 10% when it is more than one managing director and secondly, what is the reason for the Government taking this power? He will say "in exceptional circumstances". But what are the exceptional circumstances when that exemption will be given? I would like to have clarification in this matter.

SHRI N KANUNGO: Sir regarding Mr Himatsingka's suggestion, the purpose is to eliminate the monthly payments of directors and to confine it only to payments per meeting if there are more meetings of a particular company in a month or for a number of months put together. There is nothing to prevent it.

As far as the putting in of excessive fees of directors is concerned there are provisions where it can be checked. But I am sorry I cannot accept the idea of eliminating that particular form of remuneration of directors because there is a period provided during which the directors of the company can arrange to change the terms from monthly fee to fee per meeting.

Regarding Mr Santhanam's point that we have not deliberately put a time limit, I have to submit that it is nothing in the nature of the Public Demands Recovery Act or anything like that; it is a civil claim for which the usual law of limitation will apply. Therefore, it is a civil claim by a person against another person and it will be decided according to civil law. I am afraid my friend has not appreciated the discussions we had in the Joint Select Committee. It has been found necessary for companies where there are a larger number of managing directors according to the nature of the business of the company and they have been on contract for certain

salaries and all that and 5% does not cover up, there it will be unfair to go to the extent of paying compensation for the cancellation of these contracts. It may be necessary to have higher payments for particular years when the profits are less than 5 per cent or even when there might be losses. So, the provision has been made to provide for these contingencies.

SHRI K. SANTHANAM: Sir, I do not press my amendment.

SHRI P. D. HIMATSINGKA: Sir, I beg leave to withdraw my amendment.

**Amendment Nos. 50 and 81 were by leave, withdrawn.*

MR. DEPUTY CHAIRMAN: The question is:

"That clause 113 stand part of the Bill."

The motion was adopted.

Clause 113 was added to the Bill.

Clauses 114 to 117 were added to the Bill.

Clause 118—Amendment of section 316

SHRI M. R. SHERVANI: Sir, I move:

53 "That at page 65, line 16, for the word 'including' the word 'excluding' be substituted."

54. "That at page 65, line 24, for the word 'including' the word 'excluding' be substituted."

The questions were proposed.

SHRI M. R. SHERVANI: Sir, section 316 of the original Act restricted the managing directorship to 2 excluding the private limited companies. Now, this amendment restricts the managing directorship to 2 including the private limited companies. My submission is

**For texts of amendments, vide cols. 2045-46 supra.*

that there may be public limited companies worth Rs. 10 crores each, controlling 20 mills. This is, of course, the volume of work which a single man is not expected to do. But there may be very small companies with a capital of a lakh of rupees or so. Now the managing director of this private limited company cannot serve as the managing director of a public limited company. Actually the restriction should be on the size of the companies and not on the number of companies.

SHRI N. KANUNGO: Sir, this has been deliberately put by the Joint Select Committee. Because a person has a limited capacity, he should not allow himself to be appointed to innumerable companies and draw remuneration from them without doing the money's worth for them. The private companies were excluded in the Act of 1956 but they have been included here because the operations of private limited companies are also sometimes much bigger than those of public limited companies. Well, Mr. Shervani has argued that the size of the operations and not the nature of the company should be the criterion. Yes, that is one way, but the easier way of administration is to take the composition and not the nature of the companies. Therefore, I am not prepared to accept it.

SHRI M. R. SHERVANI: Sir, I beg leave to withdraw my amendments.

**Amendment Nos. 53 and 54 were, by leave, withdrawn.*

MR. DEPUTY CHAIRMAN: The question is:

"That clause 118 stand part of the Bill"

The motion was adopted.

Clause 118 was added to the Bill.

Clauses 119 to 121 were added to the Bill.

**For texts of amendments, vide col. 2049 supra.*

Clause 122—Amendment of section 332.

SHRI ROHIT M. DAVE (Gujarat): Sir, I move:

82. "That at page 66, lines 27-29, the words 'who is entitled to exercise not less than five per cent. of the total voting power therein' be deleted."

Sir, this clause is a very important clause because it defines the word "managing agents". As I said in my opening speech, I am opposed to the managing agency system altogether and I press that it should go immediately. But the Government does not seem to accept this particular line of thought. Therefore, at least let us try to put a ceiling over the number of managing agencies as 10 for every managing agent as the effective ceiling. The normal way of circumventing this particular ceiling is to have some private limited company, in that private limited company the shares are held by a small group of shareholders. This small group is normally the friends and relatives of some keyman. The keyman himself does not hold many shares, perhaps he holds 1 per cent. or 2 per cent. Because his own friends and relatives are the shareholders in that private limited company, it is possible for him to manage through that private limited company more companies and thereby to circumvent the ceiling of 10 which is prohibited under the law. It is because of that that I am moving that even if 1 per cent. or even one share is held by anyone in a private limited company, he should be considered a managing agent and, therefore, any company that is managed by a private limited company should be included in the list of companies managed by a managing agent, and to that extent the ceiling should be modified.

The question was proposed.

SHRI N. KANUNGO: Sir, the whole question is, what should be the quantum of the share which will give rise to the presumption that a particular shareholder has got control over the company? It is conceivable that under certain circumstances, assuming there

are only 3 or 4 shareholders in a private company with a large volume of operations, the power of 1 per cent. of the shares will be very important. This matter was considered by the Joint Select Committee and under the present circumstances it was thought that this limit of 5 per cent. which has been provided is ample for the time being and in conjunction with the other provisions of the law, the interlocking and remote control of companies will be avoided. Let us try it for some time

MR. DEPUTY CHAIRMAN: The question is:

82. "That at page 66, lines 27-29, the words 'who is entitled to exercise not less than five per cent. of the total voting power therein' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 122 stand part of the Bill."

The motion was adopted.

Clause 122 was added to the Bill.

Clause 123—Amendment of section 342

SHRI K. SANTHANAM: Sir, I move:

57. "That at page 67, lines 15-16, for the words 'during the period of his managing agency' the words 'till the date when his resignation becomes effective' be substituted."

I also move:

58. "That at page 67, in lines 26-27 and 31, respectively, for the words 'the managing agent ceases to act as such' the words 'the managing agent's resignation becomes effective' be substituted."

The questions were proposed.

SHRI K. SANTHANAM: The words 'during the period of his managing agency' which are there, are very ambiguous. They are likely to give a lot of trouble. I have only tried to clarify the clause by saying: "till the date when his resignation becomes

effective". When a man has already resigned, what is the period for which he continues to be the managing agent? The determination of the period is going to become ambiguous. It is not right in the Company Law that there should be any ambiguity.

SHRI N. KANUNGO: Apparently there might be a period of vacuum between the resignation of the managing agent and an alternative firm or management being provided by the Board of Directors and acceptance of the resignation. I suppose, normally, what would happen in a company which is living is, the period of vacuum will not be there because the Board of Directors will immediately have to make other arrangements. Even under the normal presumptions of equity, the managing agent cannot function during the brief interval of his submitting the resignation and the acceptance of the same. Though apparently there is a vacuum, I am advised that this will not lead to any awkward position and I would suggest that the clause, as it is, may be accepted because it is hoped that in conjunction with other provisions of the law, this situation can be tackled.

SHRI K. SANTHANAM: Sir, I beg leave to withdraw my amendments.

**Amendment Nos. 57 and 58 were, by leave, withdrawn.*

MR. DEPUTY CHAIRMAN: The question is:

"That clause 123 stand part of the Bill."

The motion was adopted.

Clause 123 was added to the Bill.

Clauses 124 to 127 were added to the Bill.

Clause 128—Substitution of new section for section 350—Ascertainment of depreciation

SHRI SURESH J. DESAI (Gujarat): Sir, I move:

**For texts of amendments, vide col. 2052 supra.*

59. "That at page 72, lines 6-9, the words 'as shown by the books of the company at the end of the financial year expiring at the commencement of this Act or immediately thereafter and at the end of each subsequent financial year,' be deleted."

I also move:

60. "That at page 72, after line 20, the following explanation be inserted, namely:—

'Explanation: For the purpose of this clause, the words "written-down value" would mean either the written-down value as per Income-tax records if the same has been followed prior to the commencement of this Act for calculating managing agency commission or in other cases the written down value as shown by the books of the company but shall not include any value by which the assets have been written up in the books.'

SHRI P. D. HIMATSINGKA: Sir, I move:

83. "That at page 72, lines 6-9, the words 'as shown by the books of the company at the end of the financial year expiring at the commencement of this Act or immediately thereafter and at the end of each subsequent financial year' be deleted."

I also move:

84. "That at page 72, after line 20, the following explanation be inserted, namely:—

'Explanation: For the purpose of this section, the words "written-down value" would mean either the written-down value as per income-tax records if the same has been followed prior to the commencement of the Companies (Amendment) Act, 1960 for calculating managing agency commission or in other cases the written-down value as shown by

[Shri P D Himatsingka.]

the books of the company but shall not include any value by which the assets have been written up in the books."

MR. DEPUTY CHAIRMAN: Mr Himatsingka, your amendments are almost identical.

The questions were proposed.

SHRI SURESH J DESAI: Sir, these amendments seek to remedy an anomalous situation. Section 350 of the principal Act is proposed to be substituted to provide for depreciation to be calculated for arriving at the net profits of the company. There are two methods of calculating depreciation. Some companies calculate it according to the rules provided by the Income-tax Act, 1922. Some companies follow the other method, called the straight-line method, that is, calculating it according to the estimated life of the plant and machinery. Now, those who follow the second method, when they compute the managing agency commission, calculate depreciation at the written-down value year by year according to their Income-tax records. But the section provides that the written-down value will be calculated only as shown by the books. This will place the second set of companies to an obvious disadvantage. So my amendment seeks to remedy this situation.

Secondly at times, when the written-down value in the balance-sheet is very low, there is revaluation of the assets and the value is written up. This only places the company at an advantage in negotiating bank loans, etc but according to this clause, now, even depreciation, calculated at the written-up value which is never taken into the profit and loss account of the company, will also have to be included. So this anomalous position will be remedied by my amendment.

SHRI P D HIMATSINGKA: If the amendments are accepted, there will be no loss but the companies will be in the same position where they were

before the amendments came into force. The result of the amendment being accepted will be that the written-down value for depreciation and computing their commission, etc shall be based on the written-down value adopted by the company in the previous years but if the present amendment, as in the clause, is retained which says, "as shown by the books of the company at the end of the financial year, etc.", the result will be, as mentioned by Mr Desai, that those who have followed any method other than that allowed by the Income-tax law will show different amounts whereas in calculating the net profits, certain other figures have been taken. So there will be injustice done to those companies. Therefore these amendments, if accepted, will remove that. An Explanation has been added which will make it clear. It says:

"For the purpose of this clause, the words 'written-down value' would mean either the written-down value as per income-tax records if the same has been followed prior to the commencement of this Act for calculating managing agency commission or in other cases the written-down value as shown by the books of the company . . ."

There is another thing that has been added—

"but shall not include any value by which the assets have been written up in the books."

As you know, in the case of a large number of companies existing for a long time, the book value of the fixed assets is sometimes Re. 1 or even zero but some companies revalue them and put the present market value on their immovable assets and on the credit side, they put that as reserve. Therefore there is no gain to the company, but if the language of the present amendment is followed, they may be put to a great disadvantage. The value in the books

may be the basis for calculating depreciation and there will be a lot of difference to them in the amount of remuneration. That may be taken into consideration.

SHRI N. KANUNGO: Frankly, this is too technical for me to comprehend fully. All the same, this has been done for setting down definitely what should be the accounting procedure for the commission to be paid. Whether the past methods of accounting will be hardship to a particular company or not, is doubtful but all the same, this lays down a particular method and this method has been discussed very thoroughly in the Joint Select Committee. I would, therefore, commend to the House the acceptance of the clause as it stands.

5 P.M.

**Amendment Nos. 59, 60, 83 and 84, were, by leave, withdrawn.*

MR. DEPUTY CHAIRMAN: The question is:

"That clause 128 stand part of the Bill."

The motion was adopted.

Clause 128 was added to the Bill.

Clauses 129 to 156 were added to the Bill.

Clause 157—Amendment of section 411

SHRI T. S. AVINASHILINGAM CHETTIAR: Sir, I have to make a few observations on clause 157 which seeks to amend section 411 of the principal Act. This refers to the work of the Advisory Commission. While mentioning the work of the Advisory Commission, a number of clauses are mentioned in which the matters pertaining to the clauses should be referred to the Advisory Commission. The original amendment said that cases coming within sections 408 and 409 need not be brought within the purview of the the Advisory Commission. Section 408 refers to Government's powers to

prevent mismanagement, and changes in the Board of Directors likely to affect the company prejudicially. The Select Committee considered this matter very carefully and thought that an omission like that would not be advisable in the interest of the Company Law Administration and so this amendment was arrived at. In this connection, Sir, I want a little clarification. You see two provisos here. One says:

"Provided that it shall not be necessary for the Central Government to refer to the Advisory Commission any application under section 408 or section 409 which in the opinion of that Government is of a frivolous nature or deals with matters of minor importance".

The only point I am trying to make is this. If the application is not referred to the Commission because in the circumstances it is thought to be frivolous, a list of such instances should be given to the Commission when it meets the next time. I say this because with all my trust in the Government's machinery, it is possible that there may be an attempt at suppression of some of these cases. So it is necessary that while frivolous cases need not be referred to the Commission to avoid multiplication of the work of the Commission, a list of the cases which have been received by the Company Law Administration and which they thought to be frivolous and should not be referred to the Commission, should also be given to the Commission so that if the Commission thinks it necessary, they may review this matter. I think that is necessary.

With regard to the second proviso, Mr. Deputy Chairman, it says:

"Provided further that the Central Government may, in the case of any application under section 408 or section 409 which has been, or may be, referred to the Advisory Commission, make such interim order as it thinks fit but it shall not make any final order on such application except after

*For texts of amendments, vide col. 2054-55 *supra*.

[Shri T. S. Avinashilingam Chettiar.] considering the advice tendered by the Advisory Commission."

Now, in the case of an emergency it has been provided that the Company Law Administration may take whatever steps they may think fit. But the final step must have the approval of the Advisory Commission. That proviso is all right as it is.

But with regard to the first proviso, the Minister in charge will make it clear that this will not be a close secret with the Company Law Administration and that a list at least of such cases will be made available to the Commission so that they may be seized of it.

SHRI N. KANUNGO: Sir, I must make it clear that there is no intention to avoid the advice of the Commission. This provision was laid down so that it might lighten the work of the Commission and considering the amount of work that is already there, it was thought that they should not be loaded with frivolous cases and what are called unnecessary references. But a list will certainly be maintained and it will be the Government's discretion to place it before the Commission. The discretion must be that of the Government and after a period of one or two years the House can always ask what is the number of cases which are dealt with in this way, the nature of those cases and so on. It is open to the House to review it and to give any directions that the House pleases.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 157 stand part of the Bill."

The motion was adopted.

Clause 157 was added to the Bill.

Clauses 158 to 183 were added to the Bill.

Clause 184—Amendment of section 530.

SHRI ROHIT M. DAVE: Sir, I move:

85. "That at page 92, for the existing clause 184, the following be substituted, namely:—

'Amendment 184. In section 530 of the of section Principal Act,—
530.

(a) in sub-section (1), in clause (b), after the words 'relevant date', the following words, letters and figures shall be inserted, namely:—

'and any compensation payable to any workman under any of the provisions of Chapter VA of the Industrial Disputes Act, 1947;'

(b) in sub-section (2), for the words, 'one thousand rupees', the words 'two thousand and five hundred rupees' shall be substituted.'

Sir, clause 184 has got one very welcome provision, namely, that certain benefits which have been provided under the Industrial Disputes Act are also made a prior charge in case the company goes into liquidation. But while giving this benefit to the workers it has been taken away in another way because the ceiling of Rs. 1,000 which alone can be considered as a prior charge at the time of winding up of the company, is kept as it is. Unless this ceiling is raised, the worker can only have a legal satisfaction that he has been given certain benefits under the law but he cannot exercise the right to get those benefits because of the fact that this ceiling will apply. Therefore I have suggested that the ceiling should be raised from Rs. 1,000 to Rs. 2,500.

The question was proposed.

SHRI N. KANUNGO: Sir, I fully appreciate the purpose behind Mr. Dave's amendment but at the same time I must say that apart from the workers, there are other claimants also in a liquidation. Sir, it is known that a company goes into liquidation because it cannot meet out of its assets all its liabilities. When the

claimants are many if you push up the prior claims of a particular section, then the other section is bound to suffer. If there are adequate assets to satisfy all the prior claims, it is all right and they have got various other claims also. One should not try to deprive other creditors. Creditors who have rendered service in however humble a manner it might be should not be deprived and to that extent the credit-worthiness of the company should not also be jeopardised. If you consider the provisions that are there in other countries, I am told in the U.K. the prior claim has been put at £200 and comparing the conditions in the U.K. and the conditions in India I think this amount we have prescribed is adequate in the present conditions.

MR. DEPUTY CHAIRMAN: The question is:

85. "That at page 92, for the existing clause 184, the following be substituted, namely:—

'Amendment 184. In section 530 of the of section Principal Act,—
530.

(a) in sub-section (1), in clause (b), after the words 'relevant date', the following words, letters and figures shall be inserted, namely:—

'and any compensation payable to any workman under any of the provisions of Chapter VA of the Industrial Disputes Act, 1947;'

(b) in sub-section (2), for the words, 'one thousand rupees', the words 'two thousand and five hundred rupees' shall be, substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 184 stand part of the bill."

The motion was adopted.

Clause 184 was added to the Bill.

Clauses 185 to 215 were added to the Bill.

*Clause 216—Insertion of new Schedule
1A*

SHRI BHUPESH GUPTA: Sir, I move:

86. "That at page 104, after line 31, the following be inserted, namely:—

- '50. Sister's daughter's husband.
- 51. Mother's sister's son.
- 52. Mother's sister's daughter.
- 53. Husband's brother's father.
- 54. Husband's brother's mother.
- 55. Husband's mother's father.
- 56. Husband's mother's mother.
- 57. Wife's father's father.
- 58. Wife's father's mother.
- 59. Wife's mother's father.
- 60. Wife's mother's mother.'

Sir, here in the Schedule you will find that a list is given of the relatives. I have only added to this list. There you have 49 entries. The number is rather interesting. 49 is given in this list; I have brought it to 60 by adding a number of other relatives. Why I do so is quite clear because in the earlier provisions of this Bill you will find that many of the clauses relate to relatives of directors, managing directors and so on. They always use this kind of penumbra of bringing in relatives and then they carry on. Other relatives would be available and that is how they will try to circumvent the provisions of the law. Therefore in this Bill no loophole should be left and that is why I have suggested the addition of these relatives also. For instance, there will be the sister's daughter's husband. We especially the Hindus—and Muslims also—reach out to all kinds of relatives; wife's father's father; wife's mother's mother; there are so many like that. I do not know; I can't even contemplate this kind of thing but people who are interested in circumventing the law know where to find whom and they make all kinds of arrangements. And that is why I have added certain other categories of relatives also to be included in the Schedule.

The question was proposed.

SHRI N. KANUNGO: May I know what is husband's brother's father?

SHRI BHUPESH GUPTA: I do not know; he can say, he being a husband and perhaps has a brother. Not being a husband I cannot say.

SHRI N. KANUNGO: Really I do not visualise all the relationship contained in the long list which has been given in the Schedule and still more confusing is the list which Mr. Bhupesh Gupta has suggested. I am sure Mr. Gupta also cannot visualise all this relationship. In this matter I would prefer to stick to the list which the Joint Select Committee has adopted and in any case personally I feel this is very illusory because it will prove more dangerous to the relatives.

MR. DEPUTY CHAIRMAN: The question is:

86. "That at page 104, after line 31, the following be inserted, namely:—

- '50. Sister's daughter's husband.
- 51. Mother's sister's son.
- 52. Mother's sister's daughter.
- 53. Husband's brother's father.
- 54. Husband's brother's mother.
- 55. Husband's mother's father.
- 56. Husband's mother's mother.
- 57. Wife's father's father.
- 58. Wife's father's mother.
- 59. Wife's mother's father.
- 60. Wife's mother's mother.'

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 216 stand part of the Bill."

The motion was adopted.

Clause 216 was added to the Bill.

Clauses 217 and 218 were added to the Bill.

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

SHRI N. KANUNGO: Sir, I move:

"That the Bill be passed."

The question was proposed.

SHRI BHUPESH GUPTA: Sir, after long discussions we are about to pass this Bill. Many of our suggestions have not been accepted and we shall continue to press them in future whenever we get a chance. As you know, even before this measure came, I brought in an amendment to section 293 prohibiting donations to political parties. We may do it from this side of the House through Private Members' Bills.

Now, I will make a few suggestions. Now, whatever little improvements have been made despite the fact that they have not gone very far at all, very much will depend on how the law is administered and we find from our experience that whenever a measure of this kind is passed containing not so bad, neither so good, provisions, they are not properly implemented. There are certain provisions in this Bill which are important and they should be enforced. Who can enforce them? Sir, great responsibility devolves on the Company Law Administration. In this connection you will have noticed that in the course of the discussions none from this side or from the other side of the House made any adverse remark about the Company Law Administration. We have done so not because we have not got one or two complaints about them but we know that they have been subjected to severe attack by big business who are trying to malign the Company Law Administration and make it look as if it is a bureaucratic administration not interested in public good but interested in self-aggrandisement and so on. That is why we thought that this institution, the Company Law Administration, should be given a little protection and that

protection we have given. What we would now like is this. Firstly, we would like the organisation to be developed in very many centres like Calcutta, Kanpur, Madras, Delhi, Bombay, etc. But you do not have enough officers. I think in order to implement a measure of this kind we must have a larger number of officers and personnel. Some people might ask, 'how is it that the Communist Party which has been pressing for economy now comes out with this suggestion for extension of what might be called the bureaucracy?' I do not view it from this angle at all because no party is going to implement this. It is the Government which will have to implement this measure and above all it is the Company Law Administration which will have to implement this. That is why they should be given adequate personnel for dealing with so vast and complicated a problem as this. If you look into the Report of the Company Law Administration, you will find that the number of inspectors and others is very few even in a place like Calcutta which is a big business centre. I think Bombay and Calcutta together account for nearly 45 per cent. of the companies. Now, the number is very small. Therefore, it has to be increased. I do not say that the top should be increased, but it should be duly increased.

Then, Sir, there should be little interference with the day to day working of the Company Law Administration. The hon. Minister said that I was supporting Mr. Masani. Not at all. Mr. Masani is a fright to me. And it is precisely because of that I want the Company Law Administration to take very stringent and rigorous measures against big money, which is why I am supporting this kind of extension of the institution. Therefore, they should be given enough powers to function.

Then, Sir, the responsibility must be to Parliament naturally. The Company Law Administration should listen

to what everybody says, read what is written about the company management, big business concerns, read what they say in the Press, what we from the Opposition say. They do not come to listen to the debates, but they can certainly get hold of the proceedings and study them. They can study what appears in the newspapers and take measures. My experience in this matter is not so happy. We had brought many things to the notice of the House. We had named concerns like Jardine Hendersons and so on. We had named many people that way, so that investigation could take place. Up to date we do not know what has happened. Therefore, it is essential that, when we bring things to the knowledge of the House or to the knowledge of the Company Law Administration, they should look into them. Not only that. We should have at least some kind of an assurance that they are looking into them and we would be interested in knowing the results of their examination. I do not say that you believe everything that we say. But certainly when things are said by various parties, from responsible quarters, whether in the Press or by the representatives of the public, they need to be looked into with a certain measure of seriousness. That seriousness seems to be lacking.

Then, Sir, there is a fear on the part of the Company Law Administration about doing certain things against people very high-up. They should be free from that fear. I think it will be a creditable day if they could haul up certain elements in big business and fix them up for the crimes they are committing. Even if certain Ministers and others may be annoyed with them for the time being, the entire people will bless the Company Law Administration. They should do their duty. And what is more, people's confidence in the administration will grow. It is important that the Company Law Administration should seek the cooperation of the workers, trade unions, employees and so on. Today we are in a state of affairs where you do not have a

[Shri Bhupesh Gupta.]

co-operative mind on the part of the employees and workers. Surely the Company Law Administration and those who are responsible can seek the assistance of the organised trade unions, their leaders or the workers individually and employees in order to find out things. They should not rely on merely what is said by the companies, because we know that our companies, at least the big ones, are accustomed to giving false accounts and even worse, they are prone to making false statements. Every statement that comes from that quarter should be verified and you have got readily available for consultation a very class-conscious, patriotic-minded working people and employees, who should be consulted. That is my suggestion.

Then, Sir, with regard to these other factors, a report should be prepared. We get a report. No, that will not do. From the discussions in this House and the other House it should be clear to the Company Law Administration what is agitating the public mind, what is agitating our mind and what is agitating the minds of the other Members. We would like to have more facts, more information about this thing, so that we can suggest to them how they should function, and we may also know that things are going on well. That is also very important. As far as the other provisions are concerned, I think the Company Law Administration should now make up its mind. Whatever limited, restricted power it has got, it must utilise for striking at the concentration of wealth, at the monopolist elements, big concerns and so on in so far as they lead to certain evil practices, etc. They should not be bogged down in routine matters only. Routine matters are too many in the Bill. So many procedural things are there. If the Company Law Administration, especially the gentlemen who are in charge at the top get bogged down in minor details and so on, the other things will not be looked after well. Therefore, there should

be a proper division of work in the Company Law Administration. Some people should be entrusted with the responsibility of enforcing policies dealing with bigger matters, whereas the other people should be given the responsibility of handling smaller, minor, detailed matters. Otherwise things get mixed up. We who run party organisations and other organisations know that if you concentrate too many things in the hands of one set of people, major and minor, nothing is properly looked after. Therefore, it is necessary that the organisation should be proper.

As far as the special audit is concerned, I raised that point when he was speaking. I say that let us take the risk a little of overdoing things. Let us send a number of special auditors, because the country will gain by it. We are not interested primarily in what happens to an individual concern. We know that the big concerns in the country have not proved true to their assignment. They have not played fair by the country and the public. Therefore, it is essential, at this stage at least when you have got the power, to exercise it. I do not say that you use it frivolously. I do not think that the gentlemen who are at the head of Company Law Administration or in the Government will use it frivolously. But my fear is that lest they should annoy some people, they might proceed very falteringly in this matter. They may not take any step. Therefore, I suggest that this special audit should be instituted and as long as there is a *prima facie* case, no case intimation should be sent. It is at their discretion now. In no case intimation should be sent to the person who should come under investigation or under special audit.

Finally, I would like also to add here managing agency. Yes, Sir, Lal Bahadur Shastriji in his speech said that the trend was in the other direction. But what did he say? Those managing agencies that are there remain more or less. Now, instead of

having hundreds, we are having fifties. Are we reversing the trend? I do not take it that the reverse trend is there. Maybe they are not growing in the same way as they were growing. But the point is to restore the economy from the clutches of the existing managing agency system. And we cannot accept the argument that if the managing agencies were to be disbanded or discouraged either in the Tatas or in the Indian Iron and Steel Company, production would go down. There would be Board of directors or if you like managing directors and so on. The same set of people would be there. Only the financial arrangement would disappear. You will see that the profit is got not out of the managing agency; profit is got out of the production of steel and the country knows it. The production will be there, the workers will produce even more enthusiastically and you will get it. Therefore, we cannot accept this argument that production will suffer. The Company Law administration should pursue now a policy of positive disincentive, discouragement of the managing agents. Now, they cannot go outside the bounds of law. I know it. But within the bounds of law they should take every possible measure, every possible step, so that the existing managing agencies are inclined to give up and new managing agencies are not formed. Fraud should be prevented. Now, Sir, the secretary and treasurer are the two institutions, where the managing agency is finding a new outlet of economic control and authority. I suggest that Government and the Company Law administration particularly should be very vigilant about the position of secretaries and treasurers, so that these two institutions are not abused in this manner. In no case the Government or the Company Law Administration should raise the emoluments and allowances under section 309 of the managing directors or managing agents. The point is to reduce it. Fifty thousand is already there. The point is to bring it down. I felt aghast when I saw

that in some cases it has been raised of all people by the Company Law Administration. That should not be done.

Sir, this is all I can say, and I hope that, however little the good that has been done, the Company Law Administration will give a better account of itself in the coming days.

SHRI M. P. BHARGAVA (Uttar Pradesh): Sir, a long-drawn legislation is coming to an end. The Joint Select Committee deliberated for quite a long period, and every clause was thrashed out. On this occasion I want to congratulate Shri Lal Bahadur and his colleague, Shri Kanungo, for the patience which they showed in the deliberations of the Select Committee. Over 500 amendments were moved, and there was divergence of opinion on almost every important item. Yet they listened to every argument and then tried to formulate something which would be acceptable to everybody. Sometimes Shri Lal Bahadur attended the meetings of the Select Committee against the advice of his medical attendants.

Sir, Shri Lal Bahadur referred to the question of strengthening of the administrative set-up which is very very necessary, and I agree with some of the observations made by Mr. Bhupesh Gupta in so far as they relate to the strengthening of the administrative set-up. Now there are several clauses which need the close attention of the Company Law Administration. Two major administrative factors have hitherto prevented the Company Law Administration from administering the Companies Act as vigorously as it should have been and from helping to achieve the social and economic objectives which underlie its provisions. The two factors are, first, inadequate staff in this Department both in quantity and in quality at the Centre as well as in the States. The second factor has been the absence of any effective co-ordination and integration of work as between the Department of Company Law Administration and other

[Shri M. P. Bhargava.] related Departments on subjects like industries development and regulation, the work of the Licensing Committee under the Act, the capital issue control, the Stock Exchange Regulations, and the working of financial institutions like the Industrial Finance Corporation, the National Industrial Development Corporation and the like. The present amendment of the Companies Act will result in a considerable increase in the work of the Department both quantitatively and qualitatively. Many important administrative amendments now made may well remain ineffective or only partially effective unless the present ban on the creation of new posts imposed by the Government is relaxed and adequate staff of the requisite quality is provided in the Department of Company Law Administration in order to enable the Department to administer the provisions of the new law. The House will bear with me if I take a little of its time and give some figures about the present strength.

At the Centre, besides a few administrative officers the headquarters of the Department consists only of one senior chartered accountant and two junior accountants. Similarly the Legal and Investigation cells consist of only one or two trained men. As the House knows, we have introduced a new clause, No. 71, about special audit. This clause will only remain a pious hope if it is not properly administered, and that cannot be done unless an adequate staff of chartered accountants and trained accountants is made available to the Company Law Administration here and also to the Registrar of Companies in the States. The only hitch is the ban which has been imposed on new recruitment. That was done as a result of the Committee which was appointed to go into the civil expenditure. Here is a case where that rule must be relaxed and the Company Law Administration should be allowed to recruit people to carry on their day-to-day work which is bound to become heavy with

these new amendments which we have accepted today.

Now, Sir, take the case of the field organisation. The field organisation consists of the offices of four Regional Directors and the offices of Registrars in the different States. The Regional Directors are supposed to supervise the offices of the Registrars in their region, but the staff at their disposal is hardly adequate for this purpose. Besides, the Regional Directors are relatively junior officers who cannot be expected to take decisions in complicated matters without constant guidance and supervision from the Centre. So, what is necessary and what is required is that these Regional Directors should be fairly senior people who can take decisions on their own and who can work on the hints given by the Centre without a lot of letters being exchanged between the Regional Offices and the Centre to explain minor details. The Centre should be able to give them guidance and these officers should be able to carry on the work for which I doubt if the present officers are senior enough. I do not say that they are not good people. They are good people, they are doing things in their own way. But what I am stressing is that more senior men should be provided as Regional Directors. Of the 50 offices of Registrars of Companies, there are only 20 offices consisting of Registrars and some Assistant Registrars in important places like Bombay and Calcutta, and there are only 38 accounts assistants of whom only 9 are chartered accountants and the rest are simply Commerce graduates. This is not a very satisfactory state of affairs. You cannot expect a large number of companies to be properly and usefully administered with a handful of officers. You have to provide more officers. The legal staff consists only of 14 junior assistants qualified in law. The total clerical strength of the Department including its Regional Offices and the offices of the Registrars of Companies is only 364. You can imagine how well a clerical staff of 364 can cope

with the huge work involved in the Company Law Administration. This staff has to deal with about 28,000 to 29,000 companies. Now for 28,000 to 29,000 companies the staff is as I have mentioned above. It would therefore be clear that if the Registrars and their staff are to do justice to their work, they must have a much higher complement of senior staff in their offices

Sir, much has been said about the various provisions, and I will not take the time of the House in showing what provisions entail more work for the Company Law Administration. The net result of all this will be a large increase of work at the headquarters of the Department as well as at the Regional Offices and the Offices of the Registrars of Companies. It should be remembered that the type of work which the Field Officers will have to do will be relatively new because some new clauses have been added which have not been tried so far. It will be a new experiment, and so they will have to take some decisions on the spot. Therefore, in the beginning, for some time to come, the Field Officers are bound to look up to the Centre for help and assistance, and this can only be given if the Centre is strengthened, if the Company Law Administration at the Centre is strengthened. The administrative implications in the present management of the Companies Act have to be carefully thought out and early steps have to be taken to strengthen this Department and the regional offices appropriately.

Before I sit down, I would like to add a word of appreciation about the Company Law Administration. As you might have heard, the hon. Minister himself wanted to appreciate their work and say something but he hesitated and did not express his opinion. I take this opportunity of paying my tribute to the Secretary of the Company Law Administration and his staff for the manner in which they have administered the Company Law Administration so far. I hope and

trust that if they are given the requisite strength of officers, clerks, chartered accountants and legal experts, they will be able to do full justice to their work.

SHRI AKBAR ALI KHAN Sir, I do not find any justification at this late hour to dwell on these matters in any detail or at any length. But I will make two observations only and finish. I do not associate myself with the observation that has fallen from the lips of my learned friend, Shri Bhupesh Gupta, that the private sector or the companies have not done well. Sir, I want to pay my complement to them, especially to Tatas and others who are the persons who started the industries and have made great strides under difficult circumstances. Without going into details, I would say that this Parliament, the Joint Committee, the Ministry and their staff, all have really given the proper answer to the Opposition parties; they have really given serious thought to this important legislation. It is a very great step in the development of our corporate sector as well as the economic life. I am sure that there are many who think that the Sastri Committee was appointed rather early and I am one of them. Although it was so, we have come to certain things which I am sure will help the development of our industry and at the same time tighten the control which is very badly needed in the greater interests of the shareholders as well as the public. But I want to caution the Government and the staff. We had the pressure of people who wanted us to remain where we were and the pressure of persons who wanted to go along the totalitarian line. That is to say they wanted to bring everything under Government control. We had to adopt a middle way. But we have given discretion to the Government in many matters. If that discretion is not properly used with a business man's mind in trying to expedite and settle matters without any delay, I am sure the economic development of the country will suffer very serious set back. So, may I, through you,

[Shri Akbar Ali Khan.]

appeal to the Government that in all these matters where the Centre has been given discretion, two things should be done? One is, it has been suggested by my learned friend, Mr. Santhanam, that we should have regional offices and give them greater powers and decentralise power. The other thing is, at the regional level and at the Centre, the matter that comes to you must be decided within a prescribed time. There is no use dilly-dallying or postponing the matter. That will not do in business. And if there is any officer who does not do the thing within the prescribed time, you must have some such system by which you can put black marks in his record so that he may feel that he will have to suffer if things are not done within the time prescribed.

With these observations, I welcome the Bill. I think we should congratulate ourselves for this very advanced and useful measure that Parliament has adopted.

SHRI J. S. BISHT: Sir, I think the Ministry of Commerce and Industry is entitled to a vote of thanks. We in the Select Committee saw the immense amount of work that they had to do. It was a very controversial measure and it took a very long time. Both Mr. Lal Bahadur Shastri and Mr. Kanungo devoted a lot of time in getting through those hundreds of amendments that were put in and the stout opposition that was put up against many controversial provisions of which we saw a little here during these two days. And I must also record our thanks to the Secretariat of the Ministry who did yeoman's service and in particular, the draftsmen had to revise the draft nearly half a dozen times. There were dozens of clauses which had to be redone over and over again, and what you see now is the final form in which you see the Bill. It may not be a perfect piece but I can say that very few pieces of legislation have gone through such an ordeal of

fire as I call it. Having said that, I must make an appeal to the Ministry. That is to say, the Indian Companies Act is not the Indian Penal Code. It should not be administered in the spirit of a penal code, in the spirit of public prosecution. In accordance with our Industrial Policy Resolution and our declared aim of having a mixed economy, the spheres of the public sector and the private sector are clearly demarcated. When we have given a sector to the private enterprise, we should give them the fullest freedom to act in the manner in which they think it fit, subject to the regulation and control in the interests of the companies that they manage as well as of the public at large. That is the only criterion. Subject to that, the private enterprise in that particular sector should be given encouragement and guidance and regulation, instead of always using the big stick against them. And I am sure, as the hon. Minister has said repeatedly here, that it is in that spirit that the law will be administered and not in the spirit in which my friend, Mr. Bhupesh Gupta, wants it to be used, that is to say, just find a pretext and come down heavily on them. We should not use a sledgehammer to kill a fly, as it were. That should not be done because as was said in the morning, even in the public sector, accounts have not been given, returns are not available; not because of any fault, not because of any *mala fides* but because they are new enterprises, and every new enterprise does take time to work out things properly. After all, it is a big thing and the law should not be made difficult for them. Any new entrepreneur who goes into business will find the same difficulty. Every new enterprise cannot afford to engage expert lawyers working all the twenty-four hours over these things. Therefore what they need is guidance and help. Only in extreme cases, to give an example, this law should be used and that too in cases where it is clearly proved that there is really something *mala fide* or that the people who enter the domain of

private enterprise do so with a view to defraud. This is important.

The second thing is that the Company Law Administration should not listen to the advice given by my hon. friend, Mr. Bhupesh Gupta, that the managing agency system should be completely abolished. I am one of those who feel that when the history of the industrialisation of India will be written, the great pioneering work done by the managing agency system will be duly appreciated. But for the managing agency system jute, steel and many other industries would not have thrived in this country. And what are the functions that they perform? They are the people who pioneer, who promote a project. Then they are the people who finance a project. Thirdly they are the people who give the managerial talent and the know-how. A group of people who may have a lot of money can do nothing about it in this technological age. They require people who can help them. It is only the managing agency system that does this task. It is said that this managing agency system does not exist in other countries. True. But there are the other things that they have. The promoting houses they have got in the United States of America as well as in the United Kingdom. We have not got all that. There are the issuing houses as they are called. We have not got them. There are under-writers. We have got very few under-writers who purchase shares in the hope of selling them later on. So in the absence of all these other forms through which the new companies and the new ventures are promoted, in the absence of all these houses and other things it is necessary that the managing agency system should go on. I concede only one point, namely, that in certain lines, like textiles or sugar, where we have developed a large amount of managerial personnel and know-how and all that, it may not be necessary to have this managing agency system in every firm, and there of course the Government will use its discretion,

but in all these new lines it will be very necessary to have the managing agency system without which our rapid industrialisation will be greatly retarded.

With these words, Sir, I wholeheartedly support this Bill and congratulate the Ministry.

SHRI K. SANTHANAM: Sir, I hope the hon. Minister will excuse the trouble I have given him. I only wanted to put on record all the defects there were according to my reading of the Bill. At the same time I wish to congratulate him on the passage of the Bill and I hope that in working the Bill the administration will forget all the discretionary clauses as far as possible, in the case of remuneration or extension of period or any other thing. They should work as if the discretionary clauses did not exist. That is the way in which the Company Law Administration can earn prestige and can earn reputation for justice. If they give all kinds of privileges to particular individuals, then throughout the country it will become discredited.

With these words I wish for the success of this law.

SHRI N. KANUNGO: Sir it is my pleasant duty to record my gratitude to both the Houses for the patience and joy with which they have accepted the passing of this Bill, and looking back on the days, from its introduction up to today, I must go on record as appreciating that by and large the provisions of the Bill, as they emerged from the Joint Select Committee, have been approved by the Members of all sections of both the Houses. It is rather a privilege to be associated with a Bill which has received this amount of support. I am heartened by the speech of my hon. friend Mr. Bhupesh Gupta and my friend on my side of the House Mr. Bhargava and others. They have

[Shri N. Kanungo.]

undermined the requirement of a well-equipped department which should administer the law. It is true, Sir, that the best of laws cannot serve their purpose unless they have got adequate arms, adequate machinery for enforcing them. Sir, I have no hesitation in saying that so far the Department of Company Law Administration has discharged its duties to the satisfaction of both Houses as the debates on their Annual Report will show, and for the future I can assure you, Sir, that they will work in the spirit in which they have been working. This piece of law is not a persecuting agency, but it is a regulatory measure certainly. Prosecutions there will be and penalties there will be if the dereliction of their duties and responsibilities deserves them, but this much I can say that it will not be used as a persecuting agency because, Sir, by and large, out of almost 30,000 companies in the country which are functioning more or less, the bulk of the companies are managed on ethical principles and with efficiency and integrity. It is those rare cases of bad faith, rare cases of anti-social objectives and procedures which attract the attention of the public and of the Houses and which require more stringent laws, and perhaps may end in regimentation, which my friend Mr. Dahyabhai Patel apprehends. But I feel, Sir, that today we are far from that stage, and with my little experience in public life I believe that there will be very little occasion for the Government to use the regulatory provisions which have been provided by the House because, by and large, the trading and industrial people of our country are getting aware of their social responsibilities and the younger men who are growing up are having their horizon enlarged and their perspectives enlarged and they want to compete in a spirit of healthy rivalry with similar corporate undertakings elsewhere in the world and they have enough patriotism and the urge to show to the world that they

are second to none in efficiency and integrity. That being, so, Sir, I believe that the provisions of the law, as they are passed today, though they are more stringent than they were in 1913 or 1956, are more in the nature of prophylactics than penalties, and I also believe that most of the provisions of the law will not be required to be enforced in spite of the apprehensions of my friend Mr. Gupta.

SHRI BHUPESH GUPTA: I hope there will be no perversions.

SHRI N. KANUNGO: I can only hope that Mr. Gupta will be there in this House to pull up any Government that indulges in perversions . . .

SHRI M. GOVINDA REDDY: He will do subversion.

SHRI N. KANUNGO: He is very frank about it, I suppose.

SHRI MAHESWAR NAIK (Orissa): With the exception of the perversions of Mr. Gupta.

SHRI N. KANUNGO: Sir, I would only say that judging from the discussions on the Reports of the Company Law Administration which have been discussed in the two Houses I am sure no instances will be found where they have been working under any fear or favour of anybody with whom they have to deal with including the Government. It is to the credit of our country that we have got a civil service which the nation can be proud of, and I believe, Sir, that this credit shall continue, and I can assure Mr. Gupta that they will continue to function without any fear or favour from any quarter including Mr. Gupta.

SHRI BHUPESH GUPTA: The only fear is that sometimes Mr. H. M. Patel writes things and people get frightened.

SHRI N. KANUNGO: Mr. Gupta has suggested that labour should be consulted. I would just remind Mr. Gupta that today in the Company Law Advisory Committee we have a member who represents the trade union movement and who has a creditable record of trade union work. Therefore I can assure you that we will not fail in the responsibilities which have been imposed upon the Government by the Houses on account of the powers which have been conferred on Government under this Bill.

Again, Sir, I would like to 6 P.M. record my gratitude and thanks to the members of the Joint Select Committee who have worked hard for long hours, without sparing themselves, but for whose work the passing of the Bill would not have been smoothened at all.

SHRI BHUPESH GUPTA: What about our Deputy Chairman? He has also worked long hours.

SHRI N. KANUNGO: No, Sir. As I understand it, I cannot record an appreciation or a depreciation of the Chair because if I am permitted to appreciate the services of the Chair, Mr. Bhupesh Gupta will try to depreciate it.

Sir, again I would just like to place on record my appreciation of the help and long hours of work and services which have been rendered by the Secretariats of both Houses of Parliament, and of the Ministry, particularly to the humbler staff of the Ministry including the clerks and class IV servants and others.

As for the senior officers, they have worked sometimes very very late in the nights, for days and nights together. I would like this to go on record and convey my thanks to them.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

MESSAGES FROM THE LOK SABHA

I. THE FORWARD CONTRACTS (REGULATION) AMENDMENT BILL, 1960

II. THE PREVENTION OF CRUELTY TO ANIMALS BILL, 1960

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

(I)

"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 Forward Contracts (Regulation) Amendment Bill, 1960, as passed by Lok Sabha at its sitting held on the 9th December, 1960.

(II)

"In accordance with the provisions of Rule 120 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to inform you that Lok Sabha, at its sitting held on the 13th December, 1960, agreed without any amendment to the Prevention of Cruelty to Animals Bill, 1960 which was passed by Rajya Sabha at its sitting held on the 2nd March, 1960."

Sir, I lay the Forward Contracts (Regulation) Amendment Bill, 1960 on the Table.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. tomorrow

The House then adjourned at one minute past six of the clock till eleven of the clock on Thursday, the 15th December, 1960.