

[Shri Bhupesh Gupta] considered it necessary to withdraw this Bill. I only hope that he is not doing so under Government pressure.

MR. CHAIRMAN: No insinuations.

DR. RAGHUBIR SINH: I have only to say that I am withdrawing. . .

SHRI AKBAR ALI KHAN (Andhra Pradesh): There is no representative of the Education Ministry present in the House, Sir.

DR. RAGHUBIR SINH: I am withdrawing this Bill and the next one, mainly because I have already introduced a combined Bill in an amended form.

MR. CHAIRMAN: The hon. Member is satisfied.

The question is:

"That leave be granted to withdraw the Historical Records (of National Importance) Preservation Bill, 1955, introduced in the Rajya Sabha on the 9th December, 1955."

The motion was adopted.

#### THE HISTORICAL RECORDS (DECLARATION OF NATIONAL IMPORTANCE) BILL, 1955

DR. RAGHUBIR SINH (Madhya Pradesh): Sir, I move:

"That leave be granted to withdraw the Historical Records (Declaration of National Importance) Bill, 1955, introduced in the Rajya Sabha on the 9th December, 1955.

MR. CHAIRMAN: The question is:

"That leave be granted to withdraw the Historical Records (Declaration of National Importance) Bill, 1955, introduced in the Rajya Sabha on the 9th December, 1955."

The motion was adopted.

#### THE COMPANIES (AMENDMENT) BILL, 1957

SHRI RAJENDRA PRATAP SINHA (Bihar): Sir, I beg to move:

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

Sir, in the Statement of Objects and Reasons appended to this Bill I have explained the purpose with which I have brought this Bill before the House. You will see that the provisions of the Companies Act, 1956 are not adequate to prevent changes taking place in the management of the companies which are likely to be prejudicial to the interests of all concerned, the permanent and the long-term interests of the company itself, the interests of labour and of the general public at large.

You will find, Sir, that Chapter VI of the Companies Act deals with such cases. In Part A of that Chapter there is provision for the courts to take action against the change in the management of companies which are likely to be prejudicial to the interests of the company itself. But the important point to note in Part A, particularly with reference to section 398 is that the courts can take action only after the mischief has been done. The courts are not empowered to take any action before the mischief is done. Secondly, as is well known, the process in a court of law is a long drawn one and also an expensive one. Therefore, the small man cannot deal against a rich and more powerful rival in a court of law, because of his paucity of resources and time. Section 409 in Part B of this Chapter deals with the powers with which the Government is vested, with a view to preventing such things happening in the Company Law management. That is to say, if a person is aggrieved, he can apply to the Government not to permit such a change in the management taking place; and the Government can pass

such orders as it thinks fit, to prevent such a change taking place. Under sub-section (2) of section 409, Government is even empowered to pass interim orders. But what I feel is that this section, i.e. section 409 needs to be further strengthened in order to prevent the operations of speculators who want to get control over companies and undertakings, particularly in relation to industries which are governed by the Industries (Development and Regulation) Act. Now, this section 409 has a history behind it. The cornering of shares and thereby controlling the companies for nefarious purposes has been a common abuse in this country. This evil became particularly prevalent after the war. And the Government had to take note of it. If you refer to the Report of the Company Law Committee, Written Evidence, Volume II, Part I, you will find that there are various instances given in this Report about a dozen of them—where good management of the companies was taken away by the speculators thereby injuring the cause of the shareholders of the company as a whole. Now, I will draw your attention in this connection to the evidence tendered by the Registrar of Joint Stock Companies, Bombay, before the Company Law Committee. It says:

"The second type of serious abuse has now grown up in one time highly successful and prosperous concerns. Several flourishing concerns have recently changed hands and some of the daring feats of high finance performed are perfectly astounding. Not content with draining away every pie of the available cash and Government securities, some of the agents of such concerns mortgage every possible asset and raise as much money as the industry can command. All these sales of Government papers and all these loans on mortgage go not for running the particular concern but go straight as loans to the nominees of the directors or agents, for the purpose of financing their personal but gigantic gambles, or to

help such parties to acquire such further concerns from which to borrow still more moneys to finance their huge schemes of speculation and cornering of commodities."

SHRI V. K. DHAGE (Bombay): Many more instances are quoted.

SHRI RAJENDRA PRATAP SINHA: I have given only one instance to highlight the point that I am making out before you. Now, the position was taken note of by the Government and the Company Law Amendment Bill of 1951 was enacted by Parliament. In the Statement of Objects and Reasons of that Bill it was stated:

"Trafficking in managing agency rights and cornering of shares in the open market with a view to acquiring control over the management of well-established and reputable companies for anti-social purposes have, since the war, reached such proportions as to make it necessary for the Government to take immediate steps to check the evils arising therefrom."

Therefore, this Bill was passed into law which provided that the Government could take action in such cases and prevent such change in the management taking place. The provisions of this Act have been re-enacted in section 409 of the present company law. This section no doubt has a salutary effect on the operations of the speculators, but the question that must be examined today is this whether this section has completely eradicated the evil or not, whether the provisions of section 409 have stopped the evil which it was intended to eradicate from the company management. In this connection I will draw your attention to a recent statement of the Reserve Bank of India dated the 24th April 1957 which will prove my contention that the evil is still continuing and needs further examination and that it is essential that the hands of the Government be strengthened further to eradicate this

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growing menace. The Press report says:

"It is understood that the Reserve Bank of India has cautioned all scheduled banks against providing excessive finance on the security of shares. It has come to the notice of the Reserve Bank that parties are often enabled to corner the shares of companies with a view to acquiring controlling interest in such companies by putting through transactions with the aid of finance obtained from banks by pledging blocks of shares with one or more banks. The Reserve Bank concedes that there could be no objection to the banks providing reasonable finance against the security of shares for such purposes as expansion of productive enterprises, but availing bank finance solely for acquiring controlling interest in enterprises would be regarded as undesirable. Scheduled banks have, therefore, been asked to scrutinize carefully the purpose for which finance is sought against shares with a view to conserving their resources for encouraging productive activities rather than facilitating changes in the ownership of established enterprises for nearly speculative purposes. The fate of certain banks which came to grief during the war by interlocking their funds with those of other companies is posed as an example."

We find, therefore, that this evil of cornering of shares and thereby acquiring the assets of an industrial undertaking is still continuing in spite of the 1956 Act. Now, I will also draw your attention to a report published in the Press in regard to certain observations made by the Finance Minister, Shri T. T. Krishnamachari, in this very connection:

"Defending the levy of Excess Dividend Tax and the compulsory deposit scheme, the Union Finance Minister said that these steps were remedial in nature. There were

'certain evils' which the Central Government wanted to rectify. The utilisation of reserves for purposes other than they were intended for should be stopped. Similarly the attempts to acquire companies in order to utilise their reserves also should be put down."

We, therefore, find that even the Government accepts this fact that often the funds of the companies, the advances taken from the banks, are utilised by speculators to subvert the good management and to acquire control of them solely with the purpose of enriching themselves or very often for holding those shares for ransom. What they do is that they acquire the shares gradually at low prices and then they hold them before the managing agents or the board of directors, whoever they may be, and tell them: "if you do not give me some fantastic price for these holdings, we will pull you out of management."

We should see what was the purpose of the new company law which was enacted in the year 1956. The main purpose was to ensure good and orderly management, to curb and weed out inefficient and unscrupulous persons from management, and to prevent speculators and the stock exchange operators from getting control over companies for nefarious purposes, and finally to protect and safeguard the rights of the minority shareholders in a company. You will also find that one of the central ideas of the new company law was to encourage a new class of managers and entrepreneurs called secretaries and treasurers. These secretaries and treasurers were given preference over even the managing agents as is evident from the fact that the operation of section 324 does not apply in cases of secretaries and treasurers. Now, who, do the Government think, will be these secretaries and treasurers? It was thought that the secretaries and

treasurers will be men of experience, will be technicians. It was thought that these people should be encouraged to take up to corporate management because it was found that private management was in the hands of people with lot of money but with no experience—many of them—and such people did not bring any credit to the management of corporate bodies in India. Sections 378 to 383 relate to secretaries and treasurers and they were brought in merely in order that they may have an effective place in the management of corporate bodies. These people are really small middle class men who with the help of some financier or other set up some industry and when that industry becomes a flourishing concern and gets established the financier or the financial partners or those, who helped them to finance the industry, try to oust these small men. There are innumerable instances where the man who really started the industry, who provided the brain, who gave the technical 'know-how' was ousted from the control of such concerns. Now, they are not very big. I am talking of these large numbers of small cases. They are not very spectacular. They do not come usually in the Press. But I know that big business houses in this country have acquired many, many companies industrial undertakings which were started with a small beginning, by some small man. And because those men could not provide adequate finance, they were ousted from the business and that is how the big business houses in this country have been able to acquire so many undertakings. Now, these middle class men when pitched against big financiers in a court of law, find it very difficult to fight them out. What happens usually is this. When an application is made under section 409 to the Government, the speculators are not daunted by such application and they try to drag the matter in a court of law. Usually what happens is that a court may get the order vacated, or otherwise the Government itself on its own withdraw the order served

under section 409 and they want that the issues may be settled in a court of law. Now, that is what the speculators want. They think that the small man, the small entrepreneur can be put out of business in the court, because they cannot stand the long and expensive process of a court of law.

Now, Sir, in very short I will explain the provisions of my Bill to you. You will find that I have added another sub-section to section 409 of the Companies Act, 1956. In the first instance, I would like you to appreciate that section 324 which empowers the Government to notify certain industries which cannot be managed by the managing agents, is respected. Subject to section 324 I have moved this clause. The second point to which I would like to draw your attention is this. Only those industries will come under the mischief of this clause which fall under the First Schedule to the Industries (Development and Regulation) Act. I have purposely made this because all those industries which are in the First Schedule are all important to the national economy of the country and they have been brought under this Act in order that they may be regulated by the Government and the Government considers that the management of such industries should not be allowed to be impaired in such a manner that the production may suffer. Therefore, I have said that only those industries can come under the provisions of this clause.

Now, the third point which I would like you to consider is this that the Central Government is empowered to issue direction under this clause only when the Government considers that a change taking place in the management of a regulated industry is prejudicial to the public interest. If the Government considers that a change can take place and it will not affect the public interest or the interests at large, it will not affect the economy

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of the country, then the Government may not take any action under this provision. So, it is more with a view to fulfilling, shall I say, the planned development of the economy, more with a view to safeguarding that nothing should happen in the management of corporate bodies which will go to hamper production in the regulated industries—which are essential for the development of the economy—that I have brought these two provisions. When the Government consider that a change of management is likely to affect the public interest, then alone they need issue an order under this clause.

Another point I would like you to consider in this connection is that what I have provided is that minimum right of the shareholder is taken away. I would not like to disfranchise him, except what is absolutely necessary in the public interest. Now, his right so far as receiving financial benefits, dividends, etc. are concerned are not impaired in the least. He will continue to draw all from his investment.

The Government would like to propose to limit the rights of the shareholder in a limited manner under this clause. What I want is to disfranchise him—that too for a limited period—so far as his rights for changing the management is concerned. What I have said is that Government is empowered under this clause to issue a notification for a limited period only, and that period can never exceed three years. Government under the Industries (Development and Regulation) Act are empowered to take over the management of a concern for five years or more even. In this case if the Government considers that it is prejudicial to the interests of the public at large, and if the Government considers that the change in management is not a desirable one, then in that

case the new shareholders, who are anxious to change the management, their rights could be curtailed by the Government. That too is for a limited period, not exceeding three years; and after three years these new shareholders can exercise the right to change the management.

SHRI P. D. HIMATSINGKA (West Bengal): Where do you get three years?

SHRI RAJENDRA PRATAP SINHA: I have said that after three years things would settle down. I have said that in my Bill after three years. Nothing should happen in a haphazard and sudden manner. That is the whole purpose of my Bill.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Grace period.

SHRI RAJENDRA PRATAP SINHA: Grace period, exactly. Now, the whole purpose of my Bill is, in the regulated industries, to prevent the speculators from gaining control over the industry. If the rights of the shareholders are passed into undesirable hands. And thirdly, it is to stop such a matter going into court of law. If a man has made an application under this section to the Government, till the Government has disposed of this case, let the matter not be dragged into a court of law. What happens today is that before the Government passes an order, the matter is dragged into a court of law. And that is how the speculators frustrate, circumvent section 409 of the Act. As I have already explained to you, the Government is empowered to curtail the rights of the shareholders in a limited manner and for a limited period, and only in respect of regulated industries, provided the Government considers that the change that is likely to take place—as a result, of the transfer of shares—will result in affecting production and is likely to

affect the economy of the country. Thank you very much. Sir, I move.

MR. CHAIRMAN: Motion moved:

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

SHRI JASPAT ROY KAPOOR: Mr. Chairman, Sir, at the outset, I would like to heartily congratulate my hon. friend, the mover of this opposition or rather the Bill, for the great faith that he has shown in the impartiality of the Government for, by this measure, he seeks to empower the Government with very drastic powers affecting the fundamental or rather the inherent rights of the shareholders, if it considers it advisable to do so in the interests of the general public. I would, at the same time, congratulate the Government for the faith that they are by their good conduct and good government earning from members of the Opposition also. All the same, I consider this measure to be of a very extraordinary nature because, as I have said, it seeks to affect the inherent rights of the shareholders whether they are new or old ones.

I will presently refer to the drastic powers that are contemplated to be given to the Government under this Bill or rather to the restrictions that are sought to be imposed on the rights of the shareholders. But, before I proceed to do that, Sir, I must say that, while I have congratulated my friend for the faith that he has shown in the Government, I cannot congratulate him for the very poor and even partially meaningless and purposeless drafting of this measure. My hon. friend has always been a very strong critic of the measures that are put before the House by the Government and has very often offered constructive criticisms also. I must admit. But, I wonder, Sir, whether he has given that amount of consideration to the drafting of this measure which was due to it.

Sir, the most important clause in this Bill is clause 2. That contains, I submit, contradictory, purposeless and meaningless suggestions. What does it propose to suggest? This is now it reads:

"Subject to the provisions contained in section 324 where in respect of a company whose undertaking consists of an industry which falls under the First Schedule to the Industries (Development and Regulation) Act, 1951, the Central Government is of the view that owing to a change in the ownership of shares, a change in the Board of Directors or in the managing agents of the company or the termination or non-renewal of the agreement between the company and its managing agents has taken place . . ."

Now, these are the three words to which I like to draw the particular attention of hon. Members in the House "has taken place". "Has taken place" means that it has already taken place and there it proceeds to say "or is likely to take place", of course, in the future. "And that such change . . ." which means such change which has already taken place or might take place in future. "If permitted . . ." —permitted what? Now, the question of permission arises only when the change has not taken place and is likely to take place. But if a change has already taken place, as is already mentioned herein, the question of permission of the Government under this measure does not arise at all. Now, what follows is this:

"... if permitted may be prejudicial to the public interest, the Central Government may, by order, direct that the shares concerned in the changed ownership or any part of them as may be specified shall, during such time not exceeding three years as the Central Government may prescribe, carry no voting rights . . ."

[Shri Jaspat Roy Kapoor.]

Now, 'carry no voting rights' means, voting rights shall not be carried hereafter, and not the voting rights that have already been exercised by virtue of which the management or the Board of Directors has already been changed. Now, those voting rights, having already been exercised, cannot be prevented to be exercised retrospectively, because what has already been done cannot be undone obviously.

Then what follows it:

"... in respect of any matter placed before the company in general meeting which directly or indirectly is calculated to or may bring about a change in the directorate or management."

So far as the future of the concern is concerned it is all right so far as the phraseology goes. But, so far as the changes that have already taken place in the management of the company are concerned, this provision cannot help at all. The mere introduction of these words is meaningless, as they would not serve the purpose which my hon. friend appears to have in his view. Now, when a proposition has already been placed before the general meeting, and the resolution has already been acted upon, the change has already been effected. A year may have passed by now, or probably more; and what can be done under clause 2? It does not help my hon. friend at all. Absolutely purposeless and meaningless and even contradictory it is.

Now, my hon. friend seeks to bring to his rescue sub-clause (1B) of this measure wherein he says:

"The provisions of sub-section (1A) shall have effect as from the date of commencement of the Companies Act, 1956."

Well, while I may appreciate his habit of copying such a clause from several other measures that we have

enacted here, I am sorry to say, Sir, that this mere incorporation of this thing and copying out from some other provisions hardly helps him at all for, how can he possibly give retrospective effect to clause 2 of this Bill? As I have already submitted, what has already happened in the past is beyond correction, nothing can be done in respect of that. Merely the introduction of this sub-clause (1B) would not help him at all.

What is even more extraordinary here is that even the jurisdiction of the court is sought to be excluded by sub-clause (1C). Even if a case is pending before a court of law, the jurisdiction of the court of law is sought to be taken away by this sub-clause which says:

"Where an application has been made in respect of a company to the Central Government in pursuance of this section, no court shall, until the Central Government's order thereon has been passed, entertain an application made by any members of the company under section 398."

Now, I submit, this is rather a very serious question for our earnest consideration as to whether we should take away the jurisdiction of a court of law by an enactment like this merely because the hon. Member thinks that, if the party does not feel that he can get a judgment in his favour, he would make an application to the Central Government and set at naught virtually the ordinary civil law of the land. When the court of law is already there, if an application has already been moved or one wants to move an application before a court of law for the redress of his grievances, why should any bar be placed against him? And why should we think that an application made to the Central Government, which will naturally be considered by some Secretary in the Department, would receive more judicious consideration, more careful

consideration, more impartial consideration and more adequate consideration than what could be received by a duly constituted court of law? Not to have faith in a court of law, and to depend on the views of a particular officer in any Ministry of the Government, I submit, is something to which I cannot subscribe, howsoever great my faith may be in the Government, in the Ministry and in the very efficient Secretaries that may exist there. After all, Sir, they cannot be placed in the same position as a Judge of a High Court. I submit, therefore, that sub-clause 1C of clause 2 is still more ill-conceived.

Then, Sir, we come to sub-clause (1D) whereby the hon. mover seeks to indemnify the Central Government or any director or any managing agent of the company, not only for anything done by them in good faith which may harm anybody else, but also for any harm which may accrue to any person merely by an intention on the part of the Government or the Board of Directors. Now I wonder, Sir, whether he can cite any instance or whether he can explain as to how any harm can possibly accrue to any person not by any specific act, but merely by the intention of the Central Government or a director to do a certain thing. How can an intention harm any person? A specific act may, but how can a mere intention do any harm to any person, I for one, Sir, fail to see. But in his over-enthusiasm in respect of this measure he wants to indemnify the Central Government and the Board of Directors or the management of any concern even for something which is physically impossible. Now, Sir, I hope I have said sufficient enough to show that this measure, in point of phraseology, in point of substance and in point of principle, is bad and hardly deserves any further consideration, much less acceptance.

SHRI P. D. HIMATSINGKA: Mr. Chairman, Sir, I oppose this measure

not because under it more powers are intended to be given, but because it is absolutely unnecessary. Sir, section 409 which has been read out by the mover of this Bill gives sufficient power to the Government to prevent all cases where shares have been transferred or which are intended to be transferred. If you read the language of section 409, it says:

"Where a complaint is made to the Central Government by the managing director or any other director, the managing agent, or secretaries and treasurers, of a company that as a result of a change which has taken place or is likely to take place in the ownership of any shares held in the company, a change in the Board of directors is likely to take place."

The Government can prevent any such change taking place. Therefore, mere giving information to the Government enables it to prevent any possible change in the directorate or in the managing agency. Therefore, Sir, the apprehension of my friend is absolutely unjustified.

Secondly, Sir, this contemplates that a company is, for example, under a very good management and certain persons who intend to corner the shares or who have cornered the shares, want to oust that good management and be on the saddle themselves. But so far as section 398, which gives power to the Government, is concerned, it is the other way round. If a company's management is not good or if a company is being mismanaged, then section 397—Chapter VI—gives power to the court to give relief in all such cases. A certain number of shareholders—100 in number—are entitled to go to a court and move the court that the company's management is not as it should be, it is an oppression on the minority, and so on. In such cases the courts can intervene. Therefore, where action is being taken by the



[Shri P. D. Himatsingka.]

Government under sections 409, no one can interfere with the action that is intended to be taken or that is taken by the Government. Therefore, this Chapter is complete in itself. In the case of mismanagement power is given to the shareholders to move the court, and even the Government has been empowered to intervene in such cases and to put in directors of its own choice. The Government can nominate two directors under section 408. Therefore, those cases are provided for.

Then again, Sir, as you know, a Commission has already been appointed to go into the matter under the chairmanship of, I think, Shri Srinivasa Sastri, ex-Judge of a High Court. They are going into the matter and asking for information as to what necessary changes should be introduced in the Companies Act. As a matter of fact, as you know, a very large number of sections have been introduced in the Companies Act and very extensive powers have been given to the Government. As a matter of fact, all managing agencies will cease to exist in 1960. In some cases they have already ceased to exist. But in 1960 all managing agencies will come to an end, unless revived again with permission. *(Interruption)*. And therefore, Sir, I do not think that this measure is at all necessary or should be accepted.

SHRI C. P. PARIKH (Bombay): Mr. Chairman, Sir, in the first place, Mr. Sinha has perhaps forgotten that some changes in managing agencies have already taken place and some changes are to take place. But where the changes have taken place already, the managing agency has changed hands with the consent of the shareholders and of those who wanted the transfer; this provision is to apply to them also. I think, Mr. Sinha might not have meant it also what he has said, because by voluntary agreement the managing agents are transferring

their agencies. Then, Sir, he has this clause that wherever it has taken place it may be prejudicial to the public interest. I say that it is not prejudicial to the public interest because the man who wants to change his agency and the shareholders who want it, both have agreed. So, the question of public interest does not arise at all. So, the wording 'has taken place' should not be there. No latitude should be given to the Government in this case. But the point, wherever it is likely to take place, is very material. Now, Sir, when a change in the agency is likely to take place, all the factors are known to the shareholders. In the first place, Sir, the change takes place as a result of inefficiency, when the management is not good, and some other managing agency can do it better. But some managing agents do not want to part with power, and they do not want to surrender their rights. Then the man gets the shares by majority; he controls them and gets the agency transferred. Mr. Sinha also forgets that in this case 90 per cent. of the managing agency companies are limited companies, and any share of a managing agency company can be transferred to another only after Government's consent. Now this is the position. And in order that concerns which are mismanaged may not be taken over by those who want to indulge in speculative activities or for their own benefit, Sir, sections 409 and 408 have been provided for. So, even if he has got 90 per cent. of the shares, the change cannot be effected, because the Government reserves that right to say whether it can take place or not. Notice has to be served to the shareholders. Twenty-one days are required. All these factors are known. Section 398 is there, and where there is inefficiency, even 10 per cent. of the shareholders can approach the Government, and inefficiency can be checked. Mr. Sinha has forgotten that in the present Act the control and regulation of managing agents is of a nature which is not realised by him. Whether it is realised by him or not, I do not know, but at least

he seems to have forgotten that there is already enough control on the managing agents. First of all, the Board of Directors under section 294 has got many powers which the managing agents previously used to enjoy. There is the sixth schedule, and the managing agents are not enjoying unregulated power because they have to undergo so many other formalities and they can do that only after obtaining the previous sanction of the Board of Directors. All these are well-known facts. Now, the Board of Directors are very supreme in these matters because they can regulate all the activities, borrowing, giving of loans, contracts and so many other things. The Board of Directors are also rotating every year; one-third of them go out every year, and even a man holding 90 per cent. of the shares has to seek re-election. All these things are there. Therefore, this is not required, because the best way to control or transfer the managing agency will be to leave it to the will of the shareholders, and if the shareholders are there, even a ten per cent. minority of the shareholders can object to the transfer of the managing agency; the Government will naturally intervene and will refuse such a transfer. The Government have got this power, and it is no use our introducing these clauses, and this may be against the very object which Mr. Sinha has in view, because under sections 408 and 409 all these things could not be done. It is very well-known to the shareholders and to Government what concerns are managed efficiently and whether the incoming managing agents will be able to do better. The reputation of the incoming managing agents counts a lot, and I think that even if you obtain the sanction of the majority, even then the transfer cannot be effected. In fact, all these changes are governed by the present Companies Act. Mr. Sinha may have noted that few transfers are now taking place in the managing agencies on account of the various restrictions.

After 1956, I think that the transfers that have taken place have taken place largely in the interests of the shareholders, largely in the public interest, and in the interests of rooting out inefficiency. The managing agency system is now controlled by so many factors, and the right to control them remains with the shareholders, and he is now trying to take away that right. The changes made out by him should not be accepted.

SHRI BHUPESH GUPTA (West Bengal): Mr. Chairman, Sir, you were quite right when you said that I would be very comprehensive.

MR. CHAIRMAN: And take a little time.

SHRI BHUPESH GUPTA: I think that this Bill, apart from the technicalities involved in it introduces a very interesting topic which calls for review. We have heard two gentlemen who are connected with business. Mr. Parikh is himself a very prominent business man and elite among the businessmen. As you all know, he has always made very good suggestions. Sometimes he exposes the businessmen and he does not hide them, but this morning he has tried to hide them. I wish that the other part that he plays was in operation this morning; then we would have been a little better off on this subject. As far as the hon. Mr. P. D. Himatsingka is concerned, he is also a very prominent lawyer of Calcutta and so he is connected with prominent businessmen. He is a notable person in that respect. Therefore, what he says also I naturally consider and I would attach some importance to it. But the trouble is that these people speak from a particular angle, the angle of the businessmen, the angle of the managing agents, and because of that they say that on the whole things are good there, that there is very little change, and that whatever has to be changed is being looked after by the Government.

**SHRI P. D. HIMATSINGKA:** The managing agents would like it very heartily.

**SHRI BHUPESH GUPTA:** I am coming to that. I am talking of the general approach that you bring to a question like this. We, not being businessmen, naturally suffer from certain lack of knowledge of technical details, knowledge of experience, and to that extent we are deficient. There is no doubt about it. Yet from what we read in the Press, from the little knowledge we have of the affairs of companies, we can make certain criticisms, suggestions, which we hope the other side will consider and take into account when they discuss this particular Bill or similar other Bills. You will remember that, when the Companies Bill was being discussed in the House, we of the Communist Party, although we had nothing to do with companies that way, had moved about 300 to 400 amendments and we tried to make certain suggestions, and except for one amendment by me, all the other amendments were duly rejected by the Government, and that was a little concession shown by Mr. Deshmukh when he accepted my small amendment. Since then, the Act has been in force for some time now, and I think the public to have gathered some experience even from outside the business circle as to the operation and the consequences of a measure of this kind.

**SHRI V. K. DHAGE:** There is another enquiry committee.

**SHRI BHUPESH GUPTA:** I am told that another enquiry committee is coming. At that time two years ago on the floor of this House when we got up and made suggestions after suggestions, moved amendments after amendments, hon. Members from the other side, in particular those who decorate the Treasury Benches, who adorn the Treasury Benches, got up to say that everything was nice, everything was done after a lot of discussion with lawyers and that there was

no need to make any change. Now, Daniel has come to judgement, it seems, and another enquiry committee is coming. Therefore, let us realise that the Companies Act of India requires some changes. First, I would like hon. Members opposite to recognise this singular fact that it does require some changes. There is no escape from this reality. At that time some hon. Members from business—three of them whom I call the three musketeers of big business—raised a terrible noise, opposed certain clauses of the Bill and they felt that the Government had let them down, but now they seem to have quitted a little. We do not hear anything. On the whole they are satisfied with the operation of the Bill. These musketeers of big business seem to be quite satisfied with the provisions of the Bill. They seem to have put their swords back in their sheaths. They are happy with the operation of the Act. I smell a rat there. I begin to smell a rat immediately there. What has happened? Now, there is calm; all is quite on the business front. I am a little surprised and we feel that the Act is working to the advantage of India's monopolist elements, big business houses. That is why these gentlemen have been disabused of all their apprehensions and are very happy with the state of affairs under this Act. Here is a provision. Here the amendment has been moved. I think if there is any technical drawback, we could sit and correct at lunch time. It is not difficult. Mr. Kapoor need not be particularly touchy about whether it is 'has' or 'is'. We can sit together and meet at the Secretariat of the Rajya Sabha which consists of very eminent people in the matter of drafting and we can change it. The question that I put to you is whether you like that change. Whether the ideas you accept and whether you think that the cornering of these shares by some monopolists, by some big business should be restricted and resisted more than the provision suggests. This is the plain question the

Bill poses before this House and the plain question has to be faced manfully and with courage. There should not be any vacillation over this matter.

About this provision, it is no good telling me that the shareholders control. Every time we try to curtail the powers of these people who control India's industry and business, they take shelter under the slogan of the small shareholder. If you want me to believe that the shareholder or common man in the street who, out of his small savings, has bought a share, controls the Tatas, Birlas, Dalmias, Goenkas and Singhania, at least I hope you would credit me with a little more intelligence than what you assume me to possess. I cannot believe any such thing.

SHRI R. U. AGNIBHOJ (Madhya Pradesh): On a point of order. Can my hon. friend refer to those poor people in this House?

SHRI BHUPESH GUPTA: Tatas and Birlas, I hope, would not be in the House but there are people like you who represent them if necessary. The Tatas gave Rs. 10 lakhs to the Congress Fund.

MR. CHAIRMAN: Bill.

SHRI BHUPESH GUPTA: He raised that point about Tatas. I don't believe in hitting below the belt. I know that Tatas are not here but at the same time I know the Tatas gave Rs. 10 lakhs to the Congress Fund in the last elections which was admitted in the Tata Company's report. I suppose that there are people who would speak for them.

MR. CHAIRMAN: Come to the Bill.

SHRI BHUPESH GUPTA: I am coming. Here was an interruption and interruptions provoke such remarks. Therefore, Sir, I gave you one instance. I know that Government will

not accept this. They are not at all keen on amending the Company Law when it comes to protecting the interests of the ordinary Shareholder and they always talk about ordinary shareholders. You can ask me to believe in any Arabian Night's tale but don't ask me to believe in the tell-tale that the average common shareholders control the big business houses of India. Don't make such statements, whatever else you may make. Everyone knows that majority of the shareholders don't have the time or opportunity or wherewithal to attend the meeting—the General Body Meeting. How on earth a small shareholder in Calcutta could go to Bombay to attend the General Body Meeting of the Tata Iron and Steel Company, could the hon. Member tell me? If he is so rich a person as all that, probably he would have been in the control of some of the companies or would have been a big man. Some of the shareholders in whose name they try to justify the sins of omissions and commissions of the big business concerns, don't have even the little funds to go from one place to another to attend a shareholders General Body Meeting which takes place every year. I am not talking about the extraordinary General Body Meeting. This is a fact. This is God's own truth. Those who are believers in God, who swear by God or take oath here will recognise this truth, I hope. Now this is one thing. Therefore, who controls them? Things are manipulated at the top. These certainly pass from one hand to another by arrangement and the shareholders are the losers. We have seen when the case came about the Tata Iron and Steel Company in the Bombay High Court, when some shareholders raised noise in different parts of the country, and two shareholders appeared in the court seeking redress, to prevent the Tata Iron and Steel Company from paying Rs. 10 lakhs to the Congress, it was not possible for them to do anything. If a plebiscite was taken of the shareholders, if a vote was taken, I think it would not have been possible for the

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Tata Iron and Steel Company even with their control of shares, to have this thing so easily passed. There would have been very strong opposition on the part of the common shareholders as distinguished from those who have cornered the shares against the policy of making overfunds to Dhebarbhai so that elections could be fought. . . .

**SHRI JASPAT ROY KAPOOR:** Could not the shareholders have repudiated it by refusing the balance-sheet when it was put before them?

**SHRI BHUPESH GUPTA:** Yes, my dear hon. Member, that does not take place. Ballots do not go that way and you know also, after you have done your elections, in election ballots even how things are being handled. That would not be very handy . . .

**MR. CHAIRMAN:** He puts on the ear machine when he speaks but you remove the ear machine.

**SHRI BHUPESH GUPTA:** I can hear him very much. He is a bit on the wrong side of the trouble from which I suffer. I am not of his age. By that time I will be out of this House. This is the point.

**SHRI JASPAT ROY KAPOOR:** He never imitates good things.

**SHRI BHUPESH GUPTA:** The shareholders don't decide. Have you got the point clear? Therefore don't take their name. First of all, leave them alone for the present. Now what happens? Cornering takes place.

**MR. CHAIRMAN:** Put on the ear-phone. Wind up soon.

**SHRI BHUPESH GUPTA:** It will take time.

**MR. CHAIRMAN:** Another 10 minutes.

**SHRI BHUPESH GUPTA:** It is Private Members' Bill today, as you

know and naturally the field day belongs to us, don't you think, Sir? There is so much of interruption and it is difficult to keep the threads of my argument.

[MR. DEPUTY CHAIRMAN in the Chair.]

Cornering is taking place even now. The amended provisions of the Company Law have not put a stop to cornering of shares, have not put a stop to some company managements having monopoly between different sections of the businessmen or business houses. We should take drastic action. I am not at all interested in the power politics between two business houses or even the power politics between two sections in the same business house. I am not at all interested in that. All I say is that the monopolist control over these concerns should be prevented. I would not like to take the position where it would mean that I want to oust some section in order to put any other section of monopolist businessmen. That is not my case. Therefore, Government should have power so that they can see that decentralisation in the industrial level takes place, or at any rate there is no further concentration. Today in the country great interlocking has taken place and I don't think that the companies Act, as we passed, has broken that interlocking at all. Certain formal structural changes have no doubt taken place in order to conform to the provisions of the Companies Act. I don't deny that but what Mr. Krishnamachari calls, the hard core, if I may use that expression with regard to the hard core in the big business, that remains unbroken, unsubdued and they retain their control. We are told, even the Finance Minister told the other House that a few families control India's major industries, banking, commerce and all that. He himself admitted it. After two years' operation of the Companies Act we would like to know what sort of decentralisation had taken place, whether the interlocking has been somewhat relaxed. These are things we would like to

know. Therefore, we say that a measure of this kind is essential in order to prevent that. I don't say that a Bill of this kind will do away with interlocking, cornering or growth of monopolies. But it makes a little difficulty and comes in the way of such trends in our economic life in the industrial and the commercial sector. That is why a measure of this kind is needed. Mr. Kapoor thinks that he has faith in the Government so that he wants to invest Government with this power. The hon. Member seems to be living under a certain misapprehension. It is not because of our particular lack of faith in Government that we are suggesting this amendment. It is because we want our statute to be made perfect and we want the statute to be changed in accordance with our experiences, in accordance with the requirements of the situation. After all, Sir, the statutes last much longer than most of the Ministers—that has been the experience—or even more than most of the Governments. That is the most important thing. We are concerned with the statute which is not the property of a particular party. This becomes the law of the land. We here naturally, despite the fact that we do not have much faith or confidence in the Government, would like to see that these things are improved and would point out to them the proper way it should be done. This is our approach. Congratulate us, if you like and I do not grudge your sometimes doing it but do not do it under mistaken notions. That is what I am saying. This suggestion should be accepted and that will give us an indication as to whether you really appreciate the steps that have been taken from this side of the House or not.

**SHRI JASPAT ROY KAPOOR:** My hon. friend would not like to appreciate a compliment even.

**SHRI BHUPESH GUPTA:** I will now give you an instance of what is happening in Calcutta today. Despite

the Company Law as it is, number of British concerns are trying to corner certain Indian concerns. It is a fact.

**SHRI NARAYANDAS DAGA (Bombay):** Such as? I want the names of the concerns.

**SHRI BHUPESH GUPTA:** Some names have been supplied to the Minister of Commerce and Industry and he knows. You can ask him. After all, you belong to the same party.

**SHRI NARAYANDAS DAGA:** Could you give those names to the House?

**SHRI BHUPESH GUPTA:** I have not got the names with me but I could certainly furnish the name. I understand that the matter has been taken up with the Minister of Commerce and Industry. Over this there is no dispute at all. Some Indian dummies are being put up. Naturally, if you put too many people on the Board of Directors who are not of Indian nationality, then it naturally creates doubt. So, they are putting Indians and all kinds of subterfuges are being resorted to with a view to cornering shares. Dummies buy the shares and management is taken over by a dummy but the control rests with somebody else. Such things are happening. This is a matter for the Government to enquire into; it is not for me to give all the details. In the course of our public duty we come across such things; people sometimes from the business circles tell us about it and we draw the attention of the Government to such things. Government should try to find out what exactly the position is in regard to cornering. Then again, some big business houses are cornering shares. What are they doing this for? I know of one business house, the name also I know. It is Messrs. Mundra Bros. They have bought a British concern, Jessops and Braithwaite at very high prices. Shares were bought at very high prices and a deal was put

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through and I think the company passed into their hands. I do not mind this, of course, and it does not mean that it should not come into Indian hands. If you ask me to choose between an Indian monopolist and a British monopolist, if I were not given any choice at all, I would choose an Indian monopolist. It is better to deal with an Indian monopolist who, after all, is an Indian, than to deal with a foreigner. In this case, money was paid for cornering the shares and foreign exchange was lost. It happened that some money went out of the country and we lost some foreign exchange. We are now talking in terms of foreign exchange difficulty. We see the country suffering from want of foreign exchange. The exchange deficit is very high and is mounting every year. At the same time, we allow this kind of cornering of shares and sending of money to go on. I can understand the Government taking over this thing. I can understand Government entering into this field and paying some compensation but that too not in sterling but in rupee. I can understand all that but for the life of me, I cannot understand why this kind of cornering should be permitted at a time when we are running into deficit in foreign exchange.

SHRI NARAYANDAS DAGA: Does the hon. Member know that the payment of this amount was made in rupees and not in sterling?

SHRI BHUPESH GUPTA: Maybe, but many of the shareholders live in England and money had to be remitted to them. Such things happen and everybody knows that there is no restriction on remittances of profits or of money that they earn as a result of sale of a concern here. I do not know of any restrictions being put by Government to tackle a situation of this kind. I am saying that such things are happening and Government should take note of that.

As for the other question, management, I, absolutely, strongly feel in this matter. I think we should discuss the whole thing whether on the basis of a report by the Government or otherwise and I think we should, as a result of discussion, amend the provisions of the Company Law to break the backbone of monopoly in India. It is absolutely essential not only for the growth of industry, for the development of industries in our country, but also for the smooth and efficient running of the existing undertakings and for general economic purposes that the monopoly should be broken. Now, cornering of shares of this kind, changing of hands of this kind, leads to speculation. Speculation has come into the field of food and other essential commodities. These companies are very often inter-linked with big commercial and banking houses and money flows in a particular way. This is what happens when a company is in difficulties. The shareholders are confronted with the situation that the present management would not be in a position to manage it because of lack of finances. Then comes somebody else and says that he has got better connections with the banking world and that it will be possible for him to find the resources. Naturally, whether they like it or not, the shareholders submit to the management being changed from one hand to another. It is not always as if it is from inefficient hands to efficient hands. It so happens that certain people who are not financially so strong and so solid and resourceful give way to others who are having the strength and are powerful and have got pulls in the financial world of the country. Mr. Prabhu Dayal Himatsingka must be knowing any number of such examples in Calcutta, of such transfers being effected because of the reason that the existing management could not handle it. In such a contingency, somebody comes in and he produces cash. Those who have some financial strength get the management. The reverse of what we desire happens, namely concentra-

tion of business and industry in fewer hands, concentration of wealth, the grip of monopoly over the private sector industries of our country, at a time when we are in the midst of a planned economic development. This is the situation that we are faced with. I hope that the hon. Minister, while replying to this, will try to explain some of the things that we have said. I wish what I have said is wrong but everybody knows and things are said in the Press and even employees come out with their suggestions. Take for instance, the Indian Press. There has been decentralisation but I am told that the U.P.I. is not in a good position.

MR. DEPUTY CHAIRMAN: Don't come to the Press now.

SHRI BHUPESH GUPTA: I am taking about the undertaking.

MR. DEPUTY CHAIRMAN: We are not concerned with the Press.

SHRI BHUPESH GUPTA: We are concerned with the business part of it. I can tell you. Please listen to me. If the mention of the Indian Press hurts you, I cannot help. I cannot help you. If the name of the Press hurts you I cannot help.

MR. DEPUTY CHAIRMAN: We are not concerned with the Press in the Bill before the House.

SHRI BHUPESH GUPTA: You can expunge it if it is irrelevant.

MR. DEPUTY CHAIRMAN: I do not see how it is relevant.

SHRI BHUPESH GUPTA: I was speaking on the business houses and I was touching the U.P.I. business.

MR. DEPUTY CHAIRMAN: Please understand me. We are not concerned with the Press here. We are concerned with a simple amendment to the Company Law. Please confine

your remarks to the Bill before the House.

SHRI BHUPESH GUPTA: I am giving instances. I am taking the Press now.

SHRI RAJENDRA PRATAP SINHA: May I suggest one thing, Sir? My hon. friend is referring to the amalgamation or the interlocking of managements and to the monopolistic tendencies in the Press, the business side of the Press which is governed by the Indian Companies Act. So he is referring to the Indian Companies Act and to the operations in the Press world. That is what he says.

MR. DEPUTY CHAIRMAN: He has referred to that. It may not be the Press but in general he has referred to several companies.

SHRI BHUPESH GUPTA: So I am dealing with it. I know what I am referring to. That much I know. You should at least credit us with some commonsense. We sit here not without some intelligence at least. I am telling about the business undertakings which are covered by the Company Law, which come under this provision, where the management is passing from one hand to another and which we want to prevent by this measure. I am entitled to it. Am I or am I not?

MR. DEPUTY CHAIRMAN: You have said enough about it.

SHRI BHUPESH GUPTA: But I do not think I have said enough until I have said this. I have said to your satisfaction, I can understand, but I do not know if I have said enough to his satisfaction or I have made myself quite clear.

MR. DEPUTY CHAIRMAN: Please go on. I may tell the House that we will have to sit through the lunch hour to finish the Bills that are on hand.

SHRI BHUPESH GUPTA: Let me take the Press for instance. I am not



[Shri Bhupesh Gupta.]

casting any aspersions on it as a business undertaking, but you know, Sir, how many small Presses have passed into big hands, and I think anyone who has read the Report of the Press Commission will find how many small papers, small presses, small companies are devoured by the big ones. It has happened and you find, Sir, the condition in which the big news agency, U.P.I. is. I am not commenting on what appears in print; I am talking about the business side which is covered by this Company Law. Now, it is in a bad condition. Some people would try to take it over. We would not especially like a business concern, a news agency in our country like the U.P.I. to pass into the hands of the big business because the other fellow cannot run it or is in financial difficulty. It applies to the Press. It applies to every other sphere, especially the vital sectors of our economy. This is what I am saying. Therefore, I think I am not being totally irrelevant in this matter. All I am saying is there are certain sectors where they produce consumer goods or they produce producer goods or they deal in trade and commerce and we would like certain sectors, certain spheres of our industrial and commercial activity to be free from the growing grip of monopolists, not to pass from one hand to another in disregard of the interests of the people, the consumer, the buyer and the public. That is why control over certain sectors of industry is essential. I have said it and I think hon. Members will see the desirability of it and I have made it clear to the Government also.

In conclusion I would like to press the need for amending certain provisions of the Company Law, especially that providing for donations to political parties, and after the Bombay High Court decision this thing should be taken up. This sort of thing should be taken in hand. Similarly, we can discuss this thing and see how we can change it. Government gave an assurance that the change will be

made, that an amendment will be made, but no Bill has been forthcoming either with regard to the political donations by the companies or donations to the political parties or with regard to matters such as this. I would think that the hon. the mover of the Bill will naturally be entitled to speak in reply to the debate and I hope that the hon. Minister who will be speaking for the Government would make it clear that the time has come for them to immediately go into the operation of the Company Law, as it is today, and propose amendments and changes, at any rate a change of this kind; and more especially after the Bombay High Court judgment with regard to donations to the political parties we expect the Government to immediately come forward with necessary amending measures so that we can change them. Elections are over. Rs. 10 lakhs gone. The next elections will come; nobody knows when. Therefore, I think you can do this thing. Money, of course, you will always get, money from the big business. There are other ways of giving funds. We know them. I know your difficulties honestly. I sympathise with you because how can you fight elections until Tata gives money. Mr. Birendra Nath Mookerji may give Rs. 5 lakhs again. I know that. Even so, in the interests of the country, for the sake of better running of the companies, for the better running of our economy I think that you should accept suggestions like this and change the Company Law for the benefit of all. Elections we can fight on a political plane. We need not be bothering about the money of the big business. I think you can fight well without Tata's money, and you see when such moneys come certain forums arise in the Parliament. This you have seen. You have trouble in your own part. Don't you have?

SHRI JASPAT ROY KAPOOR: We sympathise with your helpless lot.

SHRI BHUPESH GUPTA: We don't take Tata's money. If Mr. Tata were

to give us a thousand rupees I will throw away that money I can tell you.

SHRI NARAYANDAS DAGA: How much money did your party get from a mill in Ahmedabad?

SHRI BHUPESH GUPTA: We did not take any money. I would like to know. Ahmedabad, I had been there during election time. They could not pay my fare even. So desperate they were, and we find it very difficult. Therefore, I say: Let not your bias for these people stand in the way of changing the Company Law, certain provisions of it which need very drastic change in the light of our experience.

SHRI KISHEN CHAND (Andhra Pradesh): Mr. Deputy Chairman, Sir, Mr. Bhupesh Gupta has given a very lucid exposition of the various things that are bad in the Company Law. I certainly agree with him that many of the amendments which he had proposed in the Company Law were very good, and they should have been adopted. But I beg to differ if one were to conclude that, because there are certain defects in Company Law and we are against cornering of shares, this Bill is the solution for it.

SHRI BHUPESH GUPTA: I did not say that.

SHRI KISHEN CHAND: I am as much against cornering of shares as he is. I submit, Sir, that we sent in amendments and I sent in amendments for controlling the voting powers of the shareholders and suggested that after a certain limit one hundred shares should count for one vote, but that is a different thing. To conclude from that that any amendment which aims at preventing cornering of shares should be supported, whether it goes against the interests of the industry or not, I do not think is the right method in considering Bills. The Bill should be taken on its merit, whether it is going to benefit the country. It is no argument that because a few industrialists or some

Members in this House are not raising an objection, therefore it must be good, and that type of argument does not help us. We have got to see to the history behind this Bill, and the history, Sir, is this. When the life insurance business was not nationalised and when the banking regulation Bill had not come into operation, at that time, some of the big business houses wanted to take the shares of the insurance and banking companies because the share capital of insurance and banking companies was a small amount while the funds at their disposal were in crores of rupees. An insurance company with a fund of nearly 50 crores of rupees would have only a share capital of about Rs. 70 lakhs. At that time, Sir, people wanted to corner the shares of the insurance companies because, if they corner the shares of the insurance companies they got a right on all the working funds of the insurance companies which they manipulated to their personnel advantage. Similar is the case of banking companies. I do not know much about the stock exchange, but I think if you go into the history of the .....

SHRI C. P. PARIKH: You are talking of the situation before 1950.

SHRI KISHEN CHAND: That is what I am saying; I am giving the history. At that time people used to corner the shares of insurance companies and banking companies in order to get control over large sums of money.

SHRI C. P. PARIKH: Is it possible now? You explain that.

MR DEPUTY CHAIRMAN: I think that is what he is doing.

SHRI KISHEN CHAND: Now, the insurance has been nationalised and no longer can a man take the shares of an insurance company and get control over big funds. Then came the next step. Under the Banking Companies Act a banking company cannot have any managing agents.

[Shri Kishen Chand.]

The banking company in the matter of transfer of shares is really controlled by the Reserve Bank of India. The net result is if there is any cornering it can only be in an industrial concern.

Now, there are two or three different types of industrial concerns in our country. Out of about 30,000 joint stock companies in our country, a large number of them is private limited concerns. The private limited concern is owned by three or four people. They have got all the shares and there is no question of any shares passing from one hand to the other. Then you come to public limited companies and the hon. Member who spoke before me referred to the Tatas, Birlas and others. These three or four big houses, all combined, probably control about 100 industrial concerns, perhaps not even 100.

SHRI BHUPESH GUPTA: No; it is more.

SHRI KISHEN CHAND: Round about that. Birlas, Tatas, Singhanias, Goenkas—the names he mentioned—all of them combined together do not control more than 100 industrial concerns. When we consider a Bill of this nature we should not be led away only by a hundred industrial concerns in which the managing agency is held by these five big houses. Our problem is that of small industrial concerns which are being badly managed. The five big houses do not come into them at all; they are not interested in them. It is only about small concerns that we are interested the small concern with a capital of a lakh of rupees or a couple of lakhs of rupees. If you go through the list of joint stock companies, the majority of them are with a share capital of Rs. 2 lakhs. I can assure the hon. Member who spoke before me that none of these big five houses will ever think of coming into an industrial concern with a share capital of one lakh or two lakhs of rupees.

That is the pattern of our joint stock companies.

Let us consider the case of an industrial concern with a capital of one lakh or two lakhs of rupees. It is running badly. There are only two possibilities; It is either running very well or it is otherwise. A small entrepreneur started it with zero capital; he got a capitalist to support him. He set up an industry and he is running it very well. Now, that financier who invested a couple of lakhs of rupees wants to take hold of the industry and kicks the entrepreneur out. That is one situation. I will place both the situations and then consider whether this Bill is going to benefit either situation or not. The first situation, as I said, is the case of the company, with a couple of lakhs of rupees as capital, which is run very well, but it is financed by a financier who holds a large part of the shares, the entrepreneur holding only a few shares. The entrepreneur is the managing director or the managing agent and he is running the concern very well. Now, the big financier wants to oust the managing agent and kick him out. The other side of the picture is this. An industrial concern is running very badly and the person is afraid that the other shareholders might kick him out. So he applies to the Government. In his opinion, of course, he is running the industrial concern very well though the industry is suffering badly. He applies to the Government that they should interfere. The Government may consider the matter for a year or so and I am sure the Government will come to the right conclusion and they will decide that the application of the man was unjustified. But during that period of one year or perhaps two years, he would have done the harm. So, Sir, I maintain that in both these cases the object of my hon. friend, Mr. Bhupesh Gupta, will not be fulfilled. This Bill is not going to remove the defects in the Companies Act. They will be removed when we reduce the voting power of the shareholders, but

this Bill is not going to do that. What will happen is that an inefficient man sends in an application to the Government and he thinks that he will at least get some breathing time, one or two years, during which he can abuse his powers. Now, if a concern is running well—though I have not much knowledge about these companies, I have yet to come across a case.....

SHRI V. K. DHAGE: Mr. Parikh will be able to give you information.

SHRI KISHEN CHAND: When a company is running well and is being managed by some entrepreneur, the financier will be foolish enough to want to chuck him out, because after all the financier has got a big stake in the success of the company. He would not like to spoil the running concern by throwing him out; he will not make such a mistake. In fact it is against human nature and I cannot assume that against human nature anybody will want to turn out the management and spoil the concern.

SHRI V. K. DHAGE: If the concern is well established?

SHRI KISHEN CHAND: If the concern is well established and if the financier thinks that he can do better than the other man, well, the industry is going to benefit by it. As has been pointed out, there are several provisions already in the Companies Act, sections 409, 398 etc. which fully safeguard the growth of the industry. I do not want any harassment to the small industries. We always refer to these five names and about 50 industrial concerns managed by them and we think that the whole of India consists of only these five names and 50 industries. As I pointed out earlier, there are about 30,000 industrial concerns and I do not want petty harassment to be meted out to them by giving extra power to an individual to apply to Government and keep the matter pending for a couple of years. I know that the Government will not

be misled but there is no advantage in having this provision.

SHRI SANTOSH KUMAR BASU (West Bengal): Sir, Mr. Kishen Chand has given a very clear analysis of the entire situation and after that I have very little to say. I sympathise with the mover of the Bill, the hon. Mr. Sinha, because he, even in his wildest imagination, would never have thought that this Bill would be sought to be converted into a platform for Communist propaganda in this House. That is exactly what we have listened to some time ago. The constant refrain of my hon. friend Mr. Gupta's song was about the alleged gift of lakhs and lakhs of rupees to the Congress Party as if this Bill was brought before this House for the purpose of enabling my friend to vent his wrath on that score. But Mr. Kishen Chand has presented both sides of the case in a clear and analytical manner. I find that there is consensus of opinion in this House with regard to the purpose which has inspired this Bill, namely, that cornering is an evil thing which ought to be prevented but some of my hon. friends have said that there is already enough provision in the Act and that no further provision is necessary. Nobody has said that cornering is not an evil and it should not be prevented, though some have said that it does not require any further statutory provision.

Sir, there is already a committee functioning with regard to Company Law and the trouble that I am having is whether we should attempt piecemeal legislation for the purpose of removing an evil. Now that the hon. Minister is going to reply, may I request him to consider this, that this particular provision which has been embodied in this Bill may be taken into consideration by the committee which is now functioning? This question of cornering of shares which is admittedly an evil can be thoroughly gone into and the scope of section 409 can be calmly and

coolly considered in the seclusion of a committee room by the Company Law Revision Committee. That is a suggestion which I am placing before the House and before my esteemed and hon. friend, the Minister, for consideration.

SHRI P. N. SAPRU (Uttar Pradesh): I would like to support the suggestion which has been made by my friend, Mr. Santosh Kumar Basu, that this Bill may be referred to Mr. Sastry's Committee on Company Law. I think there is no doubt that cornering is a very great evil and that we do not want the managements to change in such a way as to make it possible for big business to interfere with the public interest. We have section 409 no doubt; and we have section 397 in the Companies Act, no doubt. But what is the exact scope of these sections is a matter which will no doubt be considered by the Sastry Committee. The question is whether section 409 is effective in the context of modern life. And for reasons which have been stated by various Members, I would say that I view this Bill with sympathy, though I think that no final decision can be taken on this Bill until we have the report of the Sastry Committee before us. Thank you very much.

THE DEPUTY MINISTER OF FINANCE (SHRI B. R. BHAGAT): Mr. Deputy Chairman, although I have sympathy for the hon. mover of the Bill, for the purpose which he wants to achieve by this measure—that is, to prevent the cornering of shares in the market with a view to prejudicially affecting or disrupting the management of a company—this matter has been gone into during the last few years very intensively and extensively by the Company Law Committee, later on by the Select Committee on the Companies Bill which deliberated for over a year, and also in both the Houses during the passage of that marathon legislation, the Companies Act. I would

submit that I am not in agreement with the remedy that he suggests in this Bill by the amendment of section 409 of the Companies Act, because it will not achieve the purpose which he has in view. I think he wants to prevent the cornering of shares, which may adversely affect the management of companies and eat into the very vitals of private enterprise or company management. But I think he does not want to restrict or control the right to acquire shares in the market in a reasonable and legal manner, that is, on the stock exchange, or company shares of any private companies which are not listed. Because if we do that, well, we are attacking the very foundation of private enterprise and the effects of that may go very far and wide. It might affect the flotation of companies; it may affect the working of stock exchanges and all that. So, I would agree with the suggestion made by the hon. Member, Mr. Basu and also by Mr. Sapru, who in their wisdom have suggested that this problem of cornering of shares cannot be tackled in a piecemeal manner like this. In view of the fact that the informal committee is deliberating over the matter and the terms of reference of the committee are very wide—it goes through the entire gamut of company administration, of company legislation—I think the discussion of this measure has lost much of its significance for the present and it is a little bit unreal. I may inform this honourable House that we have already submitted a note or we have intimated to the committee the problem, the cornering of shares, as prevalent today. Also, we have referred to this Bill that is at present under discussion. The committee has taken note of this. The informal committee that is deliberating, I think, has completed its round of tour of the country. They have taken statements or interviewed or have had discussions with business houses and those concerned with company management. They are partly seized of this problem. In view of this I would suggest that the

hon. Member should not press the Bill. As for the merits of the Bill, I am not a lawyer. Hon. Member, Mr. Jaspat Roy Kapoor said that the drafting is bad. I cannot give my judgment on that, but as a layman I can say that proposed sub-section (1B) giving retrospective effect is not a happy principle to incorporate in a legislation. Similarly, proposed sub-section (1C) restricting the power of the court—the court should not intervene as long as the Government is seized of the matter—even as a layman I can say that it will be *ultra vires* of the Constitution, particularly article 225. As for the main point, he says the powers under section 409 are not enough to prevent cornering of shares. But this cannot be tackled in a piecemeal manner. I think he has picked out this one section from the Companies Act and tried to make out a case that this section 409 is not sufficient to deal with the matter. As I said earlier, during the entire discussions of the Companies Bill—both in the Select Committee as well as in both the Houses—a great deal of consideration was given to this aspect, as also to other important aspects of company management like the interlocking of shares or concentration of management in a few hands. I think there are a number of sections, if you would take the whole picture in the scheme of the Companies Act. For example, take section 346. This requires prior approval of the Government to any change in the constitution of a managing agency caused by a change among the partners or directors or by a change in the ownership of shares. Similarly, take section 399, which requires one hundred members of the company to go to the Government. It is not as if any whimsical man can come up to harass the management or blackmail the management. Similarly, section 247 vests the Central Government with power to investigate into the membership of any company for determining the true persons who control the shares. And if there has been any change in the control of the company or cornering of its shares

by unscrupulous financiers, the Government may very well use this section to arrive at the facts, and then proceed under section 401 for the rectification of the state of affairs. Similarly, there are other sections. If you look into the Companies Act you will be able to see the scheme of these provisions. The provisions that I have said above combined with the provisions requiring the approval of the Central Government to the appointment of managing directors, transfer of office of managing agencies, variations in the managing agency agreement, give ample power to the Government to prevent any such undesirable trends in the company management. Moreover, as I said, it cannot be tackled in a piecemeal manner. We have to see the trend in the private economy, how things are happening in the corporate world. The hon. Member while moving made a reference to the banking policy. What is the banking policy today? I know of cases where people were cornering shares and trying to subvert the management. Well, they are in a very difficult position to hold the shares because of the bank's finances or because of the Reserve Bank's policy. Either the banks want to increase the margin or they want to call back the money. If they have done it with a nefarious purpose or to subvert the management, well, they are in a very weak position. So, all these—the policy of the Government, the banking policy, the general economic and other conditions—will impinge upon them. This is a problem which does not create any isolated problem. This is a problem which is the product of an integrated scheme of things before the passing of the Companies Act or even before the passing of the amending Bill of 1951, which took care of all things. The adverse or undesirable trends which grew in company management after the war were taken care of. But things are much better today. We have now a greater grip of the situation. We have legislated in regard to stock exchanges where all the

[Shri Kishen Chand.]  
cornering of shares, buying and selling, are taking place. Government have taken ample powers. We know how things are happening in the various stock exchanges. We have stream-lined the stock exchange organisation. So, we have attacked this problem at the very root of it and not treated it otherwise, if I may say so with all respect to the hon. Member.

These are some of the considerations which compel me to oppose the Bill. Lastly, if we control the buying and selling of shares or if we freeze the exercise of voting rights which are attached to all shares even if it is for a small period of three years as he put it, what will it lead to? It may lead to protecting the management for a temporary period. There is no harm in that. But we cannot insulate the management permanently or for a longer period of time against what I call a hostile majority of shareholders. If we do that, we are striking at the very root of joint stock enterprise. Voting right is an inalienable right. Of course, we have the powers of investigation under the Act to determine the ownership of shares under certain conditions. We impose measures of restriction on the exercise of voting rights in respect of certain types of shares the ownership of which may be the subject of investigation. We can stop the voting rights when the ownership itself is in doubt. The provision made under this section is only for a limited purpose and can hardly be extended to other wider purposes mentioned in the Bill that the hon. Member has moved. The practical difficulty of accepting this amendment is no less formidable. It would be extremely difficult, if not impossible, in practice to identify the shares concerned which he has used because cornering takes place—it is a phenomenon—over longer periods. He buys a block of shares in the Bombay exchange; six months after, he buys another block of shares in the Calcutta exchange; and over a period

of years, he acquires a controlling interest in a particular company. Suppose we accept that the voting rights may be freezed or there should be a control over them, we cannot go retrospectively into the ownership of the shares. We cannot identify the shares. It is a peculiar phenomenon in this country—holding or making transactions in, blank transfers or holding them in *binami*. All these make it difficult for us to accept it. It is not practical. But we accept the principle of it. The identification of concerned shares is there. So, with all these considerations, I request the hon. Member not to press the Bill, firstly, because the Informal Committee is still seized of the matter and it will consider in an integrated manner as to how best to tackle this problem as the other problems and secondly, the specific remedy that he has suggested will not meet the purpose which he has in view.

SHRI RAJENDRA PRATAP SINHA:  
Mr. Deputy Chairman, Sir, I am very grateful to hon. Members of this House who have taken an interest in this Bill and have made their observations. Sir, on the whole, I am glad to note that hon. Members have expressed their views in favour of the principle of my Bill, that is to say, there is a consensus of opinion that cornering as such is an evil which must be controlled and eradicated.

Sir, I have a great regard and respect for my very esteemed friend from U.P., Shri Kapoor, and I am grateful to him for the kind words he has said about me. But he has presumed things as to the way in which now we have started reposing confidence in the Government. My esteemed friend, Shri Gupta, has replied to him on this point. But I may tell him, of course, without meaning any disrespect to him because I regard him a very progressive Member of this House, that the Government in many of their progressive measures, whether it is an economic measure or a social measure or a social welfare

measure, get greater support from the Opposition provided the measure is really progressive. And we have found, much to our dismay, that in respect of progressive measures, it is the members of the Government party who pull the legs of the Government and do not want progressive measures to be enacted. I would not like to quote instances here. Sir, you have been presiding over the destinies of this House and you are well aware of it. Even the Prime Minister at times had to rebuke his Party

1 P.M. Members for taking anti-social and anti-progressive attitude in regard to many of the measures, which come before this House. Therefore, Sir, I would assure the Government that in any progressive measure that they will bring forward before this House, they will always have the support of the Opposition.

Sir, I would like to clear some of the misunderstandings about this measure. At the outset, Sir, I would say that this Bill deals with a certain set of industries, that is to say, the industries which come under the First Schedule of the Industries (Development and Regulation) Act, and as such, many of the industries are excluded from the purview of this Bill—which do not come under the First Schedule. Moreover, Sir, those hon. Members who are aware of the provisions of this Act—the Industries (Development and Regulation) Act—will bear with me that small industries, even though they come under the First Schedule of this Act, are excluded from the purview of this Act itself. Industries with an asset of Rs. 5 lakhs or less than Rs. 5 lakhs are excluded from the purview of that Act, and industries having even more than Rs. 5 lakhs as their assets but employing less than 50 persons are excluded from the purview of that Act. Therefore, Sir, all those industries will automatically be excluded from the purview of this legislation—

SHRI J. S. BISHT (Uttar Pradesh): How many concerns will be left after that?

SHRI RAJENDRA PRATAP SINHA: Well, I cannot give you this figure off-hand. But you can get it very easily from the published documents which are there. Therefore, Sir, this Bill deals with very restricted cases, that is to say, the industries which come under the First Schedule of the Industries (Development and Regulation) Act.

Then, Sir, some of my hon. friends have stated that I have presumed that a change in the management will always necessarily be accompanied by a bad management, that a change will always be introduced by speculators, and that I have not taken into account such cases where the change may take place in a genuine manner by sale of shares, not by way of cornering, but by way of an ordinary transaction. I would like to draw the attention of all such friends of mine to the provisions of this Bill wherein I have very clearly stated that if the Government considers that action is necessary under the provisions of this Bill or if the Government considers that such a change is prejudicial to the public interest, then alone action will be taken, and any transaction of a regular and normal nature does not fall within the purview of this Bill.

Sir, some hon. Members have also taken exception to sub-section 1C. The principles embodied therein have been objected to. But such a principle more or less, but in a different way, has already been enacted in section 400 of the Indian Companies Act, which provides that even if a matter is moved in the court, the court is under an obligation to refer the matter to the Government and seek their advice and their opinion in the matter. This is what has been provided in section 400. Now what I have provided here is merely this that in case the matter is under enquiry by the Government, let not the court take any action. I have only said that so long as orders are not passed on any application made under this section to the Government, the court may not take any action.



**SHRI AKBAR ALI KHAN** (Andhra Pradesh): Don't you think that it would go against the Constitution which has laid down the principle of separation of powers and full independence for the judiciary? It is a very fundamental principle.

**SHRI RAJENDRA PRATAP SINHA:** Well, Sir, my esteemed friend is a very eminent lawyer, and I know that he is a constitutional lawyer. I am not one. But I feel that this is not *ultra vires* the Constitution, as my friend thinks. But, Sir, as my hon. friend, Shri Bhupesh Gupta very correctly said, let us not go to the technicalities or the drafting defects which might be there. I do not claim perfection there. But let us go to the principles underlying it. Some hon. Members have tried to keep this entire affairs of the Company Law Administration as a hush-hush affair, as my hon. friend has stated. They are very happy about the things as they are going on and they would be afraid of any probe or enquiry taking place. But I would like the Government or the commission, whoever may be enquiring into the affairs of the Company Law Administration to take note of the fact that there appears to be a consensus of opinion both in this House and outside that the provisions of the Company Law are not adequate enough to meet the needs of the situation, not only in the matter of the cornering of shares but in many other matters also, and, therefore, the Company Law needs to be looked into very carefully and examined as to how the provisions of this law could be improved or could be made more effective.

Now, Sir, many Members have made suggestions and have said—and I am glad that the hon. Minister has also said—that the provisions of this Bill will be taken note of by the *ad hoc* committee which is going to enquire into the Company Law Administration. I am glad that they have said so. The whole purpose of my bringing forward this measure before this House was this. I am aware that

the report of the committee which is enquiring into the Company Law will take a long time to come before this House or even before the Government, because as the hon. Members are aware, the committee is still in the stage of taking evidence. It will have to complete the evidence. Then it will have to draft its report and submit to the Government. Then the Government will consider it and will make up its mind what to accept and what not to accept. Then the Law Department will also consider it in order to incorporate the suggestions acceptable to the Government in the form of a Bill which will have to come before this House. So, all this will take a long time. Therefore, I thought it best to bring this measure before you so that urgent consideration may be given to these aspects of the Company Law Administration, to point out that there are serious defects, lacuna, in the Company Law itself, which cannot curb the speculation going on, which cannot stop the management passing into hands which are undesirable. When it is the desire of my hon. friends and also of the hon. Minister that this matter be better referred to this committee, I shall have no objection, and I do hope that the committee will take note of the proceedings of this House and the feelings expressed in this House, of the unanimous desire of this House, to eradicate this evil. I do hope that this time they will make such suggestions as will completely eradicate this evil from our corporate management. I also hope and pray that the Government will send the proceedings of this House to this committee and draw the attention of the committee to take note of what has happened today in this House. In view of this, I do not propose to press my motion. I beg leave to withdraw the Bill.

**MR. DEPUTY CHAIRMAN:** Has he the leave of the House to withdraw the Bill?

**HON MEMBERS:** Yes.

The Bill was, by leave, withdrawn.