(c) how many of them are Hindi-knowing; and

(d) how many appointments were made after 1947, and amongst them how many do not know Hindi?

THE MINISTEK FOR WORK°, HOUSING AND SUPPLY (SARDAR SWARAN SINGH) : (a) Eight including two in Calcutta.

(b), (c) and (d). The information is being collected and will be placed on the Table of the House shortly.

IMPORT OF HONEY

370. SHRI DEOKINANDAN NARAYAN: Will the Minister for COMMERCE AND INDUSTRY be pleased to state:

(a) the quantity and value of honey that had been imported from foreign countries during the years 1951-52, 1952-53, 1953-54 and 1954-55; and

(b) the names of the countries from which it was imported?

THE MINISTER FOR COMMERCE AND INDUSTRY (SHRI T. T. KRISHNAMACHARI) : (a) and (b). Information is not available as the item is not separately shown in the customs returns.

STATEMENT *RE* REPLY TO SUPPLEMENTARY QUESTION OF QUESTION No. 413 ON 12TH SEPTEMBER 1955.

THE DEPUTY MINISTER FOR PRODUCTION (SHRI SATISH CHANDRA): Sir, while answering a supplementary question arising out of Starred Question No. 413 asked by Dr. Raghubir Slnh on the 12th September 1953, I had stated that detailed project reports for the proposed Heavy Electrical Equipment Factory had been submitted by a few firms and negotiations were being carried *on* with two of them. I regret this statement was made under a misapprehension. A detailed project report was prepared in 1949. What we have actually received recently are only preliminary project reports as distinct from a detailed project report which will be prepared later on by the firm of technical consultants selected for the purpose. Present negotiations are based on preliminary project reports received from a few firms.

I therefore desire, with your permission, Sir, to correct the information given by me

PAPER LAID ON THE TABLE

MINISTRY OF INFORMATION AND BROADCASTING NOTIFICATION MAKING FURTHER AMENDMENT TO THE CINEMATOGRAPH (CENSORSHIP) RULES, 1951

THE PARLIAMENTARY SECRETARY TO THE MINISTER FOR INFORMATION AND BROADCASTING (SHRI G. RAJAGOPALAN) : Sir, I beg to lay on the Table, under sub-section (3) of section 8 of the Cinematograph Act, 1952, a copy of the Ministry of Information and Broadcasting Notification No. 5/14/54-FC/C.C.R. Am/15, dated the 10th September 1955,' making further amendment to the Cinematograph (Censorship) Rules, 1951. [Placed in Library. *See No.* S-338/55.]

THE COMPANIES BILL, 1955—*continued.*

श्री कन्हैयालाल वॉ० वैद्य (मध्य भारत): अध्यक्ष महोदय मैनेजिंग एजेंसी प्रथा के विषय में माननीय श्री सक्सेना ने यह एक बड़ा सुझाव दिया था कि हमारे ये मैनेजिंग एजेंट लोग यदि सम्पत्ति दान का एक सुन्दर आदर्श उपस्थित करें और बिना वेतन के काम करें तो बड़ा अच्छा हो। मैं इस विषय में यह कहना चाहूंगा कि बहुत से लोग जो शोषण में विश्वास करते हैं वे इस सुझाव को मानने के लिए तैयार हो जायेंगे क्योंकि मैनेजिंग एजेंट की जगह ऐसी जगह है कि

[श्री कन्हैयालाल वी० वैद्य]

वहां बैठकर लाखों के वारे न्यारे होते हैं और वह सम्पत्ति दान का एक सुन्दर आदर्श भी आपकी व्याख्या के मुताबिक उपस्थित कर देंगे और अपना हाथ भी खूब साफ कर लेंगे। जहां सारे देश की आर्थिक समस्या का प्रश्न है वहां हमें इस प्रश्न को बहुत गम्भीरता से सोचने की जरूरत है। जैसा कि एक माननीय मित्र ने कल यहां अपने भाषण में कहा था कि हम लोग तो धन कमाने के लिए इन कंपनियों में जाते हैं। इस दृष्टि से आप देखें तो धन कमाने के लिए और शोषण करने के लिए लोग वहां जाते हैं। बहुत ईमानदारी से उन्होंने यह बात कही है और सफेद टोपी पहन कर के इस बेंच से कही, जिससे हमारा सिर जरूर झुका। किन्तु मैं इस चीज को सदन को पुनः देखना चाहता हूं कि इस देश के अंदर व्यवसाय करने वाले लोग देश की जनता को जहर खिला कर के भी धन कमा रहे हैं। जहर खिलाने से मेरा प्रयोजन डालडा से और वनस्पति के तेलों से है। आज सारे देश की जनता त्राहिमाम्, त्राहिमाम् कर रही है, सारे देश के करोड़ों लोगों के स्वास्थ्य का नाश हो रहा है जिसको घी या मक्खन नाम की शुद्ध वस्तुएं नहीं मिल रही हैं। पार्लियामेंट ने भी कानून पास करके डालडा या वनस्पति तेलों की बिजनेस में घी शब्द का प्रयोग करने से उन लोगों को वंचित कर दिया है फिर भी वे अपना काम चला रहे हैं। माननीय श्री कुंजरू ने अखबार वालों से यह आशा की है कि जिस प्रकार दूसरे देशों में कंपनियों के विषय में इस बात पर ध्यान दिया जाता है कि जनता के सहयोग को प्राप्त करने के लिए वे जनता के सामने अपने सुझाव रखते हैं, उसी प्रकार यहां के अखबार वाले भी उनके सामने आदर्श रखें। लेकिन आप देखते होंगे कि इस देश में हमारे जो राष्ट्रीय अखबार हैं वहां भी हमारे इन देवताओं का राज्य है, वहां भी तो ये पूंजीपति और एकाधिपति अखबारों का गला घोंट कर उनमें बैठे हुए हैं। इन अखबारों में डालडा के लम्बे चौड़े विज्ञापन निकलते हैं कि हमने प्रगति कर ली है, ए, बी, सी आदि विटामिन वनस्पति के तेल में इस अंश में मिलते हैं कि जितने असली घी में मिल सकते हैं, यानी देश की जनता घी नहीं खाये और वनस्पति के तेल से उसका उद्धार हो जायगा। इससे तो देश में टी० बी० का रोग फैल जायगा या दो पीढ़ी के बाद इस वनस्पति घी के प्रयोग से लोग अन्धे हो जायंगे.....

श्री हरिश्चन्द्र माथुर (राजस्थान): इस बात की चिंता तो आपकी सरकार को और कांग्रेस को तो नहीं है। क्यों नहीं वह इसे बन्द करती है?

श्री कन्हैयालाल वी० वैद्य: बिलकुल ठीक है। इन बेंचों में बैठे हुए लोगों के लिए और उस बेंच में बैठे हुए लोगों के लिए यह लज्जा की बात है क्योंकि आखिर सरकार तो पार्लियामेंट पर निर्भर है, आप और हम पर निर्भर है। यदि इस विषय में हम और आप मिल कर एक मत हो कर चलें तो कोई कारण नहीं है कि हम सरकार को मजबूर न कर सकें कि वह इस धंधे को बंद कर दे, और निश्चित रूप से मैं इस प्रश्न को सरकार के सामने रखने को तैयार हूं। जहां तक देश के स्वास्थ्य का सवाल है, इस सदन को गम्भीरता-पूर्वक इस बात को देखना चाहिए कि हमारे जो पूंजीपति मित्र हैं वे उनधंधों को न करें। इसी देश के केन्द्रीय स्थानों में हमारे कारखानेदारों ने ये धंधे चला रखे हैं और आटे की मिलें भी जगह जगह खोल रहे हैं। मैं यह सब बात इसलिए कह रहा हूं कि इन लोगों का काम ईमानदारी के साथ बिजनेस कर के धन कमाना नहीं है बल्कि आटे की मिल खोल कर फ्रौड करना है। यहां दिल्ली में आप जाकर देखिये कि क्या हो रहा है। यहीं से हमने एडल्टरेशन कानून पास किया, उस के बाद जो चीफ मिनिस्टर दिल्ली राज्य के हैं उन्होंने कानून लागू कर दिया और शेष

अपीलें निकलती हैं कि एडल्टरेशन दूर करने में जनता सहयोग करे। मैं नहीं समझता जनता बिचारी कहां पिक्चर में आती है। यहां से दस मील दूर पर एक चक्की लगी हुई है जिसमें रोज १००, २०० मन सॉफ्ट स्टोन पिस कर खारी बावली में लाया जाता है और वहां बिकता है। वह सॉफ्ट स्टोन आटे में मिलता है, दूध तथा मक्खन में मिलता है, मावे में मिलता है, रबड़ी में मिलता है और खुले आम मिल रहा है।

SHRI BHUPESH GUPTA (West Bengal): But adulteration is necessary in a mixed economy.

SHRI KANHAIYALAL D. VAIDYA: We are not discussing mixed economy.

MR. CHAIRMAN: It is time.

SHRI KANHAIYALAL D. VAIDYA: I want some more time.

MR. CHAIRMAN: You had ten minutes yesterday and you have taken seven minutes today. You can take three minutes more. Other Members are to speak.

SHRI KANHAIYALAL D. VAIDYA: Anyway, I obey it.

तो मेरा यह कहना है कि आटे की बिजनेस में भी हमारे ये जो मित्र हैं वे पूरी तरह से बेईमानी करते हैं और बेईमानी करके, फ्राड करके कंपनियों के जरिये से धन कमाते हैं। बड़ी बड़ी कंपनियां फ्राड करती हैं और धन कमाने के लिए उनकी इच्छाओं का कोई अंत नहीं है। वे व्यवस्थित रूप से शक्ति को कंट्रोल किये हुए हैं। संसार का इतिहास इस बात को जानता है कि संसार में जो बड़े बड़े महापुरुष हुए, जैसस क्राइस्ट से लेकर महात्मा गान्धी तक, उनकी हत्या करने वाले कौन तत्व और कौन लोग थे। तो उनकी वासनाओं का कोई अन्त नहीं है। आज तो देश को इस फ्राड को जड़ से उखाड़ने की आवश्यकता है। ठीक है, माननीय मंत्री जी ने बड़ा लम्बा चौड़ा कानून बना कर के पेश किया है। देश का कल्याण हो यह उनकी भावना है। किन्तु इस कानून में भी बहुत से बच निकलने के रास्ते हैं, चोर दरवाजे हैं। सजा के मामले में, मैं समझता हूं, कि वह व्यक्ति जो समाज के प्रति और लाखों व्यक्तियों के प्रति क्राइम कमिट करता है वह उस व्यक्ति से कम अपराधी नहीं होता है जो खून करता है। अभी अपने देश में फांसी की सजा बन्द नहीं होने वाली है, इसलिए उस व्यक्ति को अगर आप फांसी की राजा भी देंगे तो कोई अनुचित बात नहीं होगी।

मैं एक अंतिम सुझाव यह रखना चाहता हूं कि इस कानून में कंपनियों के काम के देखभाल का अधिकार चार्टर्ड एकाउन्टेंट्स और आडिटर्स पर निर्भर करता है। आडिटर के विषय में बहुत सी बातों के सुझाव यहां पर माननीय मित्रों ने दिये हैं। कानून में एक जगह धारा जो दी गई है वह इतनी स्पष्ट नहीं है कि फ्राड के बारे में आडिटर क्वेश्चन कर सके कि फ्राड किया गया। मान लीजिए रसीदें हैं। आजकल रसीदों के मामले में धंधा यह चलता है कि ६० रु० में कोई चीज खरीद ली जाती है और रसीद बनायी जाती है ८०, १०० या १२० की। इसके लिए कानून के अंदर ऐसी व्यवस्था होनी चाहिए कि आडिटर केवल यही न देखे कि रसीद पर टिकट है या नहीं है, और इसी तरह की तमाम डिटेल्स पर वह जावे। यदि वह अच्छी तरह डिटेल्स में नहीं जा सकता है तो मैं नहीं समझता कि कोई पर्पज सर्व होगा।

अन्त में मैं यह कहना चाहता हूं कि हमारे शोषण करने वाले लोग जिस नीति पर, कंपनियां बना कर चल रहे हैं वे इस स्वराज्य के जमाने में यह माला फेरते हैं कि "जनता के राज्य में जितना लूट सके सो लूट, अन्त काल पछताएगा जब मैनेजिंग एजेंसी जायगी छूट"।

[श्री कन्हैयालाल वि० वैद्य]

इन शब्दों के साथ मैं कानून का समर्थन करता हूं।

SHRI K. MADHAVA MENON (Madras) : Mr. Chairman, I don't want to speak much about the major policy about managing agents or Secretaries or Presidents or Treasurers as those who are competent to speak about them have spoken at length about it. With the little experience that I have, I only feel, as Mr. Govinda Reddy said yesterday, that the managing agency has been a necessary evil and like King Charles's head, it will rise up, every time you try to slaughter it, in one form or another. If the managing agency goes, a caucus in the board of directors will come and take its place and we have to be ever watchful to see that the vagaries and mischiefs that they have been doing are curbed to the extent it is possible but human ingenuity and lawyers' ingenuity are such that, as I •aid, like King Charles's head, it will come up in some form or other.

SHRI BHUPESH GUPTA: We need a Cromwell.

SHRI K. MADHAVA MENON: Let us try and see that the vagaries and the mischiefs are stopped, but my feeling is that like Charles's head, it will come up again.

I wish to speak only about certain practical difficulties that I have felt as I was having an opportunity of cursorily going through this big volume, in the working of certain of the clauses. I did not send any amendments to them because if the Government think that the few things that I suggest are worth anything, let them bring amendments, if necessary. I will take up first the clauses 20 and 21. Clause 20 **says:**

> "No company shall be registered by a name which, in the opinion of the Central Government, is undesirable".

Much delay would be caused if every time a company is to be registered, a reference has to be made to the Central Government about the name of the company. It is a very formal matter whether the name is good or not. If one has to come to Delhi to get it done, it will cause unnecessary delay. If on the presentation of a memorandum for registration one has to come to Delhi, it will take time. It has been my little experience also that one has to follow up to Delhi; otherwise if personal contact or personal representation is not made, it takes months; even for other matters which require the Central Government's sanction, sometimes it requires some months. If even in the case of names of the company, it has to come to the Central Government, it will cause some difficulty and delay.

Another point that I felt was regarding clause 53 on page 28. When foreign investors are permitted to take shares in companies here, I don't think it is right that we should make a distinction between foreign interests or shareholders and Indian shareholders in regard to the matter of service of notice. The words 'in India' and 'within India' in lines 13 and 14 on page 29 make a discrimination between the two. Not that I am pleading for foreign investors but as long as you allow foreign people to invest money and take shares here, you should not make a distinction between a foreign and Indian shareholder.

[MR. DEPUTY CHAIRMAN in the Chair.]

I mean to say that clause 53 subclause (3) on page 29 will make a distinction between foreign shareholders and Indian shareholders and I think it is not correct so long as you allow a foreign shareholder to come in.

Then I want to speak about clause 51 also, which deals with service of documents on company. It says:

"A document may be served on a company or an officer thereof by sending it to the company or officer at the registered office of the company by post under a certificate of posting or by registered post or by leaving it at its registered office."

In this clause the words 'leaving it at its registered office' requires a little clarification. To make it clear it should be said that the notice etc. must be left with a responsible official of the company. Again the reference to 'certificate of posting' should be deleted. If the matter was important enough to require a statutory provision, the notice must be served by registered post. The effect of clauses 51 and 52 was not confined merely *to* correspondence on formal matters but also to the service of important communications which will give rise to legal consequences. It is unlikely therefore that a man will have to send so many communications and so we can very well make it obligatory on him to send it by registered post.

In clause 153 on page 78 it says:

"No notice of any trust, express, implied or constructive, shall be entered on the register of members or of debenture holders etc."

This clause, I think, requires some detailed consideration. It should be specifically provided whether or not, a charitable trust, for example, can be entered on the register. There are many charitable trusts which hold shares. Such shares have to be shown on the share register either in the name of the trust itself or in the names of individual trustees described as such. For example, a trust formed for an educational institution under a trust deed without a corporate existence vests the properties of the trust in the trustees. Some companies raise objection to the registration of those persons, even though their names are set out as trustees of the institution. It is really inconvenient to prevent such an institution from holding shares in such names.

In the Indian Succession Act where a person dies leaving a minor heir, the Succession certificate is, as a matter of practice, issued to all the heirs, major as well as minor. If trusts cannot be entered and if succession certificates are given in the name of guardian for minor, that guardian is practically a sort of a trustee. The company is bound to recognize the right of the minor in exactly that form. I suggest that this requires detailed consideration that a trust cannot be entered as a shareholder.

In clause 166 there is a very important point which I would appeal to the hon. Finance Minister to reconsider. In sub-clause (2) it says that every general meeting shall be called for a time during business hours—perfectly all right—on a day. that is not a public holiday. In fact most of the shareholders ordinarily are people engaged in various sorts of professions and they will be engaged on working days. To say that a general body meeting should not be held only on a holiday is rather making it more inconvenient for those shareholders. If the shareholders think that they can have a meeting on a holiday, why should we statutorily prevent it by saying that a general meeting can be called only on a non-holiday. I feel it will be much more convenient for shareholders to have a meeting on a holiday because they have various other professions which they attend to on working days. Instead of preventing by a statutory provision that a general body meeting shall be held not on a public holiday, at least we must give the general body power that by a special resolution, they could hold a meeting on any day that they like. After all we have to treat the shareholders as people who can think for themselves to some extent and not as chattels.

Then I come to clause 169. It *is* also a very small matter. It says:

[Shri K. Madhava Menon.]

"The requisition shall set out the matters for consideration of which the meeting is to be called, shall be signed by the requisitionists, and shall be deposited at the registered office of the company."

The words 'deposited at the registered office' have often led to abuses.

At least in an important matter like a requisition for a meeting, the receipt of whJeh gives rise to legal consequences, the manner of service should be such as to guarantee its receipt by the responsible officials of the company and this should be clearly provided for. It is also to be noted that requisitions for meetings are usually sent only when there is a disagreement between a body of shareholders and the management. In such a case, it *is* essential that the requisition is sent by registered post. This will avoid two difficulties. The requisitionist may deposit an alleged requisition with an irresponsible or conniving subordinate and get his signature as having received the requisition, and the matter may never come to the notice of the managing agent or directors. Again, the office may be closed and so personal tendering of the requisition may be impossible. Sending it by registered post will obviate both these difficulties.

Now, I come to clause 253 which says that only individuals should be directors. It says:

"No body corporate, association or firm shall be appointed director of a public or private company, and only an individual shall be so appointed."

Sir, this prohibition of the appointment of a company as a director of another company seems to be an unneressary restriction on a useful arrangement. A company with its continuity of function and representation by its business managers would be a valuable asset to the Board of directors of most companies. I do not want to dilate upon this point, but I do feel that absolute prohibition of a company from being director of another and laying it down that only individuals can be directors and not any body corporate, is an unnecessary restriction on useful and experienced persons coming on the Board of directors.

Sir, I have only one more suggestion to make regarding the clauses. Of course I could not go through them completely, but as a result of a cursory reading of the clauses, I am making a few suggestions here.

Next I refer to clause 643 which relates to the making of rules where it is stated that the Supreme Court, after consulting the High Courts shall make the rules. I am afraid this will take a considerable length of time. It will take a long time if we ask the Supreme Court to make the rules in consultation with all the High Courts. Section 365 of the English Act says that the Lord Chancellor with the concurrence of the Board of Trade shall make the rules. Of course, the Lord Chancellor there is the head of the judicial administration and is also a member of the Cabinet. There he makes the rules in consultation with the Board of Trade. I do not at all in any way disparage or say anything against our Supreme Court making the rules. But I feel that the Supreme Court consulting all the High Courts, will take such a long time that I do not know when you will get the rules framed. Of course, I do realise that there is the necessity for uniformity in this matter. So, the Central Government may as well make the rules. If necessary, the Central Government may make the rules in consultation with the Supreme Court and the High Courts and also fix a time within which the replies from these courts should be received so that all delay may be avoided. This may kindly be examined.

Now, I come to the question of voluntary liquidation. I feel that making the auditor of the company the liquidator of the same company in the case of voluntary liquidation is a dangerous provision. There is clause 462 dealing with "Audit of liquidator's accounts", but there is no such provision where the liquidation is a voluntary one. In such a voluntary liquidation the auditor of that company should not be the liquidator. For if anything had gone wrong, it must have been done with the knowledge of the auditor and we would only be making the person who is partly responsible for or who had been conniving at such mistakes the liquidator of the company. That is being liquidated. This should not be allowed.

Sir, I have nothing more to say.

BEGAM AIZAZ RASUL (Uttar Pradesh): Mr. Deputy Chairman, many learned speeches have been made on the Bill that is now under discussion. I neither claim knowledge of the intricacies of Company Law, nor do I intend to discuss all those difficult points. My only purpose in standing here is to make a representation on behalf of the so-called minority shareholders of whom the hon. Finance Minister also spoke in his opening speech. Some hon. Members also have referred to them. I feel that this is a matter that needs the very careful attention of Government, because it is very necessary to see that the investing public, most of whom sometimes invest their life's savings in these companies, are not exploited by the directors in such a manner that they feel frustrated and helpless after once having invested all their money.

I am glad that the hon. Finance Minister has already paid attention to this important matter and there are some provisions in this Bill which seek to widen the scope of the righ's and privileges of the shareholders. Power has also been given to Government to investigate into the affairs of those companies which are not run on proper lines. Under clause 408 it is stated that if 200 shareholders give notice to that effect, the Government will have the power to investigate into the affairs of the company and to appoint two directors. There are other clauses also, for instance 274 and 397 and others, under which Government have the power to investigate the matter. I would, however, request the hon. Finance Minister to widen the scope of these provisions by decreasing the number of 200. This number of 200 shareholders is very large and usually it is very difficult to get so many shareholders to sign a request. I do admit that the shareholders themselves are mostly apathetic in this matter. They only grumble, sit at home and say all sorts of things, but when a meeting is called, they do not go to the annual general meeting to take any active steps. If they do not take any active steps, it is not because they do not feel that they are being exploited, but because there is not enough initiative amongst them to do anything. Therefore, I would like the Government to recognise this fact and do something.

First of all, most of these companies do not pay dividends for a number of years though many of them have large capitals which they got by floating these companies. Still they do not declare any dividend. I would like the Government to consider this point and after the lapse of a reasonable time since the start of the company the Government should check and investigate the reasons why the company does not declare any dividends. There should be some power provided for that. You know what is really happening. The directors make unconscionable sums of money by way of remunerations, by entering fictitious names of relatives and others in the records as employees thus making heavy charges on the company's accounts and showing that no money is left to be given as dividends. These are things which I hope will be gone into seriously by

[Begam Aizaz Rasul.] Government so that the confidence of the investing public may not be shaken in these private and public companies and the public may come forward to invest their money in these ventures. It is on account of these bad practices that the public is getting more and more doubtful about the advisability of investing their money.

1 would, therefore, request Government to devise some system under which periodical inspection of a company, irrespective of whether it was good or bad, may be made. This will promote confidence in the mind of the public and will also ensure better management.

SHRI S. C. KARAYALAR (Travan-core-Cochin): Mr. Deputy Chairman, the paid-up capital in these companies the Motion for the consideration of this Bill. I shall make only a few general observations.

It will be seen that there has been a phenomenal growth in the number of companies and in the capital invested in those companies during the last ten or eleven years. The number of companies has gone up from about 14,000 in 1943-44 to 30,000 in 1954-55; the paid-up capital in these companies has also risen from Rs. 350 crores to about Rs. 985 crores. This is a very healthy sign of growing economic activity. We have not yet reached the saturation point in the matter of formation of joint stock companies; we have yet to go a long way. Having regard to the economic development of the country and having in mind the future planned development of the country, all possible inducement should be given to promotional activities as put forward by the Finance Minister. Unless you give inducement to promotional activity, formation of companies in future would receive a great set-back. The Finance Minister has put the case very strongly in the note that had been circulated to us of the speech which he deliver«d in the other House. I do not want to go farther than thai. I only want to make a few observations regarding the Bill as it is placed before us. The Bill as it has emerged now has become unduly voluminous and complex. It throws a number of onerous obligations both upon the companies and upon the Government. The number of obligations which are imposed upon the companies can be more or less judged from the number of clauses of the Bill under which Government have to come to some decision or other. These clauses number about 100. Let us see what the effect of these clauses will be both upon Government and upon the companies. These will necessarily have a deterrent effect upon the formation of companies. That is the first point that I want to stress. The second point that I want to stress is the voluminous nature of the Bill. It has been unduly enlarged because of the incorporation in the Bill itself of several matters of a procedural nature or of a non-essential nature. For instance, the Bill contains provisions relating to the manner of service of notice. There are several clauses dealing with this matter. There are other clauses dealing with the procedure in regard to the conduct of meetings. These are things which could conveniently have been relegated to the schedules containing regulations for the working of the companies. That has been the scheme of the existing Act and I do not see why nonessential matters should have been incorporated in the Bill itself. Only the fundamental principles relating to the working *of* companies should have been put in the main body of the Statute itself. Why I mention these things is that under the burden of the obligations imposed, the ordinary promoters, the managing agents who have been promoters hitherto, will not come forward and will not have the necessary incentive to form new companies. That is the net result of the voluminous nature of the Bill and of the numerous obligations which are cast upon the management. While on this point I wish to refer to another important aspect. I want to

jtress that incorporated companies are, by their nature, autonomous bodies working within the ambit of the Memorandum and Articles of Association. Of course, the Memorandum and Articles of Association are, to a certain extent, governed by the provisions of the Statute but so far as the members of the company and the company itself are concerned, they are to move within the ambit of the Memorandum and Articles of Association of the company. As a matter of fact, Sir, the Memorandum and Articles of Association of a company are a sort of contract between the company and the members of the company. When the members of a company subscribe to the Memorandum and Articles of Association of a company, they are bound by these documents and thstt virtually estab-lishes a contractual relationship between the company and the members. This is a very fundamental thing. It i_s on the basis of the Memorandum *skid* Articles of Association that the company itself is constructed. It is the whole basis on which the structure of a company rests. Why I mention these facts is because there are certain provisions in the Bill itself which seek to interfere with the Memorandum and Articles of Association; in other words, the Bill contains provisions which interfere with the internal autonomy of a company. The Memorandum and Articles of Association of a company are, more or less, sacred documents so far as the basis of the company is concerned. The sacrosanct nature of the Memorandum and Articles of Association should not be violated by legislation; of course, it is open to Parliament to make any provision regarding the Memorandum and Articles of Association and I do not dispute the competency of Parliament to make any regulations regarding the Memorandum and Articles of Association. But, as a matter of policy, when you concede that i a company is based essentially on •' the Memorandum ar>-i Articles of ' Association, it is rather injudicious to interfere with the basis on which the company is constructed. I mention these again because I find certain provisions in the Bill which will interfere with the autonomy of a company. I refer, for instance, to clause 408 of the Bill which lays down that under certain circumstances Government may appoint not more than two persons, being members of the company, to hold office as additional directors in addition to the number of directors already functioning. This is a provision which interferes with the Memorandum and Articles of Association of a company. These two directors are to be appointed not at the instance of all the members but at the instance of a small section. That raises a fundamental question.

SHRI AKBAR ALI KHAN (Hyderabad) : That is to protect the interest of the minority shareholders.

SHRI S. C. KARAYALAR: I understand that but I was stressing th« point that a company itself is constructed on the basis of its Memorandum and Articles of Association. This is a serious interference with the Memorandum and Articles of Association and, therefore, with the autonomy of a company. I personally feel that such a serious encroachment upon the autonomy of a company is not in the public interest. It will, as a matter of fact, give a severe jolt to the structure of a company and also to th« future formation of companies.

SHRI AKBAR ALI KHAN: There are several jolts.

SHRI S. C. KARAYALAR: Yes, but this is a very serious matter which should be considered very seriously lest the future destiny of companies should be unduly disturbed. The proviso to clause 408 continues this very same trend. There, before passing an order under clause 408, sub-clause (1), the Government may direct the company to amend its articles in the manner provided in clause 265. Clause 265 provides for election of director* OH toe principle of proportional repre-

[Shri S. C. Karayalar.] sentation. Under clause 265 only an option is given, but under the proviso to sub-clause (1) of clause 408, Government are practically imposing their views that the articles of association should be so amended as to provide for election of directors on that principle. I do not object to a company itself making provision for election of directors on the principle of proportional representation but a provision like this empowering the Government to direct the company to amend its articles in the manner provided in clause 265 is a serious interference with the internal autonomy of the company. These are matters which frill affect the future promotion and structure of companies. This is a matter which should be considered very seriously.

Sir, my next point would be with regard to the distinction between public and private companies. Sir, private companies by their very nature are organisations which are brought into being by a set of people who are generally friends or relations. They are, in the very nature, private concerns and as private companies they have been enjoying certain immunities and privileges hitherto. Some of those privileges are sought to be taken away under this Bill. For instance, private companies are required to file balance-sheet with the Registrar of Joint Stock Companies. Sir, this is a very serious invasion of rights of private people. Actually private companies in their very nature are only private bodies which have nothing to do with the public; public are not interested in those undertakings. It will be as well to mention, Sir, that private companies do not offer shares to the public; they do not invite shares from the public, nor do they offer debentures to the public, and there is a restriction on the transfer of shares of private companies. That shows the nature of the operation of private companies, and in so iar as tins Bill seeks to interfere witn me immunises or privileges hitherto enjoyed by them, that will be a grave set- back to formation of private companies. That is a matter which should be seriously considered.

I mentioned a few minutes back that there are certain clauses which seek to interfere with the autonomy of companies. Sir, the autonomy of companies is based upon a very fundamental principle, namely, the principle of rule by the majority; the rule of the majority has become an accepted principle underlying all company law. In England, Sir, it is firmly rooted in the law relating to companies and it has been the subject matter of consideration by the courts in England and I would like to read only a few sentences from a leading case on the subject. The principle laid down in that leading case is that the majority of the members of a company are entitled to control the company. I am quoting only a few sentences. The Judge who decided that case has stated: "In my opinion, if the thing complained of is a thing which, in substance, the majority of the company are entitled to do, or something has been done irregularly that the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to do legally, there can be no use in having litigation about it. The ultimate end no doubt is that a meeting has to be called and then ultimately the majority gets its wishes." This principle laid down in the leading case in England has been systematically followed, and this is even now the law. So the majority rule is the basis on which companies are formed and, if you are going to abrogate that rule, company formation will receive a rude setback. You shouiu. not interfere with the majority rule. The very basis on which companies are formed is the majority rule. There are very serious invasions upon the right of the majority. As a matter of fact, the majority is now being red'iced to a minority. That is the object of several clauses where the

provisions are made for the protection of the interests of the minorities, but, as a matter of fact, in essence, they seek to reduce the majority to the position of the minority. This is a very serious matter.

These are some of the points which I wanted to urge. I hope, Sir, these will receive the Finance Minister's consideration.

MR. DEPUTY CHAIRMAN: Yes, Mr. Kapoor, but you must finish by 1 O 'Clock and I shall ask the Finance Minister to reply.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): I believe, Sir, the Business Advisory Committee has given us three hours to-day for this and if the hon. the Finance Minister takes only one hour or so, we have still one hour and a quarter for the non-official Members. That, I believe, is the arrangement.

MR. DEPUTY CHAIRMAN: The Finance Minister will reply at 1 O'clock.

SHRI JASPAT ROY KAPOOR: You may do anything you please in your discretion and we will abide by it, but what the Business Advisory Committee had decided yesterday and you were pleased to announce is this which I have just submitted. They have allotted 33 hours. It was 30 hours according to the old schedule for the second and third reading. So the balance of three hours is for the first reading to-day.

MR. DEPUTY CHAIRMAN: We have only 2| hours left out of which one hour will be spent by the time you close at 1 O'clock. So li hours are given to the hon. Minister for reply. So you please try to close at 1 O'Clock.

SHRI JASPAT ROY KAPOOR: Very well, Sir. I will try to be as brief as I can.

SHRI H. C. DASAPPA (Mysore): My submission is that it would be better if the reply is given at 2 or 2-30; otherwise the difficulty is that the House would get a little thin by 1 O'Clock.

MR. DEPUTY CHAIRMAN: The House is expected to sit right through.

SHRI BHUPESH GUPTA: What a fantastic suggestion to make! If hon. Members take time that would be a different matter.

MR. DEPUTY CHAIRMAN: You go on, Mr.' Kapoor.

SHRI JASPAT ROY KAPOOR: How can I, Sir, when my time Is taken up by interruptions?

Now, Mr. Deputy Chairman, may I with your permission submit that I almost feel flattered that during this long drawn-out debate, out of all the Members who have so far spoken I have the singular good fortune of having your guidance in the matter of making my speech short. I believe, Sir, you would like this gentle hint to be conveyed to my predecessors through me, and I am glad that I should have been made the vehicle of this hint.

SHRI AKBAR ALI KHAN: He conveyed that intimation through bell.

SHRI JASPAT ROY KAPOOR: Now it is through a living human being. I alone have the proud privilege of being the vehicle.

Sir, at long last this Bill has reached a stage when shortly hereafter it is going to be placed on the statue book. It has been before us for very many years, before the public and before the Legislature also and it has received careful consideration at every stage, and I think all this has not been in vain because we find that after every review it has emerged in an improved form. I hope, Sir, thai we shall be guided by this good result in this House also and that the various

[Shri Jaspat Roy Kapoor.] suggestions that are made here, I hope, would be seriously considered by the Finance Minister and he would accept as many of our suggestions as appeal to him and he would agree to accept amendments in those respects irrespective of the consideration that We are discussing thi$_s$ Bill at the fag tnd of this session and that he might find some difficulty in having the accepted amendments here being accepted by the other House in the course of this session. There is no particular hurry and if he feels like accepting some amendments, he might as well put them before the other House in the next session. Sir, there does seem to be something wrong somewhere in the matter of adjustment of business. Important Bills are taken up at the fa^ end of the session when we feel delicacy and handicapped in the matter of requesting the Government to accept our amendments.

Be that as it may. Coming immediately to the provisions of the Bill, I would submit that this Bill is now in a much more improved form than it was before and I would also like to take this opportunity to congratulate the Finance Minister and express my appreciation of the manner in which this Bill has been piloted by the Finance Minister who has throughout shown an accommodating and responsive attitude. I hope that this responsive and accommodating attitude would be shown in this House also.

Sir, one of the most important subjects that has been discussed in relation to this Bill is the question of th* managing agency system. All sorts of abuses have been hurled on the managing agency system and on the managing agents. Abusive language has been used; strong words have been used against them. Of course, I am prepared to admit that the managing r.gents have to thank themselves for it, because they have resorted to mal practices and they have in the past very often acted in a manner that public feeling has grown horribly against them. But then I would SUD-mit that even the devil must be given his due and we must, while abusing them and their malpractices, also give them the credit for the good work that they have done. They have been pioneers in the matter of establishment of industries in this country. The field was open to everybody to establish industries and if it is generally the managing agents, and the nine families who have contributed 700 directors to the various institutions, who have done so, we should not grudge them The field was open to everybody including my hon. friends of the Communist Party and everybody including them could have established as many industries in this country as he liked. May I ask why my Communist friends should be abusing these nine families and the 700 directors coming from them, when thej have not contributed anything to the industrial development of (he country? Perhaps they are more interested in destroying than in setting up industries. I do not think there is anything inherently wrong in the managing agency system; the wrong lies in the managing agents, in their conduct and in their character. If only the managing agents had not behaved in the manner in which many of them have behaved in the past, particularly in the recent past, I think all would have been well and nobody would be against the managing agency system as such, Sir, whatever legislation we might pass in respect of the managing agency system and in respect of the managing agents, I am sure you are not going to achieve your object because the managing agents are much too clever. They are much too clever in the game of hide and seek. This legislation is very much in the nature of playing a game of hide and seek. You try to net them.in, they manage to get out from some loose hole. You should therefore appeal to their better sense and raise their character.

SHRI H. P. SAKSENA (Uttar Pradesh): You are abusing them.

SHRI JASPAT ROY KAPOOR: My time is short and my friend Mr. Saksena knows it more than anybody else. I do not know why he drags me into unnecessary controversy. Sir, I have almost lost my thread.

SHRI H. P. SAKSENA (Uttar Pradesh): You were abusing them; I will remind you.

MR. DEPUVi CHAIRMAN: Order, order

SHRI JASPAT ROY KAPOOR: I was submitting that they have rendered good service also. Only if they had not resorted to malpractices as they have done, nobody will probably be against them. Sir, I would submit that even if this Bill is enacted in its present form in its entirety, they have nothing to be afraid of if they work honestly and like good and patriotic citizens. A challenge has been thrown to them that if during the next five years they behave well, they might be allowed to continue and, therefore, this is the time for them to accept this challenge and show to the people ihat they are not as bad as they have been painted to be and that whatever sins they might have committed in the past, they are capable of rising to the needs of the situation. If the requirement of the situation is that they should

behave in an honest and patriotic manner, they can show that they can rise to the occasion.

Having said so mueh about the managing agency system, I would come to the provision of clause 176 in the Bill which suggests that even non-members may hold proxies for members. It is against all canons of fair-play. Why should a person who has absolutely no financial stake or interest in the company be allowed to hold proxy? I know that an improvement has been effected in this clause in the Lok Sabha according to which such persons will have no right to speak st the meetings, but the right of speaking is not so important as the right of moulding the decision by exercising the right of vote. Why should one who has no financial stake in the company have the right to vote? This, I submit, is a dangerous thing and must be deleted.

SHRI AKBAR ALI KHAN: I do not think there is the right of vote.

SHRI JASPAT ROY KAPOOR: No, no. They have the right of vote.

Now, coming to the question of the appointment of directors, I am strong ly of the view that it should be made obligatory in the Bill that the election of directors should be by a system of proportional representation. This i» very necessary. My hon. friend who has just preceded me said that the rule of majority must be maintained. I do not see how if my suggestion—a suggestion which has been made by many other Members also—is accepted the majority will be reduced to a minority, because even under the system of proportional representation if a large number of shareholders are with the managing agents, then of course the majority of directors will still be elected according to the views and wishes of the managing agents. Introduction in a large body of directors of one or two or three directors who are not in the good books of the managing agents would not reduce the majority into a minority. I would submit that in clause 408, it should be the other way round. Rather than having the present provision of clause 408, it should be open to the Government to direct the company to delete the system of proportional representation if it doe* not work well. We should have it just the other way about that if the Government finds that this system of proportional representation has not | worked well in the case of a parti-I cular company and if a representa-| tion to that effect is made to the Government, they may direct that this provision for proportional representation might be deleted.

There is another clause which suggests that the directors, whenevei

[Shri Jaspat Roy Kapoor.] fhey reach the age of 65, should not be elected. That, I think, must be deleted, for, we cannot subscribe to the view that persons attaining the age of 65 become old fossils. Look at some of the Members in our own House who have crossed that age and see how vigilant and how energetic they are. I see my old friend, Mr. Saksena, who has crossed the age of 65; how vigilant he always is!

SHRI V. K. DHAGE (Hyderabad): There is a provision that the Government might make an exemption.

SHRI JASPAT ROY KAPOOR: True; but I do not want that sort of thing. I want it as a matter of right. Take the instance of our own Finance Minister who, we see, as years roll by, goes on getting younger and stronger and even more graceful. Could it be said that he, of all the persons, when he has attained the age of 65—I do not know how old he is; to me he looks not more than 45 and to be in the prime of youth.

THE MINISTER FOR FINANCE (SHRI C. D. DESHMUKH): Second childhood.

SHRI JASPAT ROY KAPOOR: I have rightly judged him then. I hope. Sir, we shall not relish the idea that the hon. Mr. Deshmukh, when he attains the age of 65, should be considered an old fossil, not capable of performing the duties of a director properly and efficiently.

1 P.M.

Sir, I now want to make a suggestion which may appear to be a little drastic and revolutionary. But, then, I think, when we are enacting a law like this, in these revolutionary times, we should not be afraid to suggest and even accept revolutionary suggestions and it is this. In every limited company there should be a provision that every labourer therein shall hold at least one share of the value of Rs. 10 and that all these labourers must be represented on the board of directors. The Government is laying a good deal of emphasis, and rightly too, on the encouragement of co-operative societies. Well, all the elements of co-operation cannot be introduced in all limited companies, but certain elements of co-operation can certainly be introduced. And I think that no difficulty should be felt in accepting the suggestion of mine. If this is accepted, the labour would feel that they have some interest in the concern, they would work harder and more honestly. The production would increase. The labour-management troubles would decrease. My hon. friend, Mv. Bhupesh Gupta, said the other day that he was not much concerned about it. He was perhaps even against it. My hon. friend, Mr. Dasapp*, wanted to waste his breath in trying to convince him. It is no use wasting time, because he has certainly not an open mind on this subject. He has a closed mind. He would certainly be opposed to this sort of provision in the enactment, because that would bring about better relations between labour and capital and he and all others of his political tribe thrive on trouble and turmoil. They would not like to see that peaceful relations exist between labour and capital.

I would now come to the question of auditors and in this respect I would suggest something which might appear to be novel and that is. in the case of big companies—big companies have got to be defined in that case—and particularly in th$_e$ case of companies which are producing important articles of national interest, one auditor must be appointed by the Government initially. Of course, it is provided that if an auditor is not appointed by the sharehoders in due time, he shall be appointed by the Government. But I suggest that in the case of big compaines of the kind that I have just described, Government should have the right to appoint an auditor because do we not know what is going on today? In the

limited companies the auditors very often are under the thumb of the managing agents. You must have independent auditors and to achieve that object it is necessary that the Government should have the right to appoint an auditor on its own initiative in the case of important companies.

Coming now to foreign capital, my attention again goes towards my friend, Mr. Bhupesh Gupta, who would not like foreign capital to come here at all and who would even like foreign capital to be confiscated. They would like the nationalisation of all the industries which are run by the Britishers particularly. In this pamphlet "Communist Party and Problems of National Reconstruction" which they submitted to the Planning Commission, they have suggested that all the British concerns should be nationalised. They have, of course discreetly not said as to whether this nationalisation should be with or without compensation.

(Time *bell rings.)*

SHRI BHUPESH GUPTA: Please give him a little time; for once he is reading a good thing.

SHRI JASPAT ROY KAPOOR: I have not been able to catch him but I might advise him that sailing as we do in the -same boat in the matter of hearing, it would perhaps be to our mutual advantage if we speak to each other in whispers and not expose ourselves to the laughter of the House. Now, in the pamphlet which they had placed before the Planning Commission in one of their meetings, they have suggested that if the British concerns are nationalised, ft would offer a big source of capital formation and funds for *iation-building purposes. I infer therefrom that their suggestion is that that should be expropriated. Well, Sir, they might even have suggested, in order to get more funds, whether we should not carry on daylight robbery all over the country and even in the neighbouring countries perhaps. 1 would submit .....

MR. DEPUTY CHAIRMAN: It is time.

SHRI JASPAT ROY KAPOOR: A couple of minutes more and I am finishing. This suggestion certainly does not deserve to be accepted because this is not meant in the interests of the Industrial development of the country, but in the interests of the demolition of the industries in this country

Sir, my time being very short, I will skip over one or two points hurriedly. One is that we should have suitable administrative personnel. In that connection, I would make three suggestions. Firstly, we should have a training institute for this purpose; secondly, the private concerns, and particularly the Government concerns, should see to it that they train a good number of personnel regularly from year to year; and, thirdly, all the Universities should have a graduate's course in this subject.

And. lastly, I would suggest for the serious consideration of the Government that they should have like the Indian Administrative Service and the Indian Educational Service, an Indian Industrial and Commercial Service, with the same pay and scale as they have in the Educational and Administrative Services.

I would not like to hear the bell, though even if it is done, I may not be able to hear it. I would not like to give you the trouble of ringing the bell. And so to close in the end, I would appeal once again to my friends, the managing agents, that they should try to improve their methods and character and I would like to appeal to my other friends who are so much against them—and perhaps rightly— that they should try and attempt to convert them to better ways to adopt the Gandhian method of SoTvodoya and make an earnest appeal to them to evoke the best in them, to take

[Shri Jaspat Roy Kapoor.] out the best in them, not by abusing them but by persuading them, by suggesting to them that it is in their own enlightened self-interest that they should behave in a better way. The *Swrvodaya* method, if adopted, I am sure, will take out the best that is in them as had been our experience in the past. For do we not remember that Sardar Patel, when he dealt with them, adopted an attitude which was appreciated by them also and brought about good results? Almost in one breath he was able to take out from them Rs. 10 lakhs for the construction or reconstruction of Somnath temple, and also for many other causes. I would, therefore, submit that in all our dealings, in the ways that we adopt in enacting legislation and in the ways we adopt in dealing with any class of society, we must adopt the Gandhian and *Sarvodaya* way. For in that lies the ultimate solution of our problems and the well-being of the country.

DR. W. S. BARLINGAY (Madhya Pradesh): May I ask the hon. the Finance Minister just one question before he rises? I am aware that the question may appear a little naive or perhaps irrelevant and the hon. the Minister need "not answer it if he does not want to. The question I should like to ask is this. Since we are anyhow retaining the managing agency system, what is the necessity of having the companies at all? Why not organize the private sector merely on the basis of co-operative societies plus the managing agency system plus Government control?

SHRI B. C. GHOSE (West Bengal): Managing agents are to be organised as co-operatives? That is a new definition.

SHRI C. D. DESHMUKH: Mr. Deputy Chairman, I had better deal with this question first. I think we will have to do our work all over again, *it* we have to implement the suggestion, the revolutionary sugges-tion, made by the hon. Member in his question. And as he has been kind enough to concede, the proper answer for the question may take a lot of time since it will be a long process of cogitation before one could come to the conclusion that the 30,000 joint stock enterprises could be turned into a co-operative movement managed by managing agents under Government control. It is too much of a morsel to be digested at one gulp.

Now, I come to the observations of other Members. They are very valuable indeed and have thrown light en many aspects of the problem. I do not know if within the time that is available to me, I shall be able to deal with all the criticisms that have been made or all the suggestions that have been made. I refer in particular to some suggestions made this morning. I may have at the close of my speech time to deal with some of them. But as the intention in one case w3s that Government should consider it and that the Member himself may not come with an amendment to that effect, it will all depend on what conclusions we come to not now but perhaps on reflection in regard to those, and some of them may be taken up or regarded as matter for future amendments in the light of experience.

There was a complaint made that this debate has been arranged at the fag end of the Session and therefore, it might lead to Government adopting an attitude of hostility, so to speak, to amendments. Now that is not, as I conceive, the matter. In other words. I shall feel most bound to answer any amendment that may be proposed and if I give a satisfactory answer, then I expect that the amendment will not be pressed or if it is pressed, it will not be carried by the House. So .....

SHRI JASPAT ROY KAPOOR: Anrt if you feel otherwise, you will be able to accept it.

SHRI C. D. DESHMUKH: At thw moment, I can only say that *1* shall

deal with every amendment on its merits and not on the basis of the time element—that, if I were to accept it, certain other conclusions might follow. We have announced that we should like, at the latest, to bring this law into force by 1st April next year, but may be 2nd April. But that is not to say that it would not be desirable to bring it into effect earlier. On the other hand, we shall require three or four months' time for formulating the rules and now we are almost in the beginning of October. Therefore, it could not come into force very much before, say, the 1st of March. That is the kind of time element that one has to bear in mind.

Many Members have referred to the complexity of this legislation. That, I think, is in the nature of things. The joint stock enterprise has grown' and developed not only in this country, but in other countries and a progres sively expanding code of conduct has had to be enacted. There is a recent publication come out after the debate in the Lok Sabha was over, issued by the Ministry of Finance, Depart ment of Company Law Administra tion, "Progress of Joint Stock Com panies in India" which in the begin ning, the introductory section, gives some details of the length of legisla tion here as well as in the United Kingdom. We started.....

SHRI LALCHAND HIRACHAND DOSHI (Bombay): Is it on sale?

SHRI C. D. DESHMUKH: It is placed in the Library. I will give you a few figures which might be of interest. We started enacting in regard to compaines in 1850 with 105 Sections and one Schedule and we have ended in the Lok Sabha with 658 Sections and 12 Schedules. There was a revision in 1886, 1913, 1936 and then a small amendment in 1951 and then this Bill in 1954. The comparative position relating to Company legislation in the United Kingdom was as follows.

This started a little later, you will be interested to know, in 1862. But j they made up by the number of Sec-! tions. They had 212 Sections and 3 Schedules and they ended a few years earlier in 1948 with 462 Sections and 18 Schedules.

With all these statistics, it is not possible to have a simple law when one is handling a matter of such public interest. There is no way of handling what can be described justly as public money without tears and with a simple code of conduct. And as experience shows, Abuses of various kinds are being practised. Then one has to stop the loopholes, so to speak. Therefore, although we shall try to bring out a simple hand-book, it will suffer on account of its simplicity. It may give an idea of the scheme of things, a kind of perspective, a sense of proportion. But it cannot be a reliable guide to the businessman, j however small he may be, who sets out to invite other people's capital for starting an enterprise. There is no way out for him but to study the provisions of the law and if necessary, to encourage the legal profession by appointing some one qualified to advise him. We are suffering in dealing with this measure from one big defect and that is that in the past, as many hon. Members have stated, administration was very unsatisfactory. I have given the details of the general lay out in my speeches which have been re-printed here. But the fact remains that there was no systematic administration or no effective administration. And there was a complete lack of systematic research and gathering of information. Therefore it is that many of the judgments that we here pass now or see passed in books and in memoranda are mostly qualitative judgments whereas I think you will agree that before we make any fundamental changes in this matter we should have very reliable quantitative facts and figures as the basis for a quantitative judgment and it is that consideration which has been at the back of our minds in proposing certain amendments or in refusing to accept certain others. There is a feeling with us that

[Shri C. D. Deshmukh.] we ought not to take any steps that will introduce any basic disturbances in the present scheme unless we are sure of our ground and that consideration is reinforced by a fact to which many Members on this side drew attention, namely that we are at the beginning of a second planning period in which the emphasis is likely to be shifted from agriculture to industry. So, we feel that this is not a period when we should take any chances, especially if it can be shown that by taking no chances, we are not likely to lose anything significant or substantial. All that responsibility rightly rests on the executive government.

Now, Sir_5 in regard to statistics themselves, it is so much symptomatic of their imperfection that in ona of my interventions I said that no positive statement has been made that the statistics that we circulated related to companies managed by managing agents only. I verified that and I find that it is true to say that all these companies are managed by managing agents. I have now referred to the original letter which was addressed, not directly by us to companies but to Registrars, and the statistics were compiled from the information which was sent to us by the Registrars. I said that these statistics were not complete in all respects. That statement remains true still. That is to say, although they were compiled from the records maintained by the Registrars, the records themselves were somewhat defective as all the particualrs were either not available or had not been brought up-to-date.

There is another disadvantage from which the Registrar suffered, and that is the statistics were collected at very short notice. They were given barely 3-4 weeks' time in which to compile them for the use of the Select Committee. So, it was not possible foi them to address the individual companies or to bring their records up-to-date. Nevertheless, most of the Registrars have told us that the statistics which they had supplied covered most of the important managing agents carrying on activities in their areas. How far that is true we have not been able to verify.

A scrutiny of these figures shows that out of 1,720 managed companies, 1,516 were public companies and 204 were private companies. The total paid-up capital of these 1,720 managed companies is more than 215 croras of rupees, which is about 25 per cent, of the total paid-up capital of all joint stock companies in India. That is to say in that relevant year 1951-52, the total paid-up capital was 856 crores of rupees. Since the beginning of this debate I spent some time in trying to analyse some of these figures and have found that this is the break-up of the managing agencies in 1,245 compairjes. There was only one company to one managing agent, and these companies accounted for 33'4 per cent, of the total of 215 crores of rupees, which, you will recall, is one-fourth of the total paid-up capital of all companies. The amount per managing agent was Rs. 5-7 lakhs and, therefore, the amount per company also was Rs. 5- 7 lakhs. That is to say, these are all very small companies, and there can be no question of concentration of economic power in such a case. The company itself is small and only one company is managed by one managing agent.

Now, these 1,245 companies are out of 1,340 managing agents. Therefore, 1,245 managing agents accounting for 33'4 per cent of the paid-up capital of the companies could not be accused of wielding concentrated economic power.

Then we come to the next class which has 26 managing agents. Now each managed two companies, and, therefore, they managed 52 companies, and the amount per managing agent was Rs. 54 lakhs. Certainly here you come to the bigger companies, each company, therefore, having an average caoital of 27 lakhs.

So these are very substantial managing agents, as well as substantial companies, but in each case not more than two companies were managed, and the total paid-up capital accounted for 6-6 per cent., out of the total of Rs. 215 crores.

The third case is still more important *i.e.,* 36 managing agents managing 3—5 companies each. Now between them, these companies accounted for as much as 25-6 per cent, of the paid-up capital. The amount per managing agent comes to Rs. 150 lakhs. And taking that each agent managed 3—5 companies—I take even the lower figure in order to yield a higher figure per company—that comes to Rs. 50 lakhs. This is a very substantial and very important group. But the point to remember is that each managing agent is wielding power so to speak over paid-up capital on an average of Rs. 150 lakhs. Whether you call it concentration of power or not, we do not know. It is nil a .relative question.

T come to the next class where the number of managing agents is 24. They are managing between 6—10 companies each. Now, here the amount of paid-up capital per managing agent is Rs. 197 lakhs and the amount per company is Rs. 28 lakhs.

Now, all these four classes together are 1,331 and they would be managing agents managing less than ten companies each. All those four classes are below ten. They account for a total paid-up capital out of Rs. 215 crores of, I think, 87 per cent. That leaves nine managing agents only. Six managing agents managed between 11—20 companies each, and the paid- up capital that each one handles is only Rs. 114 lakhs. Therefore, the number of companies is very large. Each managing agent is managing paid-up capital of Rs. 114 lakhs of rupees and the amount of paid-up capital per company is Rs. 9-5 lakhs. So in this class, although the number of companies managed is large, each company is a small one, with a paid-up capital of 9'5 lakhs of rupees.

Next you come to two managinj? agents, managing 21—30 companies each. Now, here the paid-up capital managed is Rs. 666 lakhs. So these two are super-managing agents and the capital of each company managed is Rs. 31-8 lakhs.

Now, I come to the last class which is one solitary managing agent, managing between 31—40 companies. It might be more by this time. This was in 1951-52, because in my other list I have got a managing agent managing 50 companies. Here again the total paid-up capital managed is Rs. 688 lakhs and the amount of paid-up capital per company is Rs. 19 lakhs. Now, I hope that subject to the reservation that I have made in regard to these figures, this gives some indication as to the line of action that we will follow. The conclusion that I would draw here is that you are dealing with a few hand-picked managing agencies, either corporate companies or firms or individuals .and so on, and it is a problem which cannot be dealt with by a general formula, because a general formula might very well be very hard on innocuous people, people who are incapable, so to speak, by their very situation to practise any abuse arising out of their being managing agents.

SHRI B. C. GHOSE: I did not quite follow it, Sir. What is the conclusion that the Finance Minister wants to draw from that? If the conclusion is that there is not much concentration of economic authority because a large number of managing agents are one-company managing agents, then the other conclusion is also quite relevant that if we were to abolish it, it would affect only a small number of people, because for these one-company managing agents it does not matter whether there is a managing agency or not.

SHRI C. D. DESHMUKH: That is only an obiter *dictum,* if I may say so. My conclusion would be exactly

[Shri C. D. Deshmukh.] the opposite unless you examine these cases. You are not quite sure what will happen to these companies. And why should we rush to the con clusion that .....

SHRI BHUPESH GUPTA: The hon. Minister should give us some idea of the working capital.

SHRI C. D. DESHMUKH: I am sorry, Sir, I cannot produce all those figures. I have only tried to analyse the figures that are already before me. That only reinforces my point that one ought not to take a decision which will fundamentally affect the working of compaines unless one was in possession of far more comprehensive data.

SHRI V. K. DHAGE: May I intervene and ask one question as to the number of managing agents? Can the hon. Minister say as to which are the foreign firms and which are the Indian firms out of all those figures which are quoted by the hon. Finance Minister?

SHRI C. D. DESHMUKH: Sir, I cannot give all the information. I have got a separate list here which gives the names of the principal foreign firms—foreign means foreign names, because I do not know how many have been transferred, for instance I do not know whether Hall & Anderson is today a foreign firm, or it is an Indian firm. Therefore, I give the names Subject to 'this. Martin has some Indian element, and so on. So there are about 15 very big foreign houses. One of them held the managing agency of 32 companies in 1911— 5 jute, 12 coal. 8 tea and 7 miscellaneous—and today it holds 50. Today means 1951. Then I would not like to go down the list. But take Duncan Brothers, because they specialise in tea alone. They had 13 different companies as far back as 1911, and today, they have 26, out of which 25 are tea companies and one is a jute company. And then there i_s Killick Nixon, which holds 7. Among these 15, many of them hold, as I said, 50, 40 or 30, and some of them hold between 10 and 20. The big Indian firms are three, and they are very well-known, Tatas, Birlas and Dalmias. The Tatas started with 6 in 1911 and ended up in 1951 with 24. They are of miscellaneous kinds, mostly hydroelectric, cotton textile mills and so on. There is a much wider dispersal of the character of the companies held by the Indian managing agents, The Birlas, in 1951, held 26, and the Dalmias, in 1951, held 35. Most of them are given here under the heading 'Miscellaneous'. Now, I thought that this information would be of interest to hon. Members.

SHRI BHUPESH GUPTA: I want to know the total paid-up capital managed by the foreign concerns.

SHRI C. D. DESHMUKH: That i* given separately in the survey of foreign investment held in 1948 by the Reserve Bank. As far as I remember, the figure .....

SHRI BHUPESH GUPTA: You have mentioned 15 managing agents. We would Hke to know the total paid-up capital under their management.

SHRI V. K. DHAGE: That is about Rs. 1,220 crores.

SHRI BHUPESH GUPTA: I would like to know the total paid-up capital of the managing agents as also the total paid-up capital of the companies under their management.

SHRI C. D. DESHMUKH: Sir, I am not a walking encyclopaedia. But I have tried to analyse certain figures in' order to help the House to appreciate the problem. I sat down last night, and got some of these figures.

SHRI V. K. DHAGE: May I interrupt the hon. Minister again for a minute?

MR. DEPUTY CHAIRMAN: There are a lot of interruptions.

SHRI C. D. DESHMUKH: I would Invite the hon. Members to have a look at this publication which is available in the Library.

Now, Sir, 1 come to some of the more specific points made ■ by hon. Members. There .was one point which was made in regard to the new registrations and liquidations, and I would like to clear up a certain amount of misunderstanding here. The comparison of figures relating to new registrations with the number of the companies going into liquidation is apt to be misleading. The figures of paid-up capital of new registrations in a year represent the paid-up capital at the end of . the year of the companies registered during the preceding twelve months. Some of the compaines might have worked for the full period of one year, and some for a much less period, and may be 15 days. A company registered in April, for instance, might have been in existence for about twelve months, and the capital raised by it during that period will be shown against the figure of that company. But a company registered in February or March will hardly be in a posititon to raise much capital before the expiry of the financial year. That is obvious. And consequently, the figure of paid-up capital of new companies for the 11 years, 1943-44 to 1954-55, referred to by Shri Dhage, namely, Rs. 67 crores, includes for each year only the capital raised by them during the first financial year—April to March—of their existence. These figures do not include the capita] raised by such companies during the subsequent years, while the • paid-up capital of the companies that went into liquidation during the period of 11 years mentioned above includes the figure of the paid-up capital accumulated by such companies from their inception tc liquidation. It is the total of it. A correct appreciation of the position relating to net capital formation of companies during the period of 11 years can, therefore, be had only by a comparison of the paid-up capital of the companies at work at the beginning of that period with that at the end of that period. Now, the paid-up capital of all companies at work on the 31st of March, 1944, was Rs. 354 crores as against Rs. 983 crores on the 31st of March, 1955. This accounts for a net increase in capital formation of all companies by Rs. 629 crores, that is to say, an average of Rs. 57 odd crores a year. Now, whether all this is due to managing agents, or whether if there were liquidations, they were due to managing agents, it is not possible for me at the present moment to say. I do not even know how many of these 30 thousand companies are managed by managing ngents. According to the Registrars, they have given account of most of the managing agents. If that were to be correct, then it would look as if cnly one-fourth of the total paid-up capital is invested in the companies managed by the managing agents. But it might very well be that investigation might prove that managing agency is adopted as a mode of management by a larger proportion of companies. These matters have to be investigated very patiently and very carefully. That is why I say that one ought to take with a certain amount of hesitation any fundamental steps such as would disturb the system, the full incidence of which is not known to us and that is why one ought not to allow oneself to be over-influenced by the accounts of abuses or evil practices. It is like taking a very well known analogy—reading a Sanitary Inspector's report—as Gandhiji said about some notorious book written about India. It was in their interest or even in the interest of the writer to represent India in one wrfy or to bring forward one's grievances and there-fcre grievances are bound to predominate. It was nobody's case. It was the case of the managing agents but they were hundreds and thousands of them. They perhaps did not get l.-.gether and collectively. They have never accumulated evidence to the contrary, that is to say, to show what vhey have done.

SHRI B. C. GHOSE: The Joint Select Committee was flooded with literature.

SHRI C. D. DESHMUKH: No quantitative analysis was available even to the Joint Select Committee even in that memorandum. I am sure members of the Joint Select Commit tee had the memorandum from Federations, many members of the Associated Chambers and various others but there was nothing quanti tative in this. So far as Shri Dhage's attitude is concerned, it reminds me ol the attitude of a Christian soldier who was once caught beating a Jew | in one of the port towns. Somebody asked him why he was doing it. He said "Don't you know that the Jews crucified Christ?" Tne bystander said "Well, that was 2,000 years ago." He said "I heard of it only yesterday." The hon. Member is drawing attention to some memorandum given by the Shareholders' Association. We all know that these memoranda have been given. They are printed, they are not secret documents. It was after 1 that that the Expert Committee went j into it and what is more, the moving spirit, one who was known as the moving spirit of the Bombay Share holders' Association, Shri Jag Mohan Kapadia—everybody has paid tributes to his activities on behalf of the Shareholders—he, it must be remem bered, has signed this Expert Com mittee report. That is one. The second is, after that the Bombay Shareholders' Association has made another recom mendation. Now Members have said— | I don't know whether Shri Dhage has said it; I cannot now recall; I think it was said somewhere else—that all this happened when some Minister happened to have visited Bombay or something or other and then it was I that the Bombay Shareholders' Asso ciation made some other recommenda tion.....

SHRI V. K. DHAGE: 1 never said **that.**

SHRI C. D. DESHMUKH: Nor did T say that you said it. If people do change their minds, I think one ought to respect that change. Even if the Communist Party changes its mind, as it has done on some other issues, 1 say that is right. After all, consistency is the virtue of a somewhat dense animal which we all know but one must abide by the last judgment of anyone who pronounces that judgment and that is why we say that the Bombay Shareholders' Association are quite content with the scheme that has been adumbrated by the Joint Select Committee and which, with minor changes, has been accepted by Lok Sabha. Now, Sir, this is really the crux of all this matter. The rest of them are matters which one can dis-cuss—whether it is director's powers or proportional representation or Government companies or any other matters. The compass of the controversy is very small, but the whole crux of this problem is this. Should we here and now take the decision tc abolish the managing agency system? There is a certain amount of confusion between managing agents and managing agency system. Sometimes when one thinks of the system, one thinks of the people who have been managing agents. I think one ought to dissociate these two things because as some speakers said, so long as you have these men in business, they will behave according to certain pattern. I don't say that they will behave in the way that they have behaved in the past. I don't say so. Indeed I have expressed hopes that they will behave, being good businessmen, in quite a different way. That is the hope on which this piece of legislation is centred.- But you cannot get rid of them. They are there in business. If Ihey are not managing agents, they will be something else. If they are not honorary secretaries and treasurers, they will be managing directors or directors and you have to deal with them and that is why the law has not concentrated only on managing agents but it also deals with the powers of the directors. It deals with various things which companies must do. That is why it has altered the

Schedule as one hon. Member complained and put something from the Schedules into the body of the Act itself so that there should be no discretion left to the people. There are certain compulsory provisions. They have left others in the Schedules even now so that they can be changed by us by rules. There are certain other things which are models which companies may or may not accept. It is that which we have adopted. So what one has to consider is, what do we exactly mean when we say "Shall we abolish the managing agents?" I have here a statement showing what exactly—it is rather a complete one— we have done with managing agents. This is to elaborate the point which was made by one of the speakers which I think was a valid point.^What are you dealing with? Are you dealing with something static, something that has remained unchanged and therefore it must be destroyed or are you dealing with something that is taking the imprint of your legislative measures, whatever they may be and your administrative measures which were very few from time to time but which might be more in the future? Now in the 1913 Act, there was no regulatory provision whatsoever in regard to managing agents. In practice a firm or limited company called managing agents used to take large powers under the articles and performed the functions of the managing director, manager or secretary. The essence of managing agent is one who exercises his powers by agreement with the company or under the articles of association or memorandum, not delegated power by the Board. That is the distinction between managing agents and the others. In other words, there is a transfer of sovereignty by agreement subject of course to all the regulations and all the controls or the provisions which are contained in the Acts from time to time. Subject to that, it is a contract cf that kind where , sovereignty, so to speak, is transferred from the shareholders to the managing agents. Now as I said, in 1913 there was no regulation at all. In 1936 about 11 restrictions were placed on managing agents for the first time. For example, appointment for 20 years is now reduced to 15 and 10. Then the remuneration was fixed at a percentage of the net profit but net profits themselves were very loosely defined and office expenses were allowed which are not & 1 lowed now. Then there was another restriction on loans to managing agents out of the moneys of the company. That is a prohibition which continues. Then loans by company to another under the same managing agent were prohibited. That also continues, though we have changed it a bit. We have now given power to shareholders to approve of the transaction, subject to Government approval and so on. Then purchase of shares by another company under th_e same managing agent f_s to be approved by the directors. That was another power. The power to issue debenture by managing agent was prohibited. Then investment of funds of the company and the limits thereof were to be approved by the Board for the first time in 1936. Then they were not to engage in business competing with business of the managed company. Then they were not to appoint more than one-third of the Directors. Then there was a question of compensation. That was prohibited if it was due to default or negligence on the part of the managing agents. And lastly there was a provision inserted for the removal of the managing agent for fraud or breach of trust.

I believe if the war had not intervened and if. therefore, the Government of the day had been freer to devote more attention to the administration of the Act, may be would not have found so many abuses as were complained of. Also the very fact that there was a war led to a crop of abuses. Morality was a casualty not only in this country, as some hon. Member said, but it was the first casualty of the war all over the world. And that is why we are now

[Shri C. D. Deshmukh.J

faced with a situation where we have to impose many more stringent regulations and almost change the managing agency system out of recog nition.

The first step taken was in 1951 where we put in another five restrictions which were of very great importance. For the first time we interfered, so to say, with the autonomy, of which one hon. Member spoke, of the company. The managing agent was to be approved. If there was a transfer *»t* the managing agency or if there was a change in the composition of the managing agency, then that was to be approved. These provisions we have strengthened here in this Bill by making it impossible for managing agency to be hereditary or automatic. If we find that- it brings in blood which could not be regarded as competent or fresh or anything like that, then we have power to interfere in the composition of the managing agency. The terms of remunerations were also for the first time brought under the regulation of the executive authority. Then, of course, hon. Members know the further stages. The Bill itself which was based on the recommendations of an expert committee added another thirteen restrictions. I shall not name them again, but they were in addition to those eleven imposed in 1936 and the five imposed in 1951. That is to say to sixteen were added another thirteen. And then the Joint Select Committee added another three restrictions, all of very fundamental importance, at least two were. In one case, of course, they reduced the remuneration from 12J per cent, to 10 per cent. Also no person is to be managing agent of more than ten companies. We regard these as fundamental restrictions. Moreover, the Central Government has power to notify the specific classes of industries •which shall not have managina agents. That could very well have wide consequences. Then, lastly, the Bill as passed by the Lok Sabna has added another four restrictions. So since 1936, we have about 25 further restrictions imposed on the managing agents, that is to say, in about 20 years, therefore, it is very right to say that what we are dealing with is not the managing agency which perhaps was the basis of the charges whTch were brought forward before some special officer or befere some committee and so forth. We deal with quite a different category of people.

Then again, what is the essence of this system? As far as I am able to understand it, it is this. In a country where they are not sure that promotional talent or financing capacity is plentiful they take advantage of others, namely, of people of experience or enterprise. And they say to --them, "Well, if you are prepared to have an agreement with the company, for its management under the rules and regulations that we shall be making, you will have certain rights and you shall have certain responsibilities. The rights are that your remuneration, the maximum remuneration, will be allowed to be a little higher than in other cases, the dif-feicnce as between you and the secretaries and treasurers being 21 per cent. And the other right is that you will be allowed to nominate a certain number of directors on the Board." Thirdly, as I said, it is a question of contract between them and the company managed, that is to say, it is not power which is delegated by the company which can be taken back at any time. So we say, "These are your rights. As against that, you will have responsibilities. Those responsibilities are: You will bring to bear the best of your experience to the service of the company that you will be managing, and in particular it will be an understanding that you will look after the financing of this company." Now, that may take the form of direct loans, or it may take the form of a guarantee of a loan, or it may even take the^fdrm, at the time that the agreement was made, of taking a certain percentage of the capital of the company. It will be

combination of all the three. We usually And that a managing agent has perhaps ten to fifteen per cent. capital in the industry that he is managing. Then he lends his name •and has a stake in the industry. He .has also certain means of, I will not .say* controlling, but certainly of diresting the taking of policy decisions in the Board. As against that, he has a certain amount of security in regard to the delegation of powers, -which really is transfer of power, and he can take a long-term view and make his plans with regard to the management of the company.

All that we are saying is that we <lo not know to what extent this .scheme does prevail in the industrial world. We do not know precisely what is the record of the managing agent from the statistical or quantitative point of view. So for a few years we shall examine these matters as well as we may and we have organised *f* Department through which we shall do so. Then during these four years we shall have started investigations to find out whether there is any •category or class of industries for which promotional activity is not required so much, ' because may be you do not require many new units. After all, this issue is also before the Planning Commission. Certain units ■we may not want, because we may raise the consumer goods through other ways. If it is found that promotional activity is not required, then the next question is that of financing. Heie, it may be that banks are well used to financing certain established industries. I do not want to name any, because at once there is the danger that if I name an industry, immediately hon. Members will say, "You ^re partial, you are committed to issuing a notification."

SHIH B. C. GHOSE: Jute or tea?

SHRI C. D. DESHMUKH: But there .....

SHRI B. C. GHOSE: I am suggesting it, not the' Finance Minister. He is not suggesting. That is the advantage; it was my suggestion and not that of the Finance Minister.

SHRI C. D. DESHMUKH: That is very kind of the hon. Member. I take it, although the example does not suit me very well. In tea there was lot of difficulty as regards financing the units in 1952, in the case of the minor ones, though the major ones were well looked after by the managing agents. But take any other consumer industry. The profits come in and the banks very well know that there is a ready market. As in the case of food, there may be other essential articles in which there is a good market and there will not be much difficulty, unless the company is particularly badly managed or is a marginal company. Of course, in the case of a marginal company even the managing agent cannot sustain it very much. But for an average representative company there will not be any difficulty in regard to raising finance. But if, after investigation and after hearing all the interests, one comes to the conclusion that there is a case for the issue of a notification, then, with the advice of the Advisory Commission, one may choose to do so. 2 P.M.

In regard to the others, as I said, after examination you may find that there is a great deal of field still left for an expansion both for promotional activity as well as for financing. All that Government is saying *its,* leave the matter open for a few years. We are assuming that all the present managing agency contracts would have come to a close on a particular djlte, four or five years hence, four years from the assumed date of commencement of the Act and no new formations which are not known to us or in existence like secretaries and treasurers can come into existence without oi[r] knowledge. In both these cases, w« have the situation well under contro[l]-we will have the figures and the information and we can take decisions with reference to the national interest. We do not cai[e] wnat nappens to particular managing agents because I am quite sure that these people

[Shri C. D. Deshmukh.] will be employed in the sa'me field in some form or other. The managing agent is not going 1.0 sit at home doing nothing; he will continue to make his contribution to the industry and to the country but what we have to see is whether he makes his best contribution. He may have little money; he may have little experience and he may have little talent. All that we say is, we leave the situation open for a few years so that we shall see if any real interest of the country is going to be served. That is the only narrow point of difference between us and Members who have suggested that we abolish the managing agency system, and those who say that we abolish the managing agency have not suggested that we do so here and now, that is to say, immediately the Act comes into force. That will pose problems of very great magnitude in organisation and enterprise. Therefore, it is a matter of two, three or four years. In that period, I have no doubt that the managing agents themselves will be, because of these uncertainties, able to improve matters. He might say, "Well, mine is an industry that is not likely to be threatened by this notification. Therefore. I might establish a good record. After all, the logic of events must speak for me. If I have or *Vt* niy tribe had helped in the promotion of industry, if my tribe can show with more exact figures that the industry has been financed by it, then I expect a patriotic-minted Government to take the view that here is something which we should not destroy". After all, it is very difficult to demonstrate what you do. We can only argue on suppositions. Supposing we keep the managing agents and supposing at the end of five years, at the end of the Plan period, we are able, to show that Rs. 750 crores—the figure mentioned by some hon. Member—have been invested in industry mostly through the managing agents, hon. Members can report, "Oh! yes, but how much would it have been if there had not been any managing agents?" It is impossible to give an answer. Similarly, contrarywise, if we destroy the managing agents and supposing hon. Members were to say, "Oh, you still got your target of Rs. 750 crpres", I might retort, "How do you .know that the target would not bave been bettered if there had been managing agents?". Whatever we are planning, we are not planning so closely ior the private sector. The private sector offers its own incentives 10 the shareholder and it may be that the shareholder may be induced to reduce his own consumption and put • more money into the industry. Therefore, these figures are not rigidly fixed figures, whether it is 750 ciores of rupees or 500 crores of rupees. Whatever the figures are, I am certain that everyone in this House *iz* agreed that we must take every care to maximise the industrialisation of our country through the channels that we have chosen for ourselves. Now I am not on controversial ground; we have left behind contro-\ersy, controversy as to whether certain industries, should be nationalised, when that should be done and so on and so forth. These are all matters about which we are not concerned here. We know what our policy is in regard to the foreign companies. The House ^s a whole will, I think, agree—although certain sections of it may not—that for a number of years —how long that will be, v/hat period that will be nobody knows—we shall require foreign investment, not only direct foreign assistance but also a certain amount of foreign investment because that forms a kind of stake which makes it easy for us to operate a particular industry. Those Members who study the Reoorts of the Public Accounts Committee and the Estimates Committee know very well I that through its inexperience government might make some errors. Also, we may not know with whom we are participating. There may be companies whiteh may offer their

advice and that advice may be very

expensive and costly for us but if they have a certain stake here, then there is a possibility that the cost of their participati'on would be lower to us than if we were merely to borrow money and employ exports of various kinds. It takes a great deal of experience to discriminate between experts and experts. That, Sir, is the simple case for the .nanagi'ng agents. I would advise the House to give its serious thought to it and ask this question: "Are we ;;ure that there would be a positive and significant gain if we were to decide to destroy the managing agency system, not the managing agent here and now?"

SHRI BHUPESH GUPTA: Absolute-

SHRI CD. DESHMUKH: There is one foolhardy person who would be rash enough to take that responsibility because he knows that the executive responsibility may not come to that section , for long, long number of years.

SHRI BHUPESH GUPTA: That Is your only hope.

SHRX C. D. DESHMUKH: That is what I have to say on this mam point and it covers many of the minor points which had been made during the course of the sDeeches of hou. Members.

There were points in regard to the number of companies managed, the size of the remuneration—why 10 per cent., why not 7J per cent.—and so on. Thte is a matter of judgment. Certainly, if it could be 6J per cent., it would be more favourable to the shareholders. On the other hand, the House will remember that the Expert Committee itself recommended a provision which would give Government power to increase from 12J par cent. The origmal recommendation was 12J per cent, and, with respect to that recommendation, the Expe[r]t Committee suggested that there might be cases of a new concern where better incentive was required. In such cases, Government might examine and then ajiiee to a higher rate of remuneration.

SHRI B. C. GHOSE: That is in the Bill itself. If you have 7£ per cent. Government has power to increase it. Whether it is an increase from 10 per cent, to 15 per cent, or from 7J per cent, to 15 per cent.

SHRI C. D. DESHMUKH: You may put it at 2 per cent, and then take it higher to 15 per cent.

SHRI B. C. GHOSE: *Reductio* ad ab *surdum.*

SHRI C D. DESHMUKH: There must be some relationship to what is provided by the law and what you are going to provide by special dispensation. The lower the figure the larger will be the number of exemptions and then Government might expose itself to the charge that Government is exercising these powers with laxity and with excess generosity. Therefore, I do think that in the light of all the circumstances, 10 per cent, is quite a satisfactory ceiling. I have no doubt myself that the higher the paid-up capital of a company or the higher the net profits earned, the lower will this figure be. Only time can show. I should be very much satisfied if the average comes to 8 as against 14 in some years and 16 in others. When it comes to 8, I think we can call it a day. We must also remember that m the case of many individual managing agents it will also mean a very considerable reduction. There are certain places where it ranges from 20 to 24 p

er cent. In those cases also, it will have to come down to 10 per cent. Here I am not influenced by any considerations of taxation but even in regard to such iambs or black sheep, there is such a thing as tempering it to the witid Therefore. I think this is a reasonable figure to take but finally it is a

[Shri C. D. Deshmukh.] .matter of judgment. It is not possible for any one to swear that 10 per cent. Js the right one and *1*\ per cent, is wrong. The whole scheme now has been arranged round this figure. There is 5 per cent, for the managing ■director, 7J per cent, for the secretary .and treasurer, 10 per cent, for the managing agent and 11 per cent, overall. I myself think that this is as good a scheme as any other that ■could be devised.

Then there is this question of slid ing scale and so on. I think that this is a matter which can be handl ed much more successfully and much more flexibly when we deal with the individual clauses, as they are bound to come up to us, because then one can go into the merits of each case and it may be that the Finance Minis try or the special department might bold that five per cent, of net profit is enormous, that five ought to be reduced to three. Therefore all these scales and formulae have their cwn disadvantages, and it is much belter to concentrate attention on the cir cumstances of any particular case and then come to the necessary con clusion. What one can bear in mind is of course this idea which is after all.....

SHRI LALCHAND HIRACHAND DOSHI: Is there going to be higgle-haggle whenever a manaing agent approaches the Government for fixing the commission?

SHRI CD. DESHMUKH: Higgle-"haggle is a term which is used between two equals. There *Us* no question of either higgling or haggling. We issue a direction. We ask questions; we expect reasonable answers to these questions. If they are given, we give a reasonable decision. There is no bargain here at all. But even the managing agents will recognise it "that after all there must be some limit to what a man expects by way •of rewards for his services, and if tney do expect too much, then there are the fiscal measures which can be taken, which can be made to operate as a somewhat moderate disincentive to them.

SHRI LALCHAND HIRACHAND DOSHI: It is already there.

SHRI C. D. DESHMUKH: Therefore, Sir, there are limits within which these matters can be considered and I have no doubt that in practice one would be able to come to a satisfactory conclusion in regard to each case. As I said, about 1200—1245 or 1275—they are small men. They would never come within this 50,000 business. Their total remuneration may be 20,000 or 25,000. Now in that case, supposing it is.a profit of one lakh now 10 per cent, of one lakh is quite different from 10 per cent, of 50 lakhs. It is an arithmetical truism and it may be that in such small cases even 10 per cent, may just give, say, 700 or 800 rupees per month to a . managing director, which no one would regard as excessive even for a small company. After all if you are handling 5 lakhs worth of assets, another 5 lakhs worth of block and this and that and debentures and so on, I do not think any one would hold that a managing director should not get Rs. 700 or Rs. 800 a month or about Rs. 10,000 a year, but that assumes a net profit of one lakh which you can calculate on the assets of the company working backwards. So I think, Sir, that there is advantage in leaving this situation somewhat flexible and to be dealt with by Government In the course of the exercise of the powers which have been vested in them.

Now about these powers incideatal-]y I might make a statement that the alternative to them was to put more liberal provisions. The two alternatives open to Government were either to put more liberal provisions and give freedom to everybody or to put stringent restrictions and at the

same time allow for more liberal treatment in cases where certain difficulties were experienced. Now the •course we have taken is this. We have put stringent restrictions but left room for executive relaxation, and we think that that is a better method than leaving the rein loose, so to speak, for all concerned. That is why the number of powers has gone up, as for iastance in the case of intercompany investments where the group under the same managing agent is concerned.

Now that is almost all that I have to say on the subject of managing agents except one small point. I think it is clear to the hon. Member why there are two clauses like 352 and **198.**

SHRI B. C. GHOSE: Yes, it is clear. If necessary I shall move an amendment.

SHRI C. D. DESHMUKH: If the hon. Member is satisfied, then I do not think I need take up the time of the House by going over that matter.

Now, in regard to directors. Sir, there is this question of the right of -workers to participate. There seems to be almost universal agreement that there should be some form of participation. The difficulty is that we do not know which form will secure the best results from everybody's point of view, from the worker?' point of view, from the employers' point of view and from the consumers' point of view. As I said, this is a matter in which one has to revise one's notions from time to time. All the different schools of thought had opportunities of expressing their views before the Planning Commission. That is a' development that has taken place since I spoke on this subject in the Lok Sabha. and there was a sub-committee appointed. I think—I have not seen the reports of the sub-committee. I think tKey are to be submitted to another meeting of the labour panel a little later. about a month later and then we shall know where we stand. It may not take the form of direct participation on the Board—there may be some other—and I think there was the mention of some council of management and so on and so forth. Now all these matters will be thrashed out and then, as I said, if there are any consequential amendments to be made in the various enactments, not only this one but all the other enactments, then they will have to be made. That will have the advantage. I hope, of having the adherence of many schools of thought or most schools of thought. At least I hope that there will be a tripartite agreement so far as employers, employee* and Government are concerned.

SHRI H. C. DASAPPA: May I know Sir, whether this participation of labour would be in the corporations belonging to the public sector- also?

SHRI C. D. DESHMUKH: Whatever principles are evolved will not ignore the public sector. Actually in some of the Government concerns there are already representatives of labour; in Sindri I think there is one. In many there are. So I have no doubt that changes mutatis mutandis would have to be made. Now that is all I need say on this because I do not regard this as a matter of current or even imminent controversy so far as this legislation is concerned. • Then there were other suggestions which, I have no doubt, I shall have to deal with when we come to the clauses, as for instance that the number of directorships should be relat ed to the size of the block capital Now that point was raised in the Lok Sabha also, and the only danger is that it might put a sort of limit which might be undesirable in the present context on the expansion of companies, an expansion which might be justified otherwise by the economics of production. Moreover, Sir. the I mature of companies varies enormously ' from industry to industry and if a

[Shri C. D. Deshmukh.]

fairly high ceiling i[J]s proposed—which may defeat its own purpose—nn trie total paid-up capital, then we feel that company formation might be impeded. Therefore here as in many other matters I would say that it is best to have two bites at the cherry instead o£ trying to swallow it. whole because you may then decide on the next course of action; either you can retrace or you can reinforce the action that you have taken and there is no restriction on the power of Parliament :n this matter. After alt if certain experiences emerge as a result of the administration of the Act, then from time to time we shall have to consider these issues. There will be the annual report which will come before Parliament. I have no doubt that Parliament will take a far livelier interest in the administration of companies in the light of all these debates and so on that haVe precede ed this legislation and Government, will be called upon (a) to narrate their experience and (h) then to take steps which appear reasonable to take ifn the light o£ the experiences of the Houses of Parliament which study the annual report. Therefore I would say again that there is every thing to be said for not taking almost irrevocable steps or not taking too big risks in the beginning i'n one's reforming zeal and that holds good also for this question of propor tional representation. I myself con fess that I felt in two minds about this, but I cWld not ignore the fact, that there were two equaily likely possibilities, either important grouns of shareholders might wage warfare within the precincts of the company, in which case the company would suffer, or a large majority holder might oppress the minority. Now, 1 do not know statistically which is going to happen, whether the first one or the second one. One would require a great deal of experience of the actual working of companies under new conditions— not under the conditions as we see them, but under new conditions— before we come to a decision that pro-portional representation is the best one. We should remember that alter all in this world where joint stock enterprise is tairly widespread there are only a few States in one country where proportional representation is practised. I gave the figures; I think they are containe'd in my speeches. Even in the United States this is not the recognised form. In the mos1 industrially advanced States, I thinP in 45 per cent, of the total mdustfta! enterprise in the U.S.A. this form ti proportional representation has no been adopted. I do not see why we should rush in the vanguard of this kind of progress when we have plenty of time ahead. We hope that insterd of 30,000 companies, in five years time we may have 60,000 or 70,001 companies. Why should we take £ risk today which will imperil the smooth working of companies in on: country?

SHRI JASPAT ROY KAPOOR: Doe the hon. Minister conceive that here after any company is going to adop the option of having this clause it their articles of association to thi effect that they shall have proportiona representation and if any cnmpatr or any fair number of compan es avi not going to adopt this thing ii .v *v* the experience to be gained?

SHRI C. D. DESHMUKH: 1 sa that in this matter, as in speen.aUu. and stock exchange, there ar always two views. If there is a Bui there is a Bear. Similarly if then is a body of opinion which feels tha a kind of unified control is good fo a company, they will take a certain course of action, and there will t another equally respectable body o shareholders who might come to th conclusion that it is better to ador. this kind of proportional represer tation which holds some kind c safeguards for minori'ties. It is nt a matter which is capable of an arithmetical definition. In this Hous itself, I am sure that there will b two opinions.

SHRI BHUPESH GUPTA: Why do you stand between the Bull and the Bear?

SHRI C. D. DESHMUKH: That is the dilemma.

SHRI JASPAT ROY KAPOOR: Why not between the Devil and the Deep .Sea, perhaps Mr. Gupta would ask.

SHRI C. D. DESHMUKH: Then I come to the question of administration on which I have not anvthing much to say. I have said most of what I had to say already in the Lok Sabha and I can only repeat the assurances that I have given that we shall try to help and not hinder.

Some questions were raised by Dr. Kunzru with regard to the report. He was wondering whether the information under clause 237 was or was not covered by the provisions in clauses 217 and 219 in regard to the state of affairs of the company. The answer is that the state of affairs itself is not much of a ri'gid requirement. When a company wants to set out information about its state of affairs, it may mean anything. Supposing cotton is spoiled in the go-down, someone has to say that it has been spoiled. That is something bearing on the state of affairs of the company. It is impossible to define it beforehand. Nevertheless a shareholder may say, "Well, there is one particular fact which was hot shown in the report that the godown that was hired had a damp floor." I am only giving a kiftd of an imaginary instance. In such a case it would be open to the shareholder to seek his remedy and therefore I do not think that one is excluded by the other. That is to say, even in giving a statement of affairs and i'n attaching a statement to the balance sheet, it is still the duty of the management to give all the material facts so that the shareholder is well-informed of what exactly happened. S3 I think that will remove the doubt that 'he hon. Member has in this; particular respect.

SHRI H. N. KUNZRU (Uttar Pradesh) : Sir, I put another question also. Suppose a shareholder writes to the Board of Directors and asks for information which is reasonable and which cannot be regarded as being of a confidential nature likely to affect injuriously the interests of the company, will he be entitled to get a reply to his enquiry under this clause?

SHRI C. P. PARIKH (Bcmbayj: Without that clause he is gatting it at present.

SHRI H. N. KUNZRU: I want not the hon. Member's opinion but the Government's opinion.

SHRI C. D. DESHMUKH: What it says here is, "if in the opinion of the Central Government there are circumstances suggesting that the members of the company have not been given ail the information with respect to its affairs whi'ch they might reasonably expect..,...." There is nothing to say that this is only concerned with the balance sheet or the statutory statement and therefore I should say that they are entitled to this information.

SHRI H. N. KUNZRU: I think it will be better if the Finance Minister looks into the matter and has trie point made clear,

SHRI C. D. DESHMUKH: We shall have occasion to deal with this when we come to the clause also.

Then there was another point which the same hon. Member made in regard to the bringing of the regulation of banking Aid insurance companies also within the ambit of this new department. Whatever one might have to say n theory about it, I am reluctant to enter on this course.....

SHRI H. N. KUNZRU: Why?

SHRI C. D. DESHMUHK: .....when that department has to deal with an unpredictable volume of work. I am anxious that they should be able to deal satisfactorily with the large number of matters that would come to them from ordinary companies, apart from banking and insurance companies except to the extent to which banking and insurance com panies are governed by the same regulations, but there are other matters which affect the banking and insurance companies but which are not necessarily connected with joint stock enterprise or with the incor poration or winding up or the management of companies. Those companies are connected with the economic life of the country. So far as banks are concerned, for ins tance, there is the question of control of credit and we have a central bank for the whole country dealing with this. Now, that matter is not neces sarily cognate with the looking after the minutiae of the banking company as a joint stock enterprise. Some questions may arise .....

SHRI H. N. KUNZRU: There are other questions, for instance, with regard to directorships which can be profitably reviewed by the Central department which will deal with the affairs of joint stock companies.

SHRI C. D. DESHMUKH: As I said, to the extent to which there are common provisions, I expect that it will come under the Department of Company Law Administration. To the extent to which there are matters which are outside the scope of the Company Law, we require a separate organisation. In any case, that simply means coordination between the two Secretaries under the same Minister. At present it is the Reserve Bank which centralises all these in its department. There is already a coordination so to speak at the Reserve Bank end and their proposals come to us in the Department of Economic Affairs. That means, they come up to the Minister who is advised by the Secretary. Now, it is possible to hold that everything is interconnected and therefore everything in the field of economic affairs should be in the hands of one person, but in practice that is not feasible.

MR. DEPUTY CHAIRMAN: They are governed by seperate Acts.

SHRI C. D. DESHMUKH: Even electricity was pointed out the other day as part of this, but electricity is not under me. It is under the Irrigation and Power Ministry. I cannot bring everything relating to electricity here. There are provisions for passing on the advantage to the consumers but that is something else. Then there is the Industries (Development and Regulation) Act. That is administered—although it deals with companies and also investigates into the affairs of industrial concerns—by the Commerce and Industry Ministry. And, therefore, while bearing in mind that as far as possible cognate subjects should be handled by the same department, one has to bear in mind these administrative difficulties. In any case, one can keep this matter under review as one goes along, but one would be ill-advised to pile everything into a new department which has not yat been properly organised. It is not a question of drawing a chart of one Secretary, two joint Secretaries, so many Deputy Secretaries, Under Secretaries, and so on. It is very difficult to get properly qualified persons for the job. We have to gather a certain amount of experience in this particular field, especially as I said, so far, our experience was confined to officers of the State Governments or provincial Governments. Although some of them have no doubt come to us on transfer, some of them have not. And, therefore, we have this difficult job of building up a new department.

Then, there is this question of statutory authority. Now, I do not really understand how it is that we are not establishing a statutory authority. The Advisory Commission is being established under a Statute and, therefore, it is a statutory authotrity. If it is a question of autonomy, I think, hon. Members have conceded that there is no such thing as complete autonomy. It cannot be so long as Parliament is looking after all these questions through a Ministry responsible to them. Otherwise, it seems to me to be setting up a seperate functional executive department only for dealing with Company Law. That can never be. The Minister must remain responsible and as long as he remains responsible, he must have the final word. And as I have pointed out in the other House, it may be possible to delegate powers to the Advisory Commission. You may say also some of these matters may be disposed of by power being delegated to the registrar, deputy registrar, assistant registrar and so on and so forth. But in one case out of two thousand, maybe the Minister may have a view which he has to put forward to the Advisory Commission. That, again, will be discussed with the Advisory Commission and even there differences of opinion might be ironed out. But it is very necessary that the final control must remain in the hands of Government and could not possibly be given up to the Advisory Commission by calling it by any other name you like, an "executive body."

Sir, I have not got the time to deal with many of the other issues, for instance, the one raised by Dr. Raghubir Sinh in regard to control of transfer of foreign assets .....

DR. RAGHUBIR SINH (Madhya Bharat) j Not by me. It was raised by Shri Fakhruddin Ali Ahmed.

SHRI C. D. DESHMUKH: I did not look behind. That is a matter of foreign exchange, and it is not a matter for Company Law. But I would say prima facie it is very difficult to suggest that nothing shall be transferred from one to the other—no assets of a company shall be transferred from one buyer to-another without Government approval. If you do want to render all this non-negotiable, so to speak, this is the easiest way of doing it. It seems to me that iinmediately it will have a reaction on stock exchange values and prices and so on. Therefore, one has to move very warily in a matter of this kind. This position irr regard to transfer of assets will be with us as long as the present sterling balances agreement remains wrth us. Afterwards we can take a view, and that view must be taken having full regard to the desirability of leaving the door open both ways. That is to say, if capital flows out, it will be—if we leave the door open—in the hope that capital will flow in, that more capital will flow in than goes out. According to the calculation made by the Reserve Bank, I think we have received a net investment of Rs. 131 crores in the last six or seven years. That is the net inflow into the country.

As regards the suggestion for nationalising and so on, it is, again, a double edged weapon. They have assets here, but we have also assets in other countries. I think one has, however, to maintain a certain modicum of decent international behaviour. One cannot just issue a ukase or *firman* saying, we nationalise completely and put a ban on the transmission of assets, transfer of dividends, and so on. The experience we have gained in the course of economic history is that most foreign investment grows its own sources of servicing the debt. In other words, it is seldom that a country, especially an independent country, loses by inviting foreign investment on projects selected by it or in directions selected by it. Usually you find that when such a judicious choice has been made, we get more in foreign

[Shri C. D. Deshmukh.] exchange than we lose by servicing that particular debt. And if that is so, that is quite a business-like proposition.

Sir, I shall have opportunities of dealing with many of these other . matters in the course of the discussion on clauses and so I ought to close now.

MR. DEPUTY CHAIRMAN: The question is:

"That th». Bill to consolidate and amend the law relating to companies and certain other associations, 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 (*Definitions)*

MR. DEPUTY CHAIRMAN: There are fourteen amendments on clause 2.

SHRI SHRIYANS PRASAD JAIN (Bombay): Sir, I move:

2. "That at page 2, line 16, for the word 'one-third' the word 'one-half be substituted."

15. "That at page 6, after line 11. the following proviso be inserted, namely: —

'Provided that an individual, by whatever name called, not being an associate of the managing agent or secretaries and treasurers, who is subject to the superintendence, control and direction of the managing agent, Secretaries and treasurers or managing director, shall not be deemed to be a manager.'"

(Amendment No. 15 also stood in the names of Shri C. P. Parikh and Shri Lalchand Hirachand Doshi.)

SHRI C. P. PARIKH: Sir, I move:

3. "That at page 2, line 38, for the word 'one-third' the word 'one-half be substituted."

4. "That at page 3, line 9, for the word 'one-third' the word one-half be substituted."

7. "That page 3, line 45, for the word 'one-third' the word 'one-half be substituted."

10. "That at page 4, line 16, for the word 'one-third' the word 'one-half be substituted."

14. "That at page 6,—

(i) in line 6, after the word 'who' the words 'by virtue of a resolution passed in the general meeting, has,' be inserted; and

(ii) in line 7, the word 'has' be deleted."

(Amendments Nos. 3, 4, 7 and 10 also stood in the name of Shri Shriyans Prasad Jain.)

SHRI BHUPESH GUPTA: Sir, I move:

5. "That at page 3 line 15, after the word 'above' the words 'and or any body corporate in which any member or any person con nected with, the managing agents is a director' be inserted."

6. "That at page 3, line 24, after the word 'corporate' the words 'or any relative of the member' be inserted."

8. "That at page 3, line 50, after the word 'members' the words 'and/or any relatives thereof be inserted."

9. "That at page 4, lines 1 to 30 be deleted."

11. "That at page 4, at the end of line 30, after the words 'body corporate' the words 'or any relative of the member' be inserted."

12. "That at page 7, lines 34-35, the words 'or body corporate (not

being the managing agent)' be deleted."

13. "That at page 7, lines 38-39 the words 'or body corporate' be deleted."

(Amendments Nos. 5, 6, 8, S>, 11, 12 and 13 also stood in the names of Shri Abdul Rezzak Khan and Shri K. L. Narasimham.)

MR. DEPUTY CHAIRMAN: Clause 2 and the amendments are open lor discussion.

[THE VICE-CHAIRMAN (SHRI H. C. MATHUR) in the Chair.]

SHRI BHUPESH GUPTA: Now, here clause 2 deals with definitions. You will find on Page 2, "associate" is defined and in the following pages this definition has continued. We have tried in our amendments to widen the scope of this definition. The reason is obvious. For instance, we have said that at page 3, line 14, "and /or anybody corporate in which any member or any person connected with the managing agents is a director" be inserted. Similarly, the other amendments are more or less the same. We want this insertion because we feel that the relatives should be included, brought within the purview of this definition. It is well-known that in our country, especially among the very big onea in the business circle, there is a lot of trade and business going on in what is called *benami* and there we find that names of relatives, sons and daughters and others, are associated with it and in such cases many of the things that are sought to be done under the law are put outside the pale of the law. Therefore, we feel that this definition has to be enlarged with a view to guaranteeing against malpractices that are carried on by a section of the businessmen.

Then, there is also another amendment at page 3, line 24, "or any relative of the member" be inserted. I feel that the hon. Minister has ignored while drafting this particular clause the fact that in many cases these "associated" are really responsible for all kinds of malpractices and corruption. And these relatives and others if let out of the operation of this clause or definition will not really much improve the matter.

In any case, these associates are really responsible for all kinds of malpractices and corruption. If they are left out of the portion of this clause of definition, it will not really much matter. I am not saying that that will be done through this clause. What I want to stress here is that the definition should be enlarged. I think it is clear from these clauses themselves that they will have wider powers in the subsequent chapter. Therefore, I want to fill in the whole thing by broadening the scope of the portion of this particular clause.

SHRI C. P. PARIKH: Mr. Vice-Chairman, first of all I want to say that this definition of "associates" has been enlarged from what it was in the Joint Select Committee Report. If Mr. Bhupesh Gupta notes it, he will find that the definition is enlarged to such an extent that about 75 per cent, relationship will be covered or will come under the definition of "associates" in many companies and h_e wants to expand it still further by adding the words "or any relative of the member" in the private limited company. Now, a private limited company may have 50 members and their relatives may number *to* 200. Therefore, the account of the 250 relatives has to be kept, I think, at present. The changes .that have been made are very adequate and therefore, the amendment which Mr. Bhupash Gupta has suggested is not necessary at all.

With regard to my amendment, I may say that, wherever the "body corporate" is there, you should take into consideration the relatives *ot* directors and managing agents. Many companies are managed by more than

[Shri C. P. Parikh.] ten directors and if we take such a view and restrict the number which originally stood at 50 per cent, or one-half, to the present one-third, we are going too far and the difficulties of company management will be very great on that account. Therefore, I suggest that, instead of "one-third" which is standing at present, the original figure of one-half which was in the Joint Select Committee should be retained.

Another amendment relates to the definition of "manager" and the amendment which I am suggesting is very important. First of all, it cuts at the whole root of the company management because the company management which is envisaged under this Bill is of four types. One is the managing agents; the second is secretary and treasures; the third is managing director and the fourth is manager. When all these three are not existing, then this "manager" will come into the picture, according to the clauses which range from 384 to 388. Now. it is true that these managers will be appointed, in my opinion, according to these clauses from 384 onwards by the Board of directors and not by the general meeting. So, according to the remaining three, there should have been approval of Government as regards their appointment. But the definition which is made out by the Finance Minister leaves many loop-holes because the present designation of "manager" has to be taken into account, because "manager" which is defined here under clause 24 of the definition means "an individual who, subject to the super intendence, control and direction of the Board of directors, has the management of the whole, or substantially the whole, of the affairs of a company" etc. It means that there are and there will be many persons, more than one, in charge of whole or substantially the whole of management. In such a case, it will be difficult to meet for many companies their remuneration and especially when the remuneration is based on 11 per cent. Exemption has been made as regards Rs. 50.000/-. But something should be left to the managing agents or secretaries. When a manager who is also in the company draws some remuneration and if that remuneration has to be added to 11 per cent, the difficulty of a general nature will arise. The hon. the Finance Minister in the other House has tried to explain that it does not mean that two persons will be working together in the whole or substantially the whole of management. Therefore, what ha^ been provided here, will meet also with the desire and the views which have been expressed by the Finance Minister—"Provided that an individual, by whatever name called, not being an associate of the managing agent or secretaries and creasurers, who is subject to the superintendence, control and direction of the managing agent, secretaries and treasurers or managing director, shall be deemed to be a manager." Therefore, whenever any person who is appointed as a manager is to take direction or guidance or advice from or is under the control of the managing agents, or secretary or treasurer or managing director, then that person should not be considered a manager. This is important because these persons are appointed and only one man is in sole authority. If this is accepted the commercial and industrial houses will be able to adjust much better. If the definition which is existing is there, difficulties will arise that there will b_e need for tremendous changes in the designation which are given to those who are managing the company and the difficulties will be enormous. Also we shall have to enter into enormous correspondence with Government whether they are willing to recognize and what is their view in interpreting this point of manager because nobody will be able to know how it will be interpreted by Government and also by shareholders. So, clarity is required,

which will represent the views act! the assurance the Finance Minister has given. Therefore, instead of asking the industrial community to change the designation of managers, it is much better that it is made clear that, if they are acting under any one, then these persons will *not* be called managers.

I would further say why this definition is put down. He says he has included in clause 198 the manager for the purposes of remuneration in order that their associates or relatives of managing agents may not be appointed to have indirect remuneration. To a large degree we can admit. Therefore, I have suggested in the amendment "not being an associate of the managing agent or secretaries and treasurers." If he is an associate of the managing agents, then do consider him in the remuneration of 11 per cent. Therefore, the word "manager" is appearing in many places. It is very necessary that for clarity, this amendment should be accepted, in order that the present smooth working may be carried on and so that there may not be a need for any great change. This will enable the people in management to understand the word much better and it will also lessen the disputes.

As regards the appointment of manager, I am not sure whether the appointment is by the Board of directors or a general meeting, but if the appointment is by the general meeting, naturally the general meeting is the best judge of his appointment. Naturally those persons should be considered genuine because they are not at all connected with the managing agents. They are neither the associates. There the whole matter should be left to the general meeting who is the best judge for regulating the affairs of the company and for determining the remuneration. Therefore, I suggest that this amendment mav be accepted.

SHRI M. GOVINDA REDDY (Mysore): Sir, I would like to invite the attention of the House to item (20) on page 5 of the Companies Bill:

> "India" means the territory of India excluding the State of Jammu and Kashmir.

I understand, the object of introducing this definition is to exclude Jammu and Kashmir which has already been stated in sub-clause (3) of Clause 1 of this Bill. So the purpose is served there when we say that "it extends to the whole of India except the State of Jamimu and Kashmir." It means that no clause of the Act applies to Jammu and Kashmir. So, first of all this definition is unnecessary. li we delete the whole definition, it does not affect the Act in any way. By adding it we are implicitly admitting that India, at least for purposes of this Act, is without Jammu and Kashmir. For other reasons, not for purposes of this Act, it is not advisable to define India that way, particularly in view of the fact that by not adding this definition we do not lose anything; this Act is in no way affected. I would request the hon. Minister to consider dropping this definition. It is politically not desirable to have it.

SHRI SHRIYANS PRASAD JAIN: Sir, the definition of "associates" which was originally in the Bill has been very much tightened in the Lok Sabha from what was redrafted in the original Bill or redrafted in the Joint Select Committee. After all. Sir, what is the objective of tightening this definition? The objective was to check all the abuses, which came to notice, through these relatives or through the associates of the managing agents. Therefore, to tighten that loophole it was thought that some kind of restriction may be put so that the abuses which crept in the managing agency system may not recur. I appreciate that point of view. These loopholes came through the relatives of the managing agents.

[Shri Shriyans Ptasad Jain.] It is, to a very great extent, true. We are very angry with our relations, with our brothers and sisters and sons-in-law and so on. It is very legitimate that we must be angry with them so that these things which were occurring before may not recur. But in our anxiety to remove this loophole, the definition should not be tightened to this extent, that the thing may become a little bit difficult, if not impossible.

Sir, as regards my amendment, notice regarding which I have already given, it may be possiblp that a particular company may not be aware that I am an associate of the managing agents or not. I may give you an illustration here. There is a company, and according to the definition which has now been put here, if more than 33 per cent, capital is held in that body corporate by the relation or of the manager or directors of the managing agents, that company will be the associate of the managing agent. This is a public limited company. It may be possible neither that company will be aware nor the managing agent will be aware whether both of them were associated with each other. And if some of the transactions take place, that person is the associate of the other then and all the liability, which may apply to the managing agents or to that company will be applicable to them.

So far as associates are concerned the restriction comes in four clashes. Firstly, an Inspector investigating the affairs of the managing agency or secretary/treasurer may investigate the affairs of the associates. That is clause 239. The restriction comes in cases mentioned in clauses 356 to 360 i.e. restriction imposed in the appointment of managing agent or associate as selling agent of goods produced by the company. The third restriction comes in regard to loans to managing agency, which is covered by clause 369. The fourth and the last restriction conies where the managing agent, secretary/treasurer is debarred by the court from acting as such for a period of five years. This bar will also apply to [f].he associate.

In this connection I may tell you one thing. Under clause 314 it has. been said that even the relations of a director are debarred from holding an office of profit unless a special resolution is passed by the Board of directors. Why, Sir, is there a bar here? If there is a genuine case, I do not see why some such power should not be given to the Board of directors as has been given under clause 314 that by passing a special resolution they may be appointed either the selling agents or the loans may be given, or whatever disabilities may occur to them now, that may not apply to the associates. That is a point which I want to put before the Finance Minister for his consideration so that he may look into it. In clause 407 it has been said that, if any agreement or any such thing is terminated of the managing agents, either by the order of the court or otherwise, and managing agents are debarred to become the director or secretary or treasurer or managing agents of any other company, the associates will •lso incur that liability. I would particularly draw his attention to this clause. I think, Sir, we are going too far in that connection. If the associates knew what the managing agent, secretary or treasurer had done or the associate was responsible for this, I can appreciate the point of view that the associates should also be debarred. He has no financial interest. He has no say in the matter. Simply by virtue of this clause he is debarred, cannot be appointed as managing agent, secretary or treasurer. It is not proper. Therefore, this is a thing which I want to put before the Finance Minister to consider so that unnecessary liabilities or unnecessary disabilities may not apply to the associates, while they are not directly interested in any financial transactions or whether they

could have been there by virtue of their own merit.

As regards my amendment to the definition of "manager", I want to know the objective behind this definition. About the definition of the word "manager" I have consulted Members of this Parliament who are very much conversant with the Companies Law, as well as people outside, and I have been told that the definition given here is not very clear. Different legal authorities have put different interpretations, to the definition of "manager". Therefore, it is very necessary new, when we are framing this Bill, that as far as possible we should clarify this definition so that no misunderstanding or difficulties occur in the way of administration.

Sir, what is the idea of this definition? What I could understand from the various speeches which the Finance Minister has made is that they do not want a manager who is directly or indirectly connected with the managing agent should draw a remuneration over and ajbove 11 per cent., w*ich has been provided under Clause 198. I quite agree with that. I have no quarrel over that. If a manager, who is a relation of the managing agents, or of the secretary or treasurer, is an associate of the managing agent or of the secretary and treasurer, whatever the case may be, should not get him much more remuneration than what he is entitled to under this clause. I accept that position. I am in agreement with the Government that the overall remuneration should not be more than 11 per cent. Sir, in ' the case of bigger companies, when a manager is appointed, he may not be in charge of the whole management. But according to this definition he may be holding the charge of substantially the whole management. And a situation can arise when there is no commission. Supposing a person is getting some salary, and the profit is not adequate, or thpre is no profit, what will be the position then? Shall we in that case ask the manager to refund that salary or to refund his remuneration? After all, he is a person who is not interested in the commission. He is only concerned with his salary. If he is drawing a salary of say Bs. 5,000 or Rs. 6,000, and if this definition remains as it is he might be asked to refund a portion of his salary. I do not think that that is the intention of the Government. I therefore request the Finance Minister to accept this amendment, which is *a* very innocent one. And by accepting that amendment all the points of view are adequately met. He should not reject this amendment fearing that the Bill may have to go back to the Lok Sabha. That argument should not stand in the way of this amendment being accepted, because this amendment will facilitate the smooth running of the companies.

DR. W. S. BARLINGAY: Sir. I merely wanted to support what Shri Govinda Reddy has said with regard to the definition of 'India' in item (20J of clause 2. There, Sir. the word 'India' is defined as meaning the territory of India excluding the State of Jammu and Kashmir. And if you will turn to clause 1 (3), you will find it stated that the Act extends to the whole of India except the State of Jammu and Kashmir. Now there is obvious overlapping in these two definitions. If we substitute the definition of 'India' as given in item (20) of clause 2 in clause 1, subclause (3) of the whole thing would mean that "It extends to the territory of India excluding the State of Jammu and Kashmir." Now that is obviously redundant. Apart from that, Sir, there is a very real objection to the definition as given in item (20) of clause 2. Sir, the word India" has been defined, and is very well understood by virtue of our Constitution. There is absolutely no need to define "India" here, especially in these terms, namely, th«t

[Dr. W. S. Barlingay.] "India" means the territory of India excluding the State of Jammu and Kashmir. Why should we exclude the State of Jammu and Kashmir from India? There may be certain enactments which may not apply to Jammu and Kashmir, which is a different matter altogether. But there is no earthly reason why .we should define "India" as a territory excluding Jammu and Kashmir. If and when—God forbid—the State of Jammu and Kashmir goes out of India by any chance—I do not know-—the whole thing can then be reconsidered. But until that happens there is no earthly reason why we should define deliberately that way the word "India". India, as we know it today, includes the territory of Jammu and Kashmir, and that has been pronounced on the floor of this House several times by the Prime Minister. And that has been pronounced by him also in his public speeches. There is, therefore, no justification whatever for this definition, apart from its creating certain obvious legal difficulties. It is mathematically incorrect, if I may say so. Thank you.

THE MINISTER FOR REVENUE AND CIVIL EXPENDITURE (SHRI M. C. SHAH): Sir, first of all, I will take up the amendment of my friends, Mr. Parikh and Mr. Jain. They want to add one proviso to the definition of the word "manager". The definition of "manager" as contained in the present Act is substantially the same, and we have taken that definition here. Now, if we accept the amendment of Mr. Parikh and Mr. Jain, the effect of that will be rather to exclude the manager, who is in substantial management of the company, from the provisions of clause 198. We want to have the overall managerial remuneration to be fixed at 11 per cent., and in that the manager is also to be included. So. the manager who is in substantial management of the company will come in. I do not think there is any fear with regard to hampering the working of the companies. In the case of any genuine difficulties, we have taken certain powers under the proviso to clause 198. So, if there are any persons who are affected in any way, they can always come to the Government, and the Government will certainly examine all those cases and exempt such managers, who are drawing higher salaries. They need not be afraid of anything. I do not think that they are right in requesting the Government to widen this definition.

SHRI SHRIYANS PRASAD JAIN: Sir, may I ask one question? Supposing there is a manager who is looking after the production, and he may not be looking after the finance and other things. Will that particular person be taken as managing substantially the whole of the company or not?

SHRI M. C. SHAH: Sir, I cannot give any answers to these hypothetical questions. It is up to the man to come to the Government, and the Government will look into the^natter, and then if the Government comes to the conclusion that that person is in substantial management of the company, he will be termed as "manager". Sir, I cannot give answers to such hypothetical questions. But I can tell the House that in order to obviate any genuine difficulties, we have taken certain powers under this Bill, and we can exempt all such persons. And therefore, Sir, they will not be justified in asking the Government to widen the scope of this definition, which las been purposely put in this Bill.

SHRI C. P. PARIKH: Sir, I think :he Minister has not replied to the .vhole question and the point at issue. [want him to make one point very :lear. If the manager is in charge }f the company, but if he is to work subject to the superintendence, con-;rol, direction and advice *nt* tb»

managing agents or the secretaries, will he be considered as "manager" or not. because that is the main criterion? I want an unequivocal answer to this question. It is no use approaching the Government in such cases.

SHRI M. C. SHAH: After the Bill has been put on the Statute Book, if he has any difficulties, he may refer those questions to the Government and then the Government will reply to any hypothetical questions.

(Interruptions.)

I am not going to reply. The explanation is there.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : You need not reply to any hypothetical question but he seeks certain clarification and it should be given.

SHRI M. C. SHAH: That is there. They are very clear words. I cannot oblige my friends. 'Manager' means an individual (not being the managing agent) who, subject to the superintendence, control and direction of the Board of directors, has the management of the whole, or substantially the whole, of the affairs of a company and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not.

The language is very clear. They might have consulted some lawyers who might have raised some doubts. If they want to have those doubts cleared, I cannot reply to them. Here the definition is very clear and they want to amend it by widening the definition as follows:—

> "Provided that an individual, by whatever name called, not being an associate of the managing agent or secretaries and treasurers, who is subject to the superintendence, control and direction of the managing agent, secretaries and treasurers or managing director, shall not be deemed to be a manager."

We don't propose to accept that definition. I am not here to deal with all the points raised by lawyers whom they may have consulted.

Now with regard to sub-clause (20) some points have been raised. Now we have no jurisdiction to legislate for Jammu and Kashmir in the matter of companies generally. References to "India" in the body of the Bill have necessarily to exclude Jammu and Kashmir. This Bill will not apply to Jammu and Kashmir. Now there are many references in certain clauses to India like "so registered in India" or "done in India" etc. Therefore we say "India" there means this. Therefore it is with reference to this Bill. I don't understand why my friends are so apprehensive because India is there.

(Interruptions.)

I don't understand why all these imaginary fears and doubts are brought in here. Therefore we say that there the word "India" means this. There is nothing wrong.

DR. W. S. BARLINGAY: Why not delete sub-clause (3) of clause 3?

SHRI M. C. SHAH: Why should we? We are advised by the Law Ministry and by our legal advisers to keep it like this and we will go by the advice of the Law Ministry .....

DR. W. S. BARLINGAY; We are not going to accept their word as final.

SHRI M. GOVINDA REDDY: Does not sub-clause (3) answer that?

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : You have made your position clear and Mr. Shah has given his reply.

SHRI M. C. SHAH: These are all imaginary fears and I think we will not be well advised to have theae imaginary fears. Because India is referred to in certain clauses of this Bill »~<* therefore we say that when India is used in that clause it will mean this

[Shri M. C. Shah] This is only a definition with regard to the provisions of this Bill and not with regard to anything else. Nobody can make capital out of this as is feared by Mr. Reddy and Dr. Barlin-gay. It is a very clear thing and it ought to be clear to them also.

About my friend Mr. Bhupesh Gupta, he wants to insert the words "body corporate" and "or any relative of the member". We have tried to bring in relatives. Wherever the word "relative" was not there, we have already included it there and I don't think we will be justified in now widening this definition as it would create some difficulty in the working of the company. So I regret that I cannot accept these amendments.

SHRI SHRIYANS PRASAD JAIN: It is perfectly true that whatever may be the legal opinion, the Minister may not give reply but the Members of tnis House can certainly expect that when a specific question is put to him, he should not evade the issue. He must reply whether it is the meaning of this clause or not. We should legitimately expect from him to know his mind as to what he means by that clause or by that amendment.

SHRI M. C. SHAH: I specifically mentioned that 'manager' is one who is in substantial management of the affairs of the company and his remuneration also will be in the all-inclusive remuneration of 11 per cent. We don't propose to exclude that manager by accepting this amendment from the over-all inclusion of the managerial remuneration.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): I will now put the amendments to vote. Amendment No. 2.

SHRI SHRIYANS PRASAD JAIN: In spite of the fact that the Minister has not given a satisfactory reply, I beg to withdraw my amendment.

•Amendment No. 2 was, by leave, withdrawn.

SHRI C. P. PARIKH: Sir, I beg to withdraw amendments Nos. 3 and 4.

♦Amendments Nos. 3 and 4 were, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : The question is:

5. "That at page 3, line 15, after the word 'above' the words 'and/or any body corporate in which any member or any person connected with, the managing agents is a director' be inserted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : The question is:

6. "That at page 3, line 24, after the word 'corporate' the words 'or any relative of the member' be inserted."

The motion was negatived.

SHRI C. P. PARIKH: Sir, I beg to withdraw my amendment No. 7.

♦Amendment No. 7, was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : The question is:

8. "That at page 3, line 50, after the word 'members' the words 'and/or any relatives thereof be inserted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : The question is:

9. "That at page 4, lines 1 to 30 be deleted."

The motion was negatived.

SHRI C. P. PARIKH: Sir. I beg to withdraw my amendment No. 10.

♦Amendment No. 10 was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : Now I put amendment No. 11.

♦For text of amendments *vide* cols, 4073—4074 *supra*

SHRI SHRIYANS PRASAD JAIN: But the amendment is clearly barred.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : Is the hon. Member withdrawing itT

SHRI S. N. MAZUMDAR (West Bengal): But if it is barred, it is barred.

SHRI BHUPESH GUPTA: I may be allowed to withdraw it.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : It is not Darred.

*Amendment No. 11 was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : Then there is amendment No. 12. Does Mr. Bhupesh Gupta withdraw it?

SHRI BHUPESH GUPTA: If it is not barred, I do not withdraw it.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : The question is:

12. "That at page 7, lines 34-35, the words 'or body corporate (not being the managing agent)' be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : The question is:

13. "That at page 7, lines 38-39, the words 'or body corporate' be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : Then I come to amendment *No.* 14, moved by Shri Parikh,

SHRI C. P. PARIKH: Sir, I may be permitted to withdraw my amendment.

* Amendment No. 14 was, by leave withdrawn.

♦For texts of amendments vide coi. 4074 *supra.*

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : Does Mr. Jain press his amendment, that is amendment No. 15T

SHRI SHRIYANS PRASAD JAINr Sir, I request leave of the House *to*> withdraw my amendment.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): But I find that two othersi-also had given notice of the same-amendment. It stands in the name of-two others also one of whom—M}r. Doshi—is not here now. So it cannot be withdrawn, i shall put it to" vote.

The question is:

15. "That at page 6, after line 11, the following proviso be inserted,, namely: —

'Provided that an individual, by whatever name called, not being; an associate of the managing agent or secretaries and treasurers, who> is subject to the superintendence,, control and direction of the managing agent, secretaries and treasurers or managing director, shall not be deemed to be a manager.'"

The motion was negatived.

THR VICE-CHAIRMAN (SHRI H. C. MATHUR): The question is:

"That clause 2 stand part of the-Bill." ■

The motion was adopted.

Clause 2 was added to the Bill.

SHRI KISHEN CHAND (Hyderabad): Sir, there is definition of item (20) in. this clause 2 to which some objection had been taken. But that stands part of this clause. So should we not take a separate vote on definition of item' (20)?

THE VICE-CHAIRMAN (SHRI H. C MATHUR): But there was no amendment.

SHRI KISHEN CHAND: It is just a. question of deleting that item (20) from the clause. That is a negative amendment and no negative amendments are moved. This is not the-

[Shri Kishen Chand.]

.subject for an amendment but taking«

.a particular point and.....

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): Clause 2 as a whale has to be put to vote. I cannot put part of the clause to the vote of the House. There was no amendment to it also ■and the clause has been adopted.

There are no amendments to clauses 3 and 4.

Clauses 3 and 4 were added to the :Bill.

^*Clause 5 (Meaning of "officer who is in default")*

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : Now I come to clause 5 to -which there is an amendment standing in the name of Mr. Gutpa and others.

SHRI BHUPESH GUPTA: Sir, I imove:

16. "That at page 10, lines 43-44,

.the words 'and wilfully' be deleted."

(Amendment No. 16 also stood in the names of Shri Abdur Rezzak Khan and Shri K. L. Narasimham.)

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): Now the amendment and .clause 5 are open for discussion.

SHRI BHUPESH GUPTA: Sir, it may be that at the end I withdraw this amendment of mine, but I would like to explain why I have moved it. It will be seen that this clause relates to certain responsibilities on the part of officers of a company. The wording in the clause is that he must be found to be wilfully guilty. That is the meaning of the "officer who is in default" as denned here in this clause. But the trouble is that the word "officer" is used here. And I feel there will be some difficulty in the administration of this portion of the law. I have no doubt in my mind that as far as the managing agents and the managing director, the secretaries and treasurers or some such people who are really at the helm of the company's Bffairs are concerned, if they are guilty, they should be considered as officers in default, whether the thing is done wilfully or not. The presumption should be that in the event of any default, these people had been wilfully at fault and it should be left to them to prove that that presumption is wrong, they should be left to rebut that presumption. But the trouble is when it comes to the other officers. The term "officer" covers a wide range of persons. Sir, very often these other officers do things without knowing what had happened at the top and without knowing, they may land themselves in some trouble, although they did not stand to gain anything by way of money or anything of that sort. Therefore, in a way, they will suffer. So my suggestion is that the Minister may be pleased to restrict this clause to the cases of the big people, in which case I am prepared to keep it. Therefore, in my amendment I wish to suggest that the word "wilfully" be deleted. But if it is not accepted, I shall not press it to the vote.

SHRI C. P. PARIKH: Sir. as regards this amendment of my hon. friend Mr. Bhupesh Gupta, I feel that both the words "knowingly" and "wilfully" should be there in this clause, because these offences are committed with the knowledge of these officers. Therefore it is very difficult to trace where the offence and the cause of it lie. And if they did not have any knowledge *ol* it haw did they participate in it? Therefore, I feel that this amendment should be'rejected. The offence should be punished. Actually the words knowingly and wilfully" should also be there in line 42. As it is, this amendment that is now moved may oe rejected.

SHRI BHUPESH GUPTA: I am not pressing it.

SHRI M. C. SHAH: Sir, this has *oeen* very deliberately done. The iistinction is there of the officer who mcwingly does a thing and of the >flicer who "authorises" the doing of t. In the case of the officer who mthorises the terms "knowingly and

wilfully" should be there. In th« other case the officer knowingly does the thing. So there is that distinction. .So I submit the amendment may be rejected.

THE VICE-CHAIRMAN (SHRI H. C MATHUR): Even when Mr. Gupta does not want to press his amendment, I am unable to take advantage of his generosity, for.....

SHRI BHUPESH GUPTA: I am between the devil and the deep sea, I suppose.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : The hon. Member need not worry, I have to put his amendment to vote, because it stands in the names of three Members and the other two are not here to say whether they withdraw it or not.

The question is:

lb. "That at page 10 lines 43-44, the words 'and wilfully' be deleted."

The motion was negatived.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR) : Now we take up clauses 6 *o 40. There are no amendments proposed to these clauses, but anybody wants to speak on them may do so.

श्री कन्हैयालाल दाँ० बँद्य : उपसभापति महोदय, दफा ६ में जहां रिलेटिव्स की व्याख्या की गई हैं, उसमें कुछ हिन्दू लॉ को भी डील किया गया हैं । मैं समझता हूं कि जब हम सिक्यूलर स्टेट की पालिसी को लेकर चल रहे हैं तो यहां केवल हिन्दू लॉ को और इसको डिफाइन करने से इस एक्ट का काम पूरा नहीं होता । इस देश में भिन्न भिन्न धर्म के लोग हैं और भिन्न भिन्न धर्म की मान्यताओं को मानने वालों की कंपनियां हैं । कोई यह कंपनी लॉ हिन्दू कंपनी लॉ तो हैं नहीं कि इसकी व्याख्या में भी आप हिन्दू जॉइंट फैमिली की और इसकी यहां कुछ चर्चा करें । मैं माननीय मंत्री महोदय से यह निवेदन करना चाहता हूं कि एक सिक्यूलर राज्य में अगर आप अपने कानून में रिश्तेदारों की व्याख्या करते हैं तो आपको पूर्णतः सब धर्मों के अंदर रिश्तेदारों के लिए क्या व्याख्या उनके धर्मों में की गई हैं, अर्थात् किस धर्म में कौन रिश्तेदार माना गया हैं, उसके क्या अधिकार हैं, यह सब उसमें रखना होगा । जब आप हिन्दू लॉ को डिफाइन करते हैं तो इसको भी डिफाइन करना चाहिए अन्यथा इस कानून की स्थिति हिन्दू कानून की तरह की हो जाती हैं ।

श्री एम० सी० शाह : इसमें हिन्दू कानून कुछ लगता नहीं ।

श्री कन्हैयालाल दाँ० बँद्य : लेकिन हिन्दू कानून की स्थिति उसमें इसलिए आ जाती हैं क्योंकि आपने हिन्दू जॉइंट फैमिली को डील किया हैं । बाकी बहुत से दूसरे जातीय संप्रदाय हैं जिनके अपने अलग कानून हैं और उन कानूनों के अन्तर्गत रिश्तेदारों की जो व्याख्या हैं उसके अंदर बहुत से लोग आ जाते हैं । अतः या तो आप डिफाइन मत कीजिए, और यदि डिफाइन करते हैं तो उन सब कानूनों के बारे में भी डिफाइन करें । यही मेरा निवेदन हैं । इस पर आपको विचार करके बताना चाहिए कि वास्तव में इससे कोई बाधा उत्पन्न नहीं होगी अन्यथा मेरी राय में यह बाधक सिद्ध होने वाला हैं ।

SHRI M. GOVINDA REDDY: T would like to point out some verbal changes required in clause 11. In sub-clauses (1) and (2), the words used are "*** Indian law". "Indian law" does not sound well; it should be "the law of the Indian Union".

SHRI BHUPESH GUPTA: It must *come* by way of an amendment.

SHRI M. C. SHAH: Does it make any difference?

SHRI SHRIYANS PRASAD JAIN-The Lok Sabha has made an amendment to clause 6 and has included provision to the effect that if the first cousins are not members of the joint Hindu family, they will not be considered as relatives for the purposes of this Act. It means that relatives can come in provided they haVe no financial interest. The present pattern of society is such that brothers are not residing with the other brothers; they are living separately and have no common financial interest. It will not be in the fitness of things to retain this definition and debar them. I can understand if these people have any financial interest with the brothers or parents or uncles or aunts etc., it is all right; but, if they have no financial interest these people should be excluded as has been done in the case of first cousins.

(Shri P. T. *Leuva rose.)*

SHRI BHUPESH GUPTA ? I think the hon. Member can speak after me.

SHRI P. T. LEUVA (Bombay): I am not going to reply to you.

SHRI BHUPESH GUPTA: The hon. Member will have to help the hon. Minister. The very opening has been difficult for him. I do not know how he will pilot all these 600 odd clauses.

We have not given any amendment to any of these clauses because we do not see any point in bringing forward any amendment but we feel that we should give some of our ideas for the consideration of Government in regard to these clauses. As you know, Sir, these clauses deal with the Memorandum and articles of association, registration and so on. Certain procedural matters and certain formalities that have to be gone through before companies come into existence are dealt with in these clauses. I do not say that whatever is said in the Memorandum and articles of association is not required to be said. What I feel is that the Memorandum and articles of association should contain much more things than what is said in them. For instance, you find in these documents some kind of formulations and presentation of facts in order to attract shareholders and in order to draw capital towards them. At the same time, nothing is said about how the interests of the workers would be looked after when the company comes into existence. The approach is one of profit making. It is understandable that the capitalist concerns would be guided mainly by the profit motive and that also holds good as far as the prospective shareholders are concerned. From the point of view of the public and from the other point which. I am interested in, certain obligatory things should be said in these documents in regard to how, when a company comes into existence, it would deal with the question of labour and all that. Nothing is said about it.

It is said somewhere else that Government will have power to refuse registration of a company with an undesirable name. I do not know what exactly is meant by that. To me, the names of the British com[1]-panies are undesirable because they smack of certain very rotten things in our society. We want to get out of that state of affairs. Therefore, this clause requires a little more of explanation as to what is meant by the word "undesirable". If a company is started by Messrs. Andrew Yule & Co., I for one would not register any company with that sort of name. We want to know what exactly the Government policy is in regard to this matter. I generally support this point of view because we must see that certain names are not registered at all. We should nof entertain such applications at all.

"(India) Limited" is another trie* that is going on. There are certair companies like Ralli Brothers (India} Ltd., Imperial Chemical (India) Ltd.,
! and all that. This is a great fraud.
I I am not going into the details of

these because they relate to some other things but when the company is essentially a foreign one, there is no reason why this sort of addition should be allowed. They do it only with a view to deceiving the public or to circumventing certain laws. Such things should not be given any quarter and the memorandum and articles of association of such companies should be rejected outright. They should not be eligible for registration at all. Government should have definite ideas about this and decide which companies are to be registered and which not.

'[MR. DEPUTY CHAIRMAN in the Chair.] I know that the hon. Minister, when he gets up, will not be in a position to say anything on the sub.iect. As he must give an answer, he will say something. It is a "must" for him. a formality, but what I would like to convey to this House is that this is a matter which calls for a little deeper consideration. It should be approached from the point of view of the national interest and from the point of view of the consumers and the workers. After all, the companies, even if they are started by the capitalists, are run ultimately, as far as production is concerned, by the workers and their interests should, as far as possible, be guaranteed at the very inception of such undertakings.

SHRI P. T. LEUVA: Mr. Deputy Chairman, I wish to make a few observations regarding clause 13. Clause 13(1) (a) says:

> "the name of the company with 'Limited' as the last word of the name in the case of a public limited company and with 'Private Limited', as the last words of the name in the case of a private limited company;"

In the case of a private limited company, it must say that the company is a private limited company; in the case of a public limited company, the mention of the word "Limited" is sufficient. It appears to me that the Draftsman has forgotten to mention one category of companies. The companies can be limited by shares as well as by guarantees. Obviously, "public limited companies" would mean that the company might be limited by shares or limited by guarantee but the Draftsman has not mentioned specifically whether "limited by guarantee" would be covered by clause 13(l)(a) or not. I would therefore submit that it must Be specifically laid down that this also covers the case of a company which is a limited company by guarantee. This clause is based on the English law and corresponds to section 2 of the Companies Act in England, which says: "The memorandum of every company must state the name of the company, with "limited" as the last word of the name in the case of a company limited by shares or bv gurantee." Therefore under the English law it is quite clear that when there is a company either limited by shares or by guarantee the word 'limited' is to be used. If you strictly interpret the present clause 13, it would exclude a cornpany which is limited by gurantee. I would submit, Sir, to the Government—of course it does not involve any question of principle but— that I personally feel that there must be some amendment to this effect to shovv that this also covers the case of companies limited by gurantees. (Interruption).

That is my interpretation because this clause has been drafted on the basis of section 2 of the English Companies Act. While the English Companies Act has specifically mentioned "company limited by shares or by guarantee" it has not been matie clear in our clause 13.

I would now come to clause 13, subclause (3) which reads:

> "The memorandum of a company limited by guarantee shall also state that each member unaerxaKes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member] for

[Shri P. T. Leuva.] payment of the debts and liabilities of the company, or of such debts and liabilities of the company as may have been contracted before he ceases to be a member, as the case may be, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount.'"

Now you know, Sir, that the liability of a member in a company limited by shares is limited to the extent of the amount which is unpaid on the share which stands in the name of a particular member, but this sub-clause there relates to the case where limitation is by guarantee. Under this clause the liability of a member extends first of all to such amount as might have been mentioned in the memorandum of association at the time he joined the company. Now this liability to pay at the time of winding up extends to two things. First is the liability created by the company till the time he is a member and he must pay this in the case of the winding up of the company taking place while he is a member. Suppose a person is a member of a company which is limited by guarantee. That company goes into liquidation and the person was a member of that company on a particular date, say, the 1st of April 1954. Now *on* the date of 1st April 1954 whatever debts are contracted by the company the member would be liable to contribute *pro rata.* But there is another provision also which is made here and it is this. He might have been a member on 1st April 1954 but he might have sold his share On the 2nd April 1954 and the winding up proceedings take place within one year after he ceases to be a member. Therefore his liability still subsists so far as the debts and liabilities of the company are concerned incurred upto 1st April 1954. That is all right. But in the present provision a new idea has been put, namely, that the liabilities which are incurred after the member his ceased to be a member of that company, those liabilities still subsist till the date of winding up. Now suppose a person has ceased to be a member on 1st April 1954 and winding up proceedings take place on 2nd February 1955. The winding up proceedings have been within one year. Therefore obviously the member would be liable to pay the debts of the company as they stood on 1st April 1954. But a new idea has been put in this clause to cover the debts which might be incurred between those two dates, 1st April 1954 to 31st March 1955, whatever the liabilities. Fresh liabilities are inserted, liabilities incurred within one year after he ceases to be a member. Now obviously this is an inequitable thing. In the English Act also there is the provision that the liability of a member ceases the moment he ceases to be a member, but here in our clause 13 the liability is sought to be increased. The person has ceased to be a member on 1st April 1954; he is no longer a member of that company, but because the winding up proceedings take olace within one year after he ceases to be a member whatever fresh liabilities are incurred by the law, they are also passed on to the person who has already ceased to be a member.

MR. DEPUTY CHAIRMAN: Please see the provision "for payment of the debts and liabilities of the company, or of such debts and liabilities of the company as may have been contracted before he ceases to be a member". His liability is only for debts incurred when he was a member and it extends to one year after he ceases to be a member.

SHRI M. C. SHAH: He does not want to have that liability also.

SHRI P. T. LEUVA: I do not want the liability which is contracted after he ceases to be a member.

MR. DEPUTY CHAIRMAN: His liability extends to one year after he

ceases to be a member for payment of the debts and liabilities of the company incurred when he was a member.

SHRI M. C. SHAH: Yes, Sir.

SHRI P. T. LEUVA: All right, Sir.

SHRI C. P. PARIKH: I first want to know, before I criticise the "Definition" the meaning of "relative" given in clause 2. 1 want to know from t[ne] Minister whether under "brothers or sisters, or as brother and sister" brother's wife and sister's husband and *vice versa* come. Also 1 want to know whether "uncle or aunt, and nephew or niece" refer to the maternal side or paternal side. I want to know what are the implications of these two categories before I go over to offer my remarks.

SHRI M. C. SHAH: Let him offer his remarks first. I cannot explain that way. If he raises some rjoint I will give a reply. He wants first explanation; then he wants to comment. It is wonderful.

SHRI B. C. GHOSE: Surely we must understand the thing.

SHRI M. C. SHAH: Let him place a point and to that point 1 shall reply.

SHRI C. P. PARIKH: I want to know what he means by this definition. On these words I want a clarification and a clarification cannot be denied, Sir.

SHRI M. C. SHAH: I say the words are there. You just read them and find out what is the meaning. If there is any doubt then you raise that noint and then I shall reply. It is ordinary intelligence.

SHRI C. P. PARIKH: Now the Min ister in this case is requested to clarify the point whether brother's wife is Included in that or not, whether sister's husband is included in that or not. These, are simple questions. How can we offer our remarks on these without knowing it. The hon. Minister has the whole secretariat behind, him, legal advisers, etc.

MR. DEPUTY CHAIRMAN: Whicn clause do you refer to?

SHRI *C.* P. PARIKH: Clause 6, subclauses (iii) and (iv).

SHRI M. C. SHAH: "Two person* shall be deemed to be 'relatives' if, and only if, they are husband and' wife, or the one or the spouse of tha one is related to the other or the-spouse of the ether, whether by legitimate or illegitimate descent or oy adoption and whether by full blood or by half blood, in any of the following ways, namely, (i) as parent and child" and so on upto (v). It is just, arithmetic. You calculate.

SHRI C. P. PARIKH: I only wanted a clarification. The Minister could have given it much earlier. I had it. in mind that it was included but I wanted to know it from him in order to be sure.

SHRI M. C. SHAH: I am not here under the cross-examination of my friend Mr. Parikh.

SHRI C. P. PARIKH: 1 was only-asking for a clarification and when the Bill is under discussion clause by clause, any clarification required should-be given. Anyway, I am thankful to him now for having given it.

SHRI M. C. SHAH: It is very clear as it is.

SHRI C. P. PARIKH: Now, I come to this point about the meaning of "relative". The Joint Select Committee-when they defined "associate" did not take so many relatives whieh they-have taken now in clauses 293, 294 296, 313 and 356 to 360 and 369. In all these clauses, the relative was no> there: only the associate was there, That was the report of the Joint Select Committee and after that these changes have been made. I quite agree that I suggested to the hon. the Finance-Minister that this should be included

[Shri C. P. Parikh.] because that was a lacuna. I am thankful to him for having included it but I also asked him to exclude sub clause (v) of clause 6 relating to first ■cousins. It is no use going to such distant relationship when you are incorporating relatives in so many clauses .....

MR. DEPUTY CHAIRMAN: That is "qualified. It saty-s, "provided the .cousins are members of a Hindu Joint family ....."

SHRI C. P. PARIKH: I say it should be entirely omitted. When we are .saying all these—brother's wife, sister's husband, uncles and aunts, paternal rand maternal, imagine what will be the number of relatives of one director. This whole group of relatives from (i), to (iv) Is more than adequate and the first cousins should :go. I say the members of the Joint :Select Committee have not taken this point of view in this matter. Sir, many representations were made to -the Finance Minister.

MR DEPUTY CHAIRMAN: Anyway, there is no amendment.

SHRI C. P. PARIKH: But as the ■clause is under discussion I say that ^subclause (v) should be dropped because when a company has 10 directors .and each director has 15 or 20 relatives under this clause, more than 200 persons will be brought in. Therefore the first cousins under sub-clause (v) ^should be omitted although there is the qualification that they must be persons having a common grandparent rand members of a Hindu Joint family. With regard to sub-clauses (i) to (iv) it is very clear, but regarding first -cousins we do not know sometimes. There are marriages; there are divorces and so many other things and it is not -possible for the company to have a register of all such relatives. Therefore 1 say that the Finance Minister should consider dropping sub-clause <v).

Now, with regard to "(India) Ltd.", EMr. Bhupesn Gupta said that this should not be used by the foreign concerns. That is an old argument that foreign companies should not directly or indirectly be allowed to operate i[n] this country. He forgets conveniently that we require foreign assistance. He also forgets conveniently how many technical units of manufacture are being run in our country which cannot be run without foreign assistance and without their technical help. 1 think there are 60 big units in India which are making a profit of over Rs. 20 lakhs every year and out of these 60 units, 30 concerns are owned and managed by foreigners. Do we not desire the existence of these concerns? Do we not want to promote more concerns in India? I think that argument should not be accepted.

Now, with regard to "'Private Limited", again 1 want a clarification from the Finance Minister whether in "body corporate" wherever it appears "Private Limited" is included or not.

SHRI M. C. SHAH: With regard to the first point, my friend M. Shriyans Prasad Jain wants to restrict the relatives and my friend Mr. Parikh complained that certain of his suggestions were accepted while others were not accepted. Whenever we felt that there were loopholes, we accepted his suggestions.

MR. DEPUTY CHAIRMAN: The complaint is that you have gone far beyond his suggestions.

SHRI M. C. SHAH: There were two kinds of suggestions with regard to clause 2. There were certain mistakes. Relatives were to be brought in and the moment he drew our attention to the fact that it should be there because that was the intention of the Joint Select Committee, we accepted his suggestion. But he also wanted to restrict clause 6: he wanted us to drop first cousins. We considered It and we thought it was not in public interest now to drop these first cousins. As a matter of fact we did not want to allow these managing agents and

their associates to take advantage through relatives. Relatives were very well defined by the Select Committee but when they thought that first cousins as they stood may not be members of a Hindu Joint family, the qualifying provision was put there. So he must thank the Finance Minister that he has accepted his suggestions. As far as the first cousins are concern ed my friend Mr. Shriyans Prasad Jain would like to put in as many restrictions as possible but I am afraid I cannot accept.....

MR. DEPUTY CHAIRMAN: There are no amendments and there is nothing to accept.

SHRI M. C. SHAH: Only he wants that relatives should go. Again there will be a wide field for all the abuses which were mentioned by Mr. Dhage and also by the shareholders' memorandum some time back and we do not want to open that wide field again.

With regard to the point of Mr. Leuva, under section 2(3) of the English Act also the liability of a member continues for a period of one year after he ceases to be a mem ber .....

MR. DEPUTY CHAIRMAN: He has withdrawn his objection.

SHRI M. GOVINDA REDDY: The Chair has convinced him. The hon. Minister need not reply that point.

SHRI M. C. SHAH: My friend Mr. Bhupesh Gupta wanted to have some restrictions on foreigners. We cannot impose any restriction on foreigners which are not imposed on Indian nationals *in* the foreign countries. Trade and commerce are mutual and international amity requires certain things to be observed or done. We cannot take unilateral action in such matters and therefore we do not propose to have any discrimination introduced in this Bill against the foreigners. Therefore his remarks are not worth considering.

78 RSD.—8

About brother's wife and sister's husband, they have already been explained and I think my friend Mr. Parikh is now satisfied that brother's wife would be included. Sister's husband will also be included; also all those relatives.

SHRI M. GOVINDA REDDY: Even those who are not related are included.

4 P.M.

SHRI M. C. SHAH: Now, Sir. those are the only points that have been raised in the debate, though there is no amendment. So, I submit that the House will pass all these clauses as they are from 6 to 40.

MR. DEPUTY CHAIRMAN: The question is:

"That clauses 6 to 40 stand part of the Bill".

The motion was adopted.

Clauses 6 to 40 were added to the Bill.

Clause 41 *(Definition of "member")*

MR. DEPUTY CHAIRMAN: Now, we take up clause 41. There is one amendment by Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA: Sir, I move:

17. "That at page 23, after line 44, the following be inserted, namely:—

'(3) No one who is not an Indian national shall be regarded as a member :

Provided that Pakistani nationals and nationals of other countries but of Indian origin, shall, with the permission of the Government of India, be entitled to subscribe to shares and thus be regarded as members'."

MR. DEPUTY CHAIRMAN: The clause and the amendment are open for discussion.

SHRI BHUPESH GUPTA: Sir, you can quite gather from the text of the amendment that according to us it is an important amendment. According to Government it is perhaps not even worth considering. But that does not make it any the less important for the country and the people. What do I say? Here, clause 41 relates to the membership of a company. I want to insert a proviso: "No one who is not an Indian national shall be regarded as a member: provided that Pakistani nationals and nationals of other countries, but of Indian origin, shall, with the permission of the Government of India, be entitled to subscribe to shares and thus be regarded as members." 1 have been told by more than one Member from that side of the House that we require foreign investment and all that. By foreign investment, of course, they mean foreign private capital investment which is otherwise called equity capital investment. Now, Sir, i would come to that later on, but here what I want to say is this. Non-Indian nationals should ordinarily be excluded from promoting any new companies. I have made two exceptions. In the case of Pakistan having regard to the close economic ties that we have got with that country because of the history of the past, we want that Pakistani citizens are not debarred from starting companies here, provided they fulfil certain obligations and get the official sanction. Likewise, I have also in mind meant those of our countrymen who have gone abroad and acquired the citizenship of other countries. Shall we say, a person of Indian origin, who is a citizen of Ceylon today, would be eligible for membership of a company, provided he gets the sanction of the Government. Now, I have made these two exceptions deliberately with a view to covering such people, because we have got people of Indian origin spread in different parts of the world. Now, Government is put to the test as far as this amendment is concerned. We certainly stand for the industrialisation ef the country. I have made it clear time and again in this House and the position has been made clear also in the other House, that we do stand tor industrialisation of the country. Let there be no doubt about it. Secondly having regard to the present state cf our development, our economy and various other factors, subjective as well as objective, we also feel that for a time, at any rate, private capital has an important part to play in our economy, of course under direction and control in the interests of the public. Therefore, we feel that these companies that are going to come into existence in the future have an important part to play. I do not know to what extent they will be 'well directed by the Government, because the policies of the Government however much it may talk about industrialisation of the country, is one of blatant support to the monopolist class. Well, I do not stand for private capitalist exploitation ideologically speaking, but we are realists and therefore, we take it also that for some time to come the private capita.' will have a part to play. In that context, naturally the new companies that are coming into existence or which will come into existence in future acquire great importance. Now. who should start these companies? I say, ordinarily speaking none but Indian nationals should be allowed to start private concerns in our country. I know that hon. Members from that side of the House would say that it is dogmatism. They will perhaps suggest that I am pressing forward a certain particular bias, political ideology, and all that. Nothing of the sort. All that I say is that today what is most important, when we have in view the industrialisation of the country, is to keep in mind the simple fact that our economy has got to be made independent, that we must start industries on our own, that we must get out of the clutches of foreign interests that we must stand on our own legs, and we must assert ourselves in such a manner that it becomes impossible for the existing foreign undertakings to fleece the resources of the country. I must have that outlook, otherwise what is the use of talking about the second Five Year Plan and all that dangling

the carrot of industrialisation of the country, until and unless that industrialisation becomes our own industrialisation? Hon. Members will say, perhaps some of them seem to have some misconception about this matter, will perhaps ask "from where do we get this capital if we do such things?" I say as an answer to this that we have got plenty of resources in our country which we must harness with a view to develop the economy of our country. For these shareholders of private companies and all that we need not go outside the country. Let us first utilise the resources that are within the country and start companies with them. And let these companies and undertakings be placed in the hands of Indian nationals, no matter to which party they belong That is our demand.

Sir, much has been said about foreign assistance and all that. Whenever I raise this question, some hon. Members and Mr. Dasappa in particular does not find that I have any original sug gestions to make. But he always makes himself ludicrous by making original suggestions. And he always says "there is nothing new that we hear from him." But I should like to say that old things 'and past experi ence have to be borne in mind .....

SOME HON. MEMBERS: Here Mr. Dasappa *comes.*

SHRI BHUPESH GUPTA: Here *comes* the ex-Finance Minister and I will try to put something into his head if that head will kindly receive noble ideas. When I say such things, repeat the old things, it is because I feel that some of the important things that you ' should do you are not doing. It is not ' a question of spreading any novel or new ideas. It is a question of redeeming some of the past pledges. Did not we say in our Independence Resolution that we must break the power of foreign capital? Did not the Prime Minister in "Parting of the ways" *n 1940 write that the hold of the city i of London on our economy must be . broken? Did not the Ramgarh Congress pass a resolution in the same strain? These are vital questions that the hon. Members must ask themselves. Therefore, I say when we are looking forward to starting of new industries, undertakings and joint stock companies,—and we are told that they will be fifty thousand by the end of the second Plan—we ' must naturally ask ourselves, who will run these industries? Who will start them and who will sponsor them? This is a question of policy to which Government must give a satisfactory answer. It is that we cannot become industrialised unless and until we go to the imperialists? Do they, the Americans and Eritish, allow others to go to those countries and start new factories, I ask. You will say, "What about the Soviet Union?" The Soviet Union does not go to other countries to exploit.

SHRI M. GOVINDA REDDY: What about China? *(Interruptions.)*

SHRI BHUPESH GUPTA: Yes, I will come to that. (fferrMptions.)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI S. N. MAZUMDAR: Hon. Mem bers like Mr. Dasappa will require to be enraged. I want to say in this connection that .....

SHRI M. GOVINDA REDDY: I want to ask the hon. Member whether the Soviet Union did not start a number of industries.

SHRI BHUPESH GUPTA: I will j come to that. Mr. Reddy is a very knowledgeable person and generally he is very sober and reasonable. He will understand me if I say that what the Soviet Union has given to China is a loan and on that loan, one per cent. interest is to be paid, but the industry belongs to the Chinese people and not a pie earned out <*ot* the industry goes outside that country, except the one! per cent, interest.

MR. DEPUTY CHAIRMAN: Come to the amendment. You need not repeat all those things.

SHRI BHUPESH GUPTA: This is a well known fact. If you want to get a loan from any country, I have no objection. You get the loan from the United States of America or the United Kingdom on suitable terms. What we are opposed to is not getting loans from such countries on reasonable terms. They will not have any equity interest. But we are opposed to the private investment to carry on—what I call—the colonial plunder of the resources of our country. That is the difference between a loan capital investment and private investment in a country. Taking loan from other countries, whether you call it export credit facilities or not that is a different thing. Suppose, we have got a steel plant from the Soviet Union. Profits earned out of that plant will not go to the Soviet Union, except the price of it that you will have to give to them. But the Standard Vacuum Oil Company which has got its establishment here sends its profits or a part of them to their country and they will draw dividends from our country.

(Time bell rings.)

MR. DEPUTY CHAIRMAN: That will do, Mr. Gupta.

SHRI BHUPESH GUPTA: No. Sir. I will have to speak.

MR. DEPUTY CHAIRMAN: Please do not repeat all those things, T arr. not going to allow it.

SHRI BHUPESH GUPTA: You mar not allow. If you do not allow, I will not speak.

MR. DEPUTY CHAIRMAN: You should not repeat your arguments; you have said all these things.

SHRI BHUPESH GUPTA: This is a very simple amendment. I know that if you were in Government, perhaps you would have accepted it. But these people do not accept. Therefore .....

MR. DEPUTY CHAIRMAN: No amount of repetition will add weight to your points.

SHRI BHUPESH GUPTA: 1 will come to my point. I cannot move an amendment without an introduction. It is rather difficult. I say that this difference must be understood. I say that these foreign nationals should not be allowed because it will lead to exploitation of our resources. That is why I am opposed to it. Whatever is earned by way of profits, a part of it at least will be remitted outside our country. That is to say that with the earnings of these concerns, it will not be possible for you to utilise them for the development of your economy or what you call the planned and well directed re-investments in our country. As we know, according to the Finance Minister himself, Rs. 30 crores are estimated to go outside India every year by way of profits and interest alone. We do not want to carry forward this legacy into more intensified exploitation of our resources. If you add the other earnings of these foreign concerns, about a hundred crores of rupees or more are remitted. If in a national income of a thousand crores of rupees, 125 crores of rupees are taken away, by any volume, this is a substantial amount and we cannot permit such a thing.

Then, we have been told this morning by the hon. the Finance Minister that the net inflow of capital has been more than the outflow. In other worus, he has told us that about Rs. 131 crores of capital come into India as private investment. If the money comes by way of loan or by way of equity investment and if it is honourable and favourable to us, certainly we will try to avail ourselves of assistance of that sort from any country. But this money has come for exploitation of the resources of India. It is well known to whomsoever reads the London Times that they are trying to pump out capital from their country for investment in certain under-developed and backward countries in order

to earn and maintain their position. Gone are the days when they could hold our country in subjugation. But still they look forward to the day when by reason of their economic tentacles they can keep countries under their grip. Therefore, I say that no foreigner more especially Britisher should be allowed to start industries here. You are giving them a fresh lease of life by allowing them to float companies and to start industries and to carry on the exploitation of our resources. I say this is unpatriotic. I say that the Company Law is out of tempo with the times: I say the Company Law is indeed making these people great, these people who exploit all the colonial and semi-colonial economies. We are an under-developed and backward people. We should look forward to the day when we get free from Leave our industries entirely in the hands of the indigenous elements. This is why I have vigorously pressed for this amendment because there is no use talking about your patriotism every time. You always say that I believe in foreign ideology and all that. Here is a thing which relates to Indian industries and I think and sincerely believe that many of you stand for India.

Sir. what is most objectionable in the whole of the Company Law is that the entire thing, the British structure of joint stock companies, has been left totally untouched. We have been told this morning that among the big managing agents are Messrs. Andrew Yule and other companies who carry on exploitation. Are we going to tolerate such things? If such things are made over even to Mr. Parikh, Mr. Doshi and Mr. Jain, the three musketeers. I leave the things in their hands. But certainly I will not tolerate any quarter being given in future to foreign interests and this is why I move this amendment and I hope hon. members of the Congress Party will accept it. I know they are Indians and they should stand for In-dianisation, not in name, not in theory, but in practice also. Exploitation of our resources by foreigners must be stopped. But if they come here for sincere assistance, we shall accept them, but if they want to come here for exploitation purposes such as jute mills, copper mines or in engineering or banks, we will tell them instantly and straightaway that we are not going to tolerate them. Therefore, I hope that this amendment will be accepted by the Government even at this hour, [f they do not accept it, they will ex pose themselves as an unpatriotic Gov ernment, a Government that protects British capital, a Government that sides with them, a Government that follows the traditions of Mir Jafar and not the traditions of the martyrs of the liberation movement .....

MR. DEPUTY CHAIRMAN: Order, order.

SHRI BHUPESH GUPTA: ..... a Gov ernment that does not redeem the pledges of the nation, a Government that considers itself more bound by its political undertakings to the British than by its pledges to the people; such a Government it. is time to get rid of .....

MR. DEPUTY CHAIRMAN: Order, order.

SHRI BHUPESH GUPTA: What I was saying was that if you do not accept this amendment. It is because you are interested in protecting the British interests in this country.

MR. DEPUTY CHAIRMAN: Order, order. You are repeating yourself again.

SHRI BHUPESH GUPTA: I am finishing. And it will only show that not only do you want to keep the managing agency system alive, but you are also inviting them, you are giving encouragement to British interests to carry on the exploitation of our economy. I think the people will draw their conclusion with regard to the Government which still believes in protecting the interests of the British capital in our economy.

SHRI H. P. SAKSENA: Did I not say yesterday that it is impossible te cure him?

SHRI KISHEN CHAND: Sir, I rise to support this amendment. We should very calmly and cerefully consider the implications of this amendment. The hon. the Finance Minister, only a few hours back in his very lucid and explanatory speech, tried to show that it is a two-way traffic—our nationals have invested their money in foreign countries and the foreigners have invested their funds in our country. I entirely agree with the hon. the Finance Minister, but let us not only look to the past, let us look to the future also. In the future we are going to industrialise our country. In that industrialisation can we really allow these foreigners to take a big part? I may warn the Government that the foreigners are going to strangulate our economy in future. I cannot see an Indian industrialist starting any industry in a foreign country of the world, in Burma, Ceylon, Australia, South Africa, Canada or any other country. Therefore, the result will be that although the hon. Finance Minister may have some idea when he said that it should remain a two-way traffic—it does not remain a two-way traffic. It will be only foreigners who will invest their funds tn **our** country while our countrymen will not be able to invest any funds outside.

Then the question arises whether this foreign investment creates such types of industries which are going to bring wealtih to our country? Sir, the type of industries that the foreigner takes up in our country is of a well-established nature. The hon. Minister knows about the soap and match industries. There is no need of repeating it. The result is that in the next Five Year Plan, if we are going to heavily industrialise our country under that Plan structure, it will not be advisable to permit the foreigners to invest large sums of money in our country. If they develop new industries, I would not mind it to some extent, but if they were starting industries which really compete with well-established Indian industries and thereby really affect the interests 01 Indians in this country, would it be fair? Well, in his presentation Mr. Bhupesh Gupta might have in his oratory said certain things about British interests. We should not be prejudiced and immediately take up the attitude that foreign investment is in the best interest of our country. I say, it is not in the interest of our country. Foreign investment in the next Five Year Plan will be very prejudicial and highly detrimental to the interest of our country. By allowing managing agencies we are permitting them to exploit. If some Indian families want to take up new industries let them come forward, because at least that money will remain in our country.

Sir, we are going to have a deficit financing of Rs. 1,000 crores. When we are going to invest Rs. 5500 crores both in the public and the private sectors in the next Five Year Plan, what is the advantage of taking about a hundred crores of rupees from foreigners? Is it advisable? If in our size of Plan of Rs. 5,500 crores, including private and public sectors, if we were getting a substantial amount of investment from outside, there would have been some justification. But just to get Rs. 100 crores or Rs. **150** crores in our country permitting them to exploit and comoete with the Indian industry is not fair. Therefore, I give my whole-hearted support to the amendment of Mr. Bhupesh Gupta.

SHRI H. C. DASAPPA: Sir, I had not the slightest idea of taking part in a discussion on this particular amendment for more than one reason. I thought this question was sufficiently dealt with by the hon. the Finance Minister, both in the other House and in this House, but since certain ideas still loom large in the minds of some of my hon. friends there. I feel, I ought to say a few words.

Sir, how the Japanese built up their industries would be a fascinating story to know. How did they build

up some of their industries? Take for instance the electrical industries in Japan. With their closest touch and collaboration with the Westinghouse Company of U.S.A. a concern has built up both heavy and light electrical industry.

MR. DEPUTY CHAIRMAN: How many more minutes will you take?

SHRI H. C. DASAPPA: A few minutes more. Let me tell you, Sir. today they are exporting to America certain of these electrical goods, like the high tension insulators. That is as a result of getting the technical know-how from America, which is abreast with the latest development in this direction. But, Sir, how are they going to give you that technical know-how? There must be some terms which are favourable to them, as indeed they should be favourable to us. This is such a simple elementary thing that I am astonished that my friends should be thinking on different lines. I say we cannot build up the entire economy without any kind of foreign collaboration.

Then, Sir, take another point which my friends, Messrs. Kishen Chand and Bhupesh Gupta have mentioned. Are other nations going to allow us to start industries in their countries? It all depends if our collaboration is a thing which is likely to help them.

SHRI BHUPESH GUPTA: Your Ambassador was turned out of an American hotel!

SHRI H. C. DASAPPA: I expect my hon. colleagues to observe the Parliamentary rules.

SHRI BHUPESH GUPTA: I need not learn Parliamentary rules from you.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI H. C. DASAPPA: When I am on my legs, it is not fair for them to interrupt

Take for instance British East Africa. How many of our industrialists nave gone and established themselves there and started factories? I think the people ought to know things before they venture on generalities. Quite a number of Indians are flourishing industrialists in East Africa. They have established sugar factories and so on. Similarly in other places. I do not want to go on quoting. What I want to say is that we should not lose chances of getting all their, not merely financial aid—I am not so much enamoured of the financial aid—but the technical know-how. The foreign investors know very clearly that if they have to give their aid it is on two conditions. First thing is that it must fee in the interest of India, of our country. The second thing is that it will be on our terms and not their terms. Now when there are these two conditions, I ask my hon. friends where is the need for any apprehension. My friend is always overanxious about jute mills and other old concerns of Britishers that came into existence when they were the masters of our land and we were their slaves. May I ask Shri Bhupesh Gupta, at that time when the liberation movement was going on, who was collaborating with these foreigners, those unwarranted people? I do not want to remind my hon. friend of such unpleasant things. And now, Sir, we are blamed for having some associations, some contact with the foreign ers for the purpose of building up our economy. May I say it comes with ill grace from one who has sold his entire thinking capacity to an outsider?

SHRI BHUPESH GUPTA: I say, the hon. Member should meet mv argument.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI BHUPESH GUPTA: Why is he saying such things? On a point of order, Sir. Can he say such things? I have not said anything against hiir

MR. DEPUTY CHAIRMAN: Please sit down.

SHRI BHUPESH GUPTA: Ask him to sit down.

SHRI H. C. DASAPPA: I am on my legs.

SHRI S. N. MAZUMDAR: I under stood Mr. Dasappa passing a remark that Mr. Bhupesh Gupta had sold all his intellectual capacities to some for eign countries.....

SHRI BHUPESH GUPTA: He has not got that commodity to sell.

SHRX H. C. DASAPPA: Sir, it is accepted that the ideology that they have placed before themselves is an ideology which is not indigenous to the country. I challenge anybody to question this point.

SHRI S. N. MAZUMDAR: We are challenging it.

SHRI H. C. DASAPPA: I am prepared to modify the expression. Sir, that thev have sold their ideology to a foreign country, and I will say that they have mortgaged their ideology to a foreign country.

MR. DEPUTY CHAIRMAN: Speak on the amendment.

SHRI H. C. DASAPPA: And therefore. Sir, there is no meaning in trying to tie our hands up by an amendment like this, which makes it impossible for us to get any technical know-how from foreign countries.

SHRI C. P. PARIKH: Mr. Deputy Chairman, this amendment is a very important amendment, and if we do not say a few words on that, I think. Sir, a wrong impression is very likely to be created in this country as well as outside.

First of all. Sir, it goes to the root of the formation of joint stock companies, and the hon. Member's amendment says that nobody who is a foreigner can be a shareholder in India.

SHRI BHUPESH GUPTA: With certain exceptions.

SHRI C. P. PARIKH: First of all, Sir, my friend should understand that in India many industries existed before 1947, and many foreigners were already there before we got political independence. And in the case of the industries which were already existing, we cannot expropriate them and we cannot expropriate their rights, because certain foreigners were already the shareholders in those industries. Therefore, Sir, in regard to the foreign capital that was invested before the year 1947, we have to pay the interest, we have to pay the dividends and all other things. And he has conveniently forgotten that Rs. 30 crores are partly on the account.

Now, Sir, I will come to what has happened from the year 1947 to the year 1955. The Finance Minister only just now gave the figures and said that the capital to the extent of Rs. 131 crores was brought in India. Now that capital has got to be paid back along with the interest. When he says 'take loans', he easily forgets interest on loans, and he easily forgets the interest that we have got to pay on those loans. So, the obligations which have been incurred till now have got to be fulfilled, and we cannot escape them. Now he says, Sir, that there should be no shareholder in future, in India, who is a foreigner. Let us now try to understand that position. While advo- " eating this position, he goes on to say further that he wants industrialisation of the country to the maximum extent. Sir, what is the meaning of 'industrialisation of the country'? He must be able to define it and he must let us know how he wants that to be done.

First of all, Sir, it must be very well understood that in certain industries, we, as Indians, have no technical knowledge and no technical know-how. And we do not know how to develop those particular industries, for example, the chemical industry, the dyes industry, the iron and steal industry, the mining industry, the shipping industry, and

so many other industries. Ana we also require heavy electrical equipment for these industries. Can we, without any foreign help, without any foreign machinery, and without any technical know-how from foreign countries, develop such industries even after ten years? Let him reply to this question. That is the first question that [would like to ask him. He must inrierstand also as to how these indus-iries are run. For running them we require the imported machinery, we require the foreign technical know-how and so many other things. !t is no use having imported machinery unless we have the people who can handle it proper-v. Without the foreign technical know-how any machinery that is mported from outside will be useless, i -cause there will be no persons here m handle that machinery properly and Hiciently. For the industrial develop-:.t of our country, we have to mufacture several producers' goods, therefore we shall have to import 1 reign machinery. And as far as pos-we want to pay the foreigners b. way of shares etc. And, Sir, if we d> not get the foreign technicians, will happen is that all our money v be sunk. There is no doubt that th Indian nationals will have to be d for handling that machinery I rly, but till then we have to rely on ha foreign technicians to a large ex nt. He talked of industrialisation, how can the country be indus-*tr* ;ed? Not simply by dreaming ai oping. Everything has to be it ted into actionSir, I would like to say sornethin about the capital issues. First of I might point out that any ind whicn has to be started by a fner in India requires to be appied by the Government under the 'ustrial Development Regula tion it. The Government permission has : to be tanen for starting such indu: '! tes by foreigners. And if there are a Indians wPho are able to starl those idustries, certainly they car start tnose industries, and ii that ase no foreigner will b« allowed to start those particular industries. And there is one condition specifically put, according to which 49 per cent, of the shares will be held by the foreigners and 51 per cent, of the shares will be held by the Indians. And the foreigners are putting trust in the Indians. And no foreigner who has no faith in the Government's policies will ever come forward to start any industries in India.

SHRI KISHEN CHAND: In this amendment it is only said that they cannot subscribe to the shares. It is not a question of starting any industry, and it is not a question of getting permission.

SHRI C. P. PARIKH: I think Mr. Kishen Chand, very well knows that without subscriptions he cannot be a member and he cannot be a shareholder. I think that is a simple question. And Mr. Bhupesh Gupta has himself admitted that a foreigner cannot be a shareholder.

Now, Sir, we should remember that our plan now is to industrialise the country, because in the sphere of agriculture we have already made some advancement. In the matter of industrialisation we are still backward. I should rather say that we have achieved industrialisation on a very tiny scale. And we have yet to industrialise our country properly. But I am asking: Can we industrialise our country properly without foreign capital? If we do not take any foreign help in the shape of foreign capital, we will not be able to industrialise our country properly even within ten or fifteen years.

Then, Sir, there is the question of capital which is required for our purposes. Even after deficit financing to the extent of about Rs. 1,200 crores. we are short of Rs. 800 crores which we have got to find out. Now therefore should we delay, or should we scrap our plans? I think we shall be running a great risk if we do so, and we shall be running a greater risk, if there is inflation in the country, and in that case, deficit financing will have to be curtailed. Even as it is, we have

[Shri C. P. Parikh.]

*ot a deficit of Rs. 800 crores.^and we have got to find out ways and means to get that money. They are not coming from the country because all the requirements of the country have been accounted for and have been taken into consideration. What will happen to the Rs. 800 crores which we are looking for? Unless we get this capital from outside, we will be nowhere in industrialisation and the progress that we have made also will be retarded and practically we shall be against a nation where there will be a lot of unemployment, discontent and unrest if we don't employ more people. These are the producer industries and if they are started, they will provide ancillary industries and also ancillary employment. The machinery industry cannot start without the iron and steel. The whole fabricating industry cannot start without iron and steel. The chemical industry is there. Dyes are required. Our shipping industry also is there. What is our shipping industry? We have entirely to rely on foreigners. Does he mean that we go on importing these things and be at the mercy of other countries? Have we any mineral development? Axe our mineral resources exploited at present? In the matter of exploitation of mineral resources we are very backward and we have made no progress. Have we exploited our forest resources? Therefore I say that these mineral resources and other resources have to be exploited and they cannot be done. So I don't understand his amendment. We have accepted the help even from the Soviet country. I don't say that we should not take from this country or that. Whoever wants to help this country in industrialisation on our terms, we shall accept it. First of all the Capital Issues Control Order is there and therefore he must have confidence in the Government who are passing this measure and having this control on capitals. With these few words, I oppose the amendments with all my strength.

MR. DEPUTY CHAIRMAN: Mr. I Mazumdar. No offensive language please because it will again recoil on you from the other side.

SHRI BHUPESH GUPTA: We will pay back in Mr. Dasappa's coin .....

MR. DEPUTY CHAIRMAN: We have to finish this today.

SHRI S. N. MAZUMDAR: I shall speak on this amendment. I don't relish hurling soiled arguments against political opponents and so I don't relish referring to that. I shall come to the points. Now the points which have been made here against this amendment are really going abegging the issue. The distinction should be made between foreign assistance and foreign private capital investment here. Now the argument which Mr. Parikh was trying to develop towards the conclusion of his speech was again confusing the whole issue. We are not against foreign assistance.

As regards the working of foreign capital in India, it is our experience that in the past it worked to the detriment of our national economy. I shall not delve into the past for long but I shall conclude my remarks with only one observation that in the past foreign capital which was entrenched in the vital sectors of our economy was utilized only for the development of those industries which were neces sary for the commercial exploitation of our country. It did not try to deve lop key industries or vital industries. Only those industries like extractive industries or those necessary for exploiting trade and commerce were paid attention to by foreign capital. Now the whole process by which for eign capital worked in India should really be characterised as de-Industrialisation, if we look at the figures of factory labour and the progress of industry towards the close of British rule in India. Now the foreign capital that is even now working is detrimental to our national economy, what ever the spokesman from the Govern ment side may say. Take the case of the tea industry. There Indian con-

so many other industries. And , we also require heavy electrical equipment lor these industries. Can , we, without any foreign help, without i any foreign machinery, and without any technical know-how from foreign j countries, develop such industries even after ten years? Let him reply to this question. That is the first questio

n that I would like to ask him. He must understand also as to how these industries are run. For running them we require the imported machinery, we require the foreign technical know-how and so many other things. It is no use having imported machinery unless we have the people who can handle it properly. Without the foreign technical know-how any machinery that is imported from outside will be useless, because there will be no persons here to handle that machinery properly and efficiently. For the industrial development of our country, we have to manufacture several producers' goods, and therefore we shall have to import foreign machinery. And as far as possible, we want to pay the foreigners by way of shares etc. And, Sir, if we do not get the foreign technicians, what will happen is that all our money will be sunk. There is no doubt that the Indian nationals will have to be trained for handling that machinery properly, but till then we have to rely on the foreign technicians to a large extent. He talked of industrialisation. But how can the country be industrialised? Not simply by dreaming and hoping. Everything has to be translated into action.

Now, Sir, I would like to say something about the capital issues. First of all, I might point out that any industry whicn has to be started by a foreigner in India requires to be approved by the Government under the Industrial Development Regulation Act. The Government permission has got to be taKen for starting such industries by foreigners. And if there are any Indians who are able to start those industries, certainly they can start tnose industries, and in that case no foreigner will be allowed to start those particular industries. And there is one condt-tion specifically put, according to which 49 per cent, of the shares will be held by the foreigners and 51 per cent, of the shares will be held by the Indians. And the foreigners are putting trust in the Indians. And no foreigner who has no faith in the Government's policies will ever come forward to start any industries in India.

SHRI KISHEN CHAND: In this amendment it is only said that they cannot subscribe to the shares. It is not a question of starting any industry, and it is not a question of getting permission.

SHRI C. P. PARIKH: I think Mr. Kishen Chand, very well knows that without subscriptions he cannot be a member and he cannot be a shareholder. I think that is a simple question. And Mr. Bhupesh Gupta has himself admitted that a foreigner cannot be a shareholder.

Now, Sir, we should remember that our plan now is to industrialise the country, because in the sphere of agriculture we have already made some advancement. In the matter of industrialisation we are still backward. I should rather say that we have achieved industrialisation on a very tiny scale. And we have yet to industrialise our country properly. But I am asking: Can we industrialise our country properly without foreign capital? If we do not take any foreign help in the shape of foreign capital, we will not be able to industrialise our country properly even within ten or fifteen years.

Then, Sir, there is the question of capital which is required for our purposes. Even after deficit financing to the extent of about Rs. 1,200 crores, we are short of Rs. 800 crores which we have got to find but. Now therefore should we delay, or should we scrap our plans? I think we shall be running a great risk if we do so, and we shall be running a greater risk, if there is inflation in the country, and in that case, deficit financing will have to be curtailed. Even as it is, we have

[Shri C. P. Parikh.]

got a deficit of Rs. 800 crores.-and we have got to find out ways and means to get that money. They are not coming from the country because all the requirements of the country have been accounted for and have been taken into consideration. What will happen to the Rs. 800 crores which we are looking for? Unless we get this capital from outside, we will be nowhere in industrialisation and the progress that we have made also will be retarded and practically we shall be against a nation where there will be a lot of unemployment, discontent and unrest if we don't employ more people. These are the producer industries and if they are started, they will provide ancillary industries and also ancillary employment. The machinery industry cannot start without the iron and steel. The whole fabricating industry cannot start without iron and steel. The chemical industry is there. Dyes are required. Our shipping industry also is there. What is our shipping industry? We have entirely to rely on foreigners. Does he mean that we go on importing these things and be at the mercy of other countries? Have we any mineral development? A.re our mineral resources exploited at present? In the matter of exploitation of mineral resources we are very backward and we have made no progress. Have we exploited our forest resources? Therefore I say that these mineral resources and other resources have to be exploited and they cannot be done. So I don't understand his amendment. We have accepted the help even from the Soviet country. I don't say that we should not take from this country or that. Whoever wants to help this country in industrialisation on our terms, we shall accept it. First of all the Capital Issues Control Order is there and therefore he must have confidence in the Government who are passing this measure and having this control on capitals. With these few words, I oppose the amendments with all my strength.

MR. DEPUTY CHAIRMAN: Mr. Mazumdar. No offensive language please because it will again recoil on you from the other side.

SHRI BHUPESH GUPTA: We will pay back in Mr. Dasappa's coin .....

MR. DEPUTY CHAIRMAN: We have to finish this today.

SHRI S. N. MAZUMDAR: I shall speak on this amendment. I don't relish hurling soiled arguments against political opponents and so I don't relish referring to that. I shall come to the points. Now the points which have been made here against this amendment are really going abegging the issue. The distinction should be made between foreign assistance and foreign private capital investment here. Now the argument which Mr. Parikh was trying to develop towards the conclusion of his speech was again confusing the whole issue. We are not against foreign assistance.

As regards the working of foreign capital in India, it is our experience that in the past it worked to the detriment of our national economy. I shall not delve into the past for long but I shall conclude my remarks with only one observation that in the past foreign capital which was entrenched in the vital sectors of our economy was utilized only for the development of those industries which were neces sary for the commercial exploitation of our country. It did not try to deve lop key industries or vital industries. Only those industries like extractive industries or those necessary for exploiting trade and commerce were paid attention to by foreign capital. Now the whole process by which for eign capital worked in India should really be characterised as de-Industrialisation, if we look at the figures of factory labour and the progress of industry towards the close of British rule in India. Now the foreign capital that is even now working is detrimental to our national economy, what ever the spokesman from the Govern ment side may say. Take the case of the tea industry. There Indian con-

SHRI M. C. SHAH: Well, I do not know whether there is any company law in the U.S.S.R. I am not aware of it. But as far as other countries are concerned where there are company laws, in all those countries there is no such restriction on non-nationals from being shareholders.

SHRI 3. N. MAZUMDAR: But there are other restrictions.

SHRI M. C. SHAH: How can we discriminate between nationals and non-nationals in the matter of buying shares in the companies that are being promoted here? So far as non-residents are concerned, my hon. friend Mr. Bhupesh Gupta is not probably aware, or he has forgotten, for he has a short memory, that the matter has been explained here many a time on the floor of this House and also on the floor of the other House, that we allow foreign capital only if Government considers that it is in the national interest, that it is in the best public interest *to* do so. He must also be aware, and if he is not, I may inform him now, that there are foreign exchange regulations which have to be complied with. Even when a single share is to be purchased by a non-national, of a company floated in India, that has to pass through those foreign exchange regulations. Then there is the Capital Issues Act.

SHRI BHUPESH GUPTA: Suppose there are nationals.....

MR. DEPUTY CHAIRMAN: No disturbance, please. He has understood your point perfectly.

S>HRI M. C. SHAH: Suppose it is found that a non-national purchasing shares in a company here is not in the best interest of the country, then that non-national will not be given the permission to purchase the share. That is the clear position. This has been so often stated on the floor of this House and also on the floor of the other House. We invite foreign capital, but only *on* our own terms and in the best interests of the country, and all - this heroics will not influence us to deviate from the path that has to be followed in the best interests of the country. Therefore, I feel this is an amendment which ought not to have been moved at all, because thereby .....

Ms. DEPUTY CHAIRMAN: But it has now been moved.

SHRI M. C. SHAH: If he will only read the clause he will find it stated there:

> "The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members."

He wanted to know whether our nationals are allowed to hold shares in other countries. Well, as I said I do not know wiut'.ier there is any company law in the U.S.S.R., or whether there is any private sector, probably no private sector is possible there. But wherever there are company laws, in the United Kingdom, in the U.S.A., in Burma, in Ceylon, Africa, and other places, Indians are allowed to hold shares. We cannot discriminate between nationals and non-nationals in the matter of holding shares. Of course, we have already kept all the necessary safeguards that are possible and our primary motive is to see that the shares are held in the best interests of the country. They have also to pass through three stages. First there is the Exchange Control Regulation Act. Then we consult the Reserve Bank. We consult the Commerce and Industry Ministry. We thus find out whether we can allow such holding of shares. There are the rules of the foreign exchange remittances. There is also the Capital Issues Act. When a company is to be formed under the Indian Companies Act and whenever they issue capital, then also they have to come to the Government under the Capital Issues Act. Then there is the Industries (Development and Regulation) Act.

[Shri M. C. Shah.] In raising the investment capital for certain industries, they have to come to the Government under the Indus tries (Development and Regulation) Act. There is a council which looks into all these things and if ihey advise that such investment will be in the best interests of the country, then and only then, can they proceed further under the Capital Issues Act and the Foreign Exchange Regula tions. We hear always about 5 P.M. , .

tnese foreign concerns and foreign capital investment; they are all attacked by my friends there but I may assure them that all these long speeches and their harangues will not make Government deviate from following the right policy that should be followed in the best interests of the country.

MR. DEPUTY CHAIRMAN: The question is:

17. "That at page 23, after line 44, the following be inserted, namely: —

' (3) No one who is not an Indian national shall be regarded as a member.

Pnovided that Pakistani nationals and nationals of other countries, but of Indian origin, shall, with the per mission of the Government of India, be entitled to subscribe to shares and thus be regarded as members.'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 41 stand part of the Bill."

The motion was adopted.

Clause 41 was added to the Bill.

Clauses 42 to 45 were added to the Bill.

Clause 46 *(Form*[1] of contracts)

SHRI BHUPESH GUPTA: Sir, I beg to move:

18. "That at page 26, after line 28, the following proviso be inserted, namely: —

'Provided that the Central Government may, by notification, limit the amount of such contracts which a particular class of com-ponies may enter into.' "

(Amendment No. 18 also stood in the name of Shri Abdur Rezzak Khan.)

MR. DEPUTY CHAIRMAN: The clause and the amendment are open for discussion.

SHRI BHUPESH GUPTA: I hope the hon. Minister will listen to what I say.

MR. DEPUTY CHAIRMAN: The whole House listens.

SHRI BHUPESH GUPTA: This clause relates to certain contracts being entered into by the companies or by any functionary acting on behalf of the companies. Here I want to give a little more power to the Government but I know it will not take such powers. I want to say here:

"Provided that the Central Government may, by notification, limit the amount of such contracts which a particular class of companies may enter into".

Powers are given in the clause hut there is no restriction to these powers. As we know, and the shoreholders know to their bitter experience, in the past contracts had been entered into by companies or the functionaries of the companies which were not in accord with the interest of the general run of shareholders. In other words, such contracts create obligations and liabilities which are very difficult to overcome. The burden is ultimately passed on to the shoulders of the

shareholders. That has been the experience of many of us. In this country a large number of companies have gone into liquidation in the l^ast few years precisely because some of the obligations they entered into were unreasonable obligations, obligations which should not have been undertaken at all. You will say, "Why should the Government come into the picture?" I do not say that the Government should go into the details of every case but what I feel is, "since we have got this authority to administer this Law in the various States, those authorities should be given powers to regulate such contracts in the interests of the shareholders. I would not have moved this amendment had it not been for the fact that in the top layer of the system of companies in our country, we have got a large number of people who are really interested in entering into contracts for getting quick returns. In the business field, there are an adventurous lot of people and they enter into all manner of contracts which they cannot fulfil. When they fail to fulfil these contracts, other people suffer. As far as those people are concerned, they can always look after their interest and take precautionary measures in the event of a company going into liquidation. That possibility of taking precautionary measures is not open to the ordinary shareholder. Therefore, this amendment is very important from the point of view of the shareholders. Here again, all that I say is that Government should have power to limit the contracts. I do not say that it should be fixed but only want that Government should have the power to limit the contracts so that if necessity comes. Government *can come* in and act. I come from West Bengal and I have come across a number of companies, the authorities of which entered into very wrong types of contracts; whether they entered into that knowingly or otherwise is not my point at all today; but the result has been the same, that is to say, the shareholders and the subscribers in general have suffered because of such contracts. It is because too much is being left in their hands. J *do* not say that you should control them or manipulate them; that is not at all my case. There are certain vital spots where Government intervention is necessary in order to protect the interests of the public and the shareholders.

SHRI C. P. PARIKH: What are they?

SHRI BHUPESH GUPTA; I suggest, therefore, that this amendment be considered. Again, I have no doubt in my mind that, as far as this Government is concerned, it is not amenable to reason and, therefore, this amendment will not be accepted. After us, some people will come and thev may at least know that we tried to do our best for improving matters. I leave it to Mr. Shah to get up in his usual way, half in excitement and half in confusion, to reject this amendment.

MR. DEPUTY CHAIRMAN: Is there any obligation on the part of the companies to notify all the contracts to the Central Government?

SHRI M. C. SHAH: No, Sir.

MR. DEPUTY CHAIRMAN: Then the amendment itself is irrelevant.

SHRI BHUPESH GUPTA: My amendment is relevant.

SHRI M. C. SHAH: I oppose this amendment because we have already taken very wide powers to see that there are no abuses. If we take this power also, I think there will be difficulties in the wholesome working of the companies. The companies must be left with some discretion and some latitude. After all, the shareholders have got all possible means of gettmg information. Therefore, this power is not necessary. I need not use strong words as my friend, Mr. Bhupesh Gupta, because it is not necessary.

MR. DEPUTY CHAIRMAN: The question is:

18. "That at page 26, after line 28, the following proviso be inserted namely;

'Provided that the Central Government may, by notification, limit the amount of such contracts which a particular class of companies may enter into.' "

The motion was negatived.

M|R. DEPUTY CHAIRMAN: The question is:

"That clause 46 stand part of the Bill."

The motion was adopted.

Clause 46 was added to the Bill.

Clauses 47 to 59 were added to the Bill.

Clause 60 (Registration *of prospectus)*

MR. DEPUTY CHAIRMAN: Are you moving your amendment, Mr. Jain?

SHRI SHRIYANS PRASAD JAIN: Yes, Sir. I move:

[1]

21. "That at page 31, lines 32 to 34, for the words 'by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing' the words 'by a majority of the persons who are named therein cs directors or proposed directors of the company or by their agents authorised in writing' be substituted," .

MR. DEPUTY CHAIRMAN: The j amendment and the clause are open ! for discussion.

SHRI SHRIYANS PRASAD JAIN: This is an innocent and simple amend- i men! and I hope the Minister will be a little bit responsive and sympathetic. If you read clause 60 you will find this: "No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its j publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto any consent to the issue of the prospectus required by section 58 from any person as an expert; * * *"Now, Sir, the difficulty arises this way. Suppose one of the directors says: I do not want to consent to the issue of the prospectus then the difficulty is that the whole expansion programme of the company will be held up. As you know, Sir, now no company can have any expansion scheme unless he goes to the Industrial Regulation and Development Board and gets a licence. If permission is granted, then and then only expansion can take place. Not only that. Afterwards he has got to go to the Controller of Capital Issues to get his permission. Unless he gets his permission no capital can be floated and no expansion of the company can take place. Having obtained the permission from the Regulation Board and from the Controller of Capital Issues then the matter goes before the general meeting of the company and the decision is endorsed by the shareholders. After having done all this if any director denies to consent to the issue of the prospectus, in that case this prospectus will not be registered and the difficulty will arise. Under the changed circumstances there is a possibility that the homogeneous Board which was the case so far will not be there. Some foreign elements, some heterogeneous elements can come into the Board and it may enter into the head of one to say: I am not consenting to the prospectus or he may demand a price for his signature. To avoid that difficulty I would rather suggest this amendment that if the prospectus is being consented to by the majority of the directors, that should be sufficient and nothing will come in the way of expansion of the industry. I hope I have cleared the point, to the hon.

iVfinister and if he is not going to [amend this clause as suggested by me, he may show us a way, if such a situation should arise, as to how to combat that and how to overcome the difficulty.

SHRI LALCHAND HIRACHAND DOSHI: I am in full agreement with my colleague who just spoke with regard to this. There are likely to be several cases where such a contingency will arise. When everything is ready for expansion, when everything is ready for the formation, if somebody takes it into his head not to sign the protuectus, the whole project comes to a standstill. I would therefore strongly support the amendment that my friend has moved and I do hope that the Government will accept it.

SHRI P. T. LEUVA: It Is "in relation to an intended company".

SHRI LALCHAND HIRACHAND DOSHI: It is: "No prospectus shall be issued by or on behalf of a company or in relation to an intended company."

SHRI M. C. SHAH: Section 92 of the present Act is similar to the one that we propose to have and there is no reason why we should deviate from the practice that has been followed so far. So far we have not any complaint about any such difficulty reported, to us. Therefore merely on the apprehension of a certain difficulty that may be there later on, though for so many years that section 92 is there and we have not come across any difficulty, I do not think it would be *b* wise policy for the Government to deviate from the policy and the practice that have been followed up to now and so I am sorry I cannot accept this amendment for the sake of some eventuality.

SHRI SHRIYANS PRASAD JAIN: May I say one thing? The hon. Minister may realize that under the changed circumstances that eventuality can arise.

SHRI M. C. SHAH: It has not so fer arisen; so there is no reason to imagine that there will be this difficulty. Imagination has no place here.

MR. DEPUTY CHAIRMAN: Do you press your amendment?

SHRI SHRIYANS PRASAD JAIN: I am asked to withdraw the amendment; I have no option but to withdraw.

MR. DEPUTY CHAIRMAN: You have to decide it for yourself.

SHRI SHRIYANS PRASAD JAIN: Yes, Sir, I withdraw.

* Amendment No. 21 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: 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 *(Criminal liability for mis-statements in* prospectus)

MR. DEPUTY CHAIRMAN: There is one amendment by Mr. Jain. Are you moving it?

SHRI SHRIYANS PRASAD JAIN: Yes, Sir. I move:

22. "That at page 35, after line *11,* the following oroviso be inserted, namely: —

'Provided that notwithstanding anything contained in section 621

*For text of amendment *vida* cols. 4137 supra.

[Shri Shriyans Prasad Jain.] no prosecution under this section shall be launched by any person without obtaining the sanotion of the Central Government in that behalf.' "

MR. DEPUTY CHAIRMAN; The clause and the amendment are open for discussion.

SHRI SHRIYANS PRASAD JAIN: So far as clause 63 is concerned, it provides for criminal liability for misstatements in prospectus. I am not suggesting that there should be no criminal liability. What I want to suggest is that if any shareholder vants to take any criminal liability notion against the promoters, in that esse he may go to the Government and when the Government has taken so much power they should exercise this power also. The shareholder may go to the Government and state his case to them and if the Government see that the facts are correct and there is a *prima facie* case then they may allow him to launch criminal proceedings against the promoters of the companv What will happen is that if th'S power is not with the Government, then any shareholder will go to the court even on flimsy grounds and will put the directors in difficulty intimately the court may do away with The prosecution but in the meantime damage will be done and the promoters will fall into difficulty and they will be always in a sort of suspense. Therefore if the Government assumes this power, they themselves may hear the case from a prospective shareholder who wants to lodge the complaint against the promoters, and in that case much of the hardship which may otherwise be caused on account of the institution of proceedings on flimsy grounds can be avoided. The Government will be perfectly at liberty to give the permission to !?>unch the proceedings if they think th?t there is a fit case for launching a criminal proceeding. This is a very simple and a very innocent suggestion and I think the Government should accept it. But I do not think that he-is in a mood to accept any suggestion.

SHRI BHUPESH GUPTA: I oppose this amendment. I do not see any reason why this amendment should even be considered by the Govern ment. Because the shareholder has been given the right to go to court if he feels that his interest has been neglected or he has been aggrieved, now the hon. Member by his amend ment wants the shareholder to go to the Government. In certain matters they are very doubtful about the Gov ernment whereas here suddenly they have developed a great compassion for the Government on this point. Now why do you want a shareholder to go to the Government? Suppose I sm a shareholder; I live in a far flung village; there is only a district court or sub-divisional court within, shall we say, five miles of my residence. I find, on my information, that certain management is functioning in a man ner which is detrimental to my interest and perhaps to the interest of the shareholders. Now if this amend ment were to be accepted, what will happen? I shall have to go to the Government. *Chowkidar* is not certainly the Government. or the police inspector in the village is not the Government. Who is that Government? I take it that the Central Government will have to be approached in this case. Imagine such a thing taking place, seeking the permission of the Central Government, when I have to start a case against an hon. gentleman who believes in malpractices? It is improper and illogical. If they have made this suggestion there is some' reason in it. I feel that they think, I have a feeling in this matter that they feel, if the shareholder is put under the obliqr+ion to approach the Government, «a the shareholder approaches the GoT'-^nment so will they approach the Government ir order to hush up matters. Such things happen.

SHRI SHRIYANS PRASAD JAIN: That is not the intention. He has misunderstood me if he thinks that is my intention.

SHRI BHUPESH GUPTA: Such things happen because the Government in such cases, it is as we know this present Government, is liable to be influenced more by them, the bosses, than by an average shareholder. That we have seen. Therefore they want to keep the door open even when they have committed or been alleged to have committed a certain crime which is liable under the penal laws. Hence, he is moving this amenament. Therefore I tell you that this amendment, if it is accepted, even If it is given the slightest quarter, will defeat the whole purpose. Of course there are some honourable men, men above board in the Government: there is no doubt about it. But there are also people whom they can buy. After all, you had in your Government Secretaries now standing trial for all sorts of things. I know this will happen. In-Bengal during war time some such thing was there and no prosecution could be launched by individual citizens against some of the big people because they always frustrated efforts to start prosecutions against them. If I had my way I would immedi-.vtely apprehend the person concerned as soon as I hear a complaint from the average shareholders against any monopolist in the country; not that 1 would put him under Preventive Detention. I would arrest him and let him on bail and make him stand his trial. Here you want to dilute the whole thing and I think this should not be accep table to the Government. And the hon. Member who has spoken in support of this amendment should not try to press such a point of view because they will be only exposing themselves a little more than what has been done by the managing agency system.

SHRI M. C. SHAH: I cannot accept this amendment. He says this is an innocent amendment but I do not think it is innocent. At leas* I am thankful to my friend. Mr. Bhupesh Gupta, for once supporting us but at the same time on grounds which I do not accept He is very much afraid that the Government might be influenced by other people and therefore he does not want us to accept the amendment. As a matter of fact we do not want to accept this amendment because we do not want to deprive the Registra or the shareholders of their right to proceed in such matters. We have taken so many powers and perhaps my friend Mr. Shriyans Prasad Jain does not like that the Government should take these powers. He is liberal so far as he is concerned and I can understand why he is so liberal. So I do not think that the Government can accept this and thus deprive the right of the Registrar and of the shareholders.

SHRI SHRIYANS PRASAD JAIN: Have not there been some cases at least where the shareholder has tried to harass the management by going to court?

SHRI M. C. SHAH: Maybe. But there is a remedy for that; there is the provision for compensation ai;d the court will decide.

MR. DEPUTY CHAIRMAN: What about your amendment?

SHRI SHRIYANS PRASAD JAIN: As Mr. Shah and Mr. Gupta are in agreement. I would like to withdraw.

* Amendment No. 22 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 63 stand part of the Bill."

The motion was adopted.

Clause 63 was added to the Bill.

•"For text of amendment *vide* cols. 4140—4141 supra.

Clauses 64 to 71 were added to the Bill.

Clause 72 *(Applications for, and allotment of, shares and debentures)*

Mm. DEPUTY CHAIRMAN: There are amendments.

SHRI BHUPESH GUPTA: Sir, I move:

23. "That at page 41, line 14, the word 'wilfully' be deleted."

24. "That at page 41, after line 22, the following be inserted, namely :

'(6) All allotments shall be made within one week of the closure of the subscription list.'"

(Amendments Nos. 23 and 24 also stood in the name of Shri Abdur Rezzak Khan.)

MR. DEPUTY CHAIRMAN: The clause and the amendment are before the House.

SHRI BHUPESH GUPTA: Sir, before I proceed, I would request that in the case of clauses to which there is no amendment, you might at least give breathing space to the Members to find out whether they want to speak on them. They may just like to make.....

Mp. DEPUTY CHAIRMAN: Well, they are expected to come prepared.

SHRI BHUPESH GUPTA: Otherwise, I must give amendments to all the clauses. I can always find some language.

Now, this clause 72 is about applications for, and allotment of, shares and debentures. Here again there is some trouble about the word "wilfully" occurring in sub-clause (4) on page 41. It says:

"In the application of this section to a prospectus offering shares or debentures for sale, sub-sections (1) to (3) shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who is knowingly guilty of, or wilfully authorises or permits, the contravention."

Here I want the deletion of the word "wilfully". I need not develop this point. That word will make it difficult for the legal process to be started. Again I have difficulty with the officers because sometimes they are genuinely mistaken. It might harm them when they need not be harmed at all.

With regard to the other amendment, I want that all allotments should be made within one week of the closure of the subscription list and I want this to be inserted at the end of this clause as a separate sub-clause. There should be some time limit because from the time the subscription starts till the allotment actually takes place, as we know, the gentlemen of the financial world indulge in all kinds of malpractices and tricks. If you ask me to enumerate them it will be very difficult to go into all of them within a short time and besides it is very difficult because we always find a great "apprehension on the part of the common shareholders when they subscribe to the shares and when the allotment is delayed, for, the delay in allotment is utilised for *doing* all kinds of tricks. Sometimes it has happened that an arrangement is made in such a way that the entire allotment—though public subscription is invited—goes to a certain chosen few. We all know that it is open for subscription. An announcement is made in half a page of a newspaper and people rush in and then something happens and they find that they cannot get subscription, or even if

they get subscription, they find difficulty in allotment. Even before the allotment there is a tendency on the part of those people to corner the shares. That is why I say that a time limit should be fixed and after the subscription is closed they should be > under obligation to complete the allotment within a period of seven days. I know that hon. Members there —I have never seen them present together for such a long time and it is very good that we are having their company—will advance their arguments but in view of the fact that the public have certain apprehensions, rightly or wrongly, with regard to such matters. I hope that even they will desist from opposing the amendment that I have given. I take it that for once they do mean honest business as far as their shareholders are concerned.

SHRI C. P. PARIKH: I do not know how even this amendment is moved by Mr. Bhupesh Gupta because he does not, in my opinion, understand how allotments are made, how applications are made and how the shares are allotted. Sometimes a company has to allot a number of shares; it may be one lakh. And naturally it takes time to make all the allotments especially when it is oversubscribed because in what proportion allotment should be made, all such questions arise.

Secondly, it is against the company's interests not to allot the shares at the earliest possible moment because the money received on application is only a small amount; the remaining amount has to be collected by the company only after the allotment and so the companies will always be in earnest to make the allotments as soon as possible in order that the funds may be forthcoming. It is in the company's own interest to expedite allotments. A specific time limit of one week is rather impossible and impracticable unless it is a very small company. There is *no* purpose in holding back the allotment as the company is anxious to get the money which can be had only after allotment. Therefore I oppose the amendment, Sir.

SHHI M. C. SHAH: I oppose the amendment. About "wilfully" it has already been explained and Mr. Parikh has dealt in full with the time limit for allotment. Last time I acceptea Mr. Gupta's viewpoint and this time I accept Mr. Parikh's.

MR. DEPUTY CHAIRMAN: What about your amendments, Mr. Gupta?

SHRI BHUPESH GUPTA: No. 23, I do not press; the other I press.

* Amendment N». 23 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

24. "That at page 41, after line 22, the following be inserted namely: —

'(6) All allotments shall be made within one week of the closure of the subscription list.' "

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 72 stands part of the Bill."

The motion was adopted.

Clause 72 was added to the Bill.

Clauses 73 and 74 were added to the Bill.

Clause 75 *(Return as to allotments)*

MR. DEPUTY CHAIRMAN: There is one amendment by Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA: Sir, I move:

25. "That at page 43, lines 6 to 8 be deleted."

Tor text of amendment *vide* col. 4145 *supra.*

(Amendment No. 2b also stoou *m* the name of Shri Abdur Rezzak Khan.)

MR. DEPUTY CHAIRMAN: The clause and the amendment are open tor discussion.

SHRI BHUPESH GUPTA: This is, again, an important amendment. Important amendment does not neces sarily mean a long speech. Here, I can assure you of that. This parti cular amendment relates to bonus shares. Now, on page 4:i you will find it reads: <—,,

"(c) in the case of bonus shares, file with the Registrar a return stating the number and nominal amount of the bonus shares so allotted."

We want the deletion of the entire concept and idea of bonus share from the company law. Therefore, the first chance that we got in the Bill to strike at the bonus share, we have utilised. As you know, this has been a matter of public resentment, especially on the part of the workers. We have seen very many companies denying bonus to the workers, fair wages 10 tne workers, disregarding the conditions of the workers, yet distributing bonus shares. This is something which is against public morality. Now, Sir, as you know, a large number of companies in our co'untry do earn a lot of profit and when they earn profits naturally workers demand bonus. And it has been established in the various Tribunals that the bonus in the case of the workers should not be considered as an *ex gratia* payment, but something which is more or less obligatory on the part of the companies to pay. Even so today the companies deny bonus to the workers. At the same time the very same companies distribute bonus shares. Now, I think I can tell you that this is sometning which te wrong from any angle, until and unless you have in mind only the monopolist element.

Then, Sir, the distribution of bonus shares has other serious rmplications. For one thing, that is how the monopolists strive to evade income-tax on these earnings. I know thai under the law at the moment they are not liable to be taxed in respect of the money that is capitalised by way of bonus shares. But I shoulc have thought that the Government would see to it that the tax evasion is not practised that way. Now. it is legalised tax evasion. Now, the plea in favour of it is: why should not the company be allowed to reinvest the money which it has itself earned by way of giving bonus shares? If we had been living in an unplanned economy, if we had not been thinking in terms of industrialisation of the country, maybe this argument might have been somewhat understandable. Today it is not [a]t all understandable, because the bonus share eats up the funds that are required for being invested along certain desired and directed channels. For' instance, even if the company produces certain things which are of vital importance, but it is in a position to earn enormous profits and declare bonus shares, why should I accept that position? If it has earned tne money, I take it that it has been possible to earn sue[1]" money at the cost of the workers and the public; and the Government should be in a position to see tint such earnings are diverted, as tar as possible, into desired channels of investment where we give priority, keeping in mind the interests of the country. Therefore, also from a proper angle of national economic reconstruction, the bonus share has got to be put a stop to. We find that even in the current year the Government has sanctioned a number of applications and about Rs. 13 crores worth of bonus share has been sanctioned. I do not know how much had been sanctioned starting from 15th August 1947, but it appears from whatever report we get that a substantial amount of money has been locked up in distribution of bonus shares. Sir, we are opposed to such things. Now, you have left the vast

private sector entirely frvto the hands of certain people. You may have a large number of shareholders, but every company today is not in a position to declare bonus share. Only those companies which are really well off and which make lots of profit go in for such bonus share. Now, these companies, as we find, are generally in the grid's of the monopolists in our economy and we want that these moneys should not be allowed to be left in their hands that way. That is why we are opposed to the very idea of bonus share. I think, some months ago in the course of the debate in the other House, it was revealed that the amount of bonus share issued during the last few years would be in the neighbourhood of Rs. 80 crores or so. The hon. Minister when replying might correct me M I am wrong. But we remember that money had been invested by them, or capitalised by them, by private monopolists and private concerns according to their own narrow interest. Now, that money had not been available for being invested in a planned marener ©r into directed channels for the development of the country's economy. I think, there fore, that the registrar should be empowered not to entertain applications for the issue of bonus shares, especially when, on the one hand, the workers are being denied a fair living wage and a national mtaimum wage for the workers remains a far cry; and, on the other hand, the country requires capital formation and every pie earned out of our industry for being invested along channels which must be promoted for putting our economy on solid and sound foundations. Therefore, for these reasons I hope the hon. Minister will accept this amendment. I do not doubt, as I see it, that the champions of the tonus share—whereby they commit fraud on the public exchequer and deceive the public, retard the development of our country—will get up in support of it.

SHRI C. P. PARIKH: Sir, with regard to the remarks which Mr. Bhupesh Gupta has just made aoout bonus shares, he entirely forgets that they are free from taxation. In the first place, bonus shares which are issued are both ordinary and preference. As regards ordinary, if it is converted from reserve fund to ordinary capital, then the moneys are permanently kept in the company, because there is no redemption of ordinary capital. And it is desirable for the industrialisation and for strengthening of the company that these assets which are existing in the reserve fund should be capitalised in the form of- ordinary shares. So, there should be no difficulty. Because if one ordinary share of Rs. 100 is given another bonus share of Rs. 100 chen naturally the. dividend or the profit will be half. So, there is no accretion to the shareholder in respect of this. But the difference arises iri cne case and that is in the case of preference shares. I say, Sir, that bonus preference shares should not be issued unless the present Act which allows bonus shares 'o be taxed only when they are redeemed, is changed, because on account of this many bonus preference shares are issued and tax is not got by Government on account of people transferring their shares to such of those who are not li'able to Income-tax and Super Tax Therefore, what happens is this: When bonus preference shares are to be redeemed, according to this Act, a man who knows that these are to be redeemed, at that time he sells the shares to somebody who has not to pay tax. Therefore, Government loses revenue on that account. I say. therefore, that bonus preference shares should be taxed whenever they are issued. If this is not possible then it should be laid down that bonus preference shares may be taxed a_s dividend whenever the first recipient sells it because bonus preference shares are always in any case to be redeemed and redeemed within a certain time. Reserves or the profits instead of being distributed as dividend which is taxable to Super Tax, thus escape taxation. In regard to bonus preference shares, when they are redeemed, the recipient

.[Shri C. P. Parikh.]

who is liable to Super Tax of about ten annas has not to pay any tax and the recipient sells these bonus shares to one who is not liable to Income-tax or whose income is less than five or ten thousand rupees. So, instead ol getting nine to ten annas on these bonus shares which should be treated as dividend, the State loses revenue on account of that transfer.

SHRI SHRIYANS PRASAD JAIN: What about non-redeemable shares?

SHRI C. P. PARIKH: I do not say. I say only if redeemable. Mr. Jain will find 80 per cent, issues are redeemable, I can go into the figures for that.

As regards figures for bonus preference shares and bonus ordinary shares, they have been issued, during the last five years to the extent of Rs. 77 crores. I do not know how much revenue Government have lost especially on this account by giving permission for the tesue of bonus preference shares. Therefore, I say—the Finance Minister has made some statement in the other House that bonus shares may be taxable— that when it comes to his budget next time, he will bear it in mind. It will be a wifee method by which bonus shares which are redeemable do not escape taxation.

So far as the argument of Mr. Bhupesh Gupta as regards bonus redeemable preference shares is concerned, it has no bearing as regards workers, because there the position is quite different. Instead of reservt funds, the bonus is converted intc bonus preference shares and fhe workers are getting thei'r return. "Either the amount is standing as bonus preference shares or as reseive :und. Therefore, his argument ha: *no* place on this account.

SHRI KISHEN CHAND: I suppor' this amendment because I maintair that the argument given by Mr Parikh is not correct. The idea underlying our Government's policy is that thers should be a ceiling on dividend and fixing the ceiling on dividend at about six per cent, or . seven per cent. In the case of companies which have large reserves, the market value of the share is h'gh and dividends up to 16 or 20 per cent, are paid. The recent case of the Imperial Bank is well known to you. By issuing these bonus shares, the capitalist gets double the number of shares and naturally the rate of dividend goes down to half. If they were giving 12 per cent., every body would have raised objection that the dividend is very high. With double the number of shares, the dividend comes down to six per cent. It looks a reasonable rate and there will be no legislation against it. Therefore, *he underlying idea is to restrict the dividend to six per cent., and to provide for it we aye insisting that there should be no bonus shares. Giving a bonus share is really capi-talistag the reserves. I do not deny it. That is a fact but the effect of it is that artificially the dividend is made to look a small figure. I therefore, support that there should be no bonus shares because eventually we want a ceiling on dividends.

SHRI S. N. MAZUMDAR:' Mr. Kishen Chand has made my task easier. I come across the question of issue of bonus shares as a trade unionist in connection with the demand for bonus raised by the workers. Mr. Parikh said that the workers' demand for bonus has no connection with this because they get on fairly or something like that. I did not quite catch him.

Now, the main question is that there are different formulae about payment of bonus to workers. I have not here the formulae which were arrived at the Profit Sharing Committee. But according to the formula of the Labour Appellate Tribunal after payment of a certain percentage of dividend—it wa_s six per cent— the question of payment of bonus to

workers would be decided. Now, Mr. Kishen Chand has put his finger on the right spot that issue of bonus shares is actually utilised in order to show a lesser rate of dividend and thereby the amount increases while the rate gets reduced. That is why I say that this may be utilised in order to deprive the workers of their right to bonus. That is so. I strongly oppose the issue of bonus shares and I want that this matter should be entirely dropped and hence the importance of this amendment.

SHRI M. C. SHAH: I cannot accept the amendment of my friend, Mr. Bhupesh Gupta. Mr. Gupta says, "Do not give out of the reserves created, from undistributed profits." Suppose bonus shares are not allowed to be given, then what wiil, happen? When there are profits, all those profits will be distributed among the shareholders as dividend and therefore, the idea of ploughing back some part of the profits into industries for expansion will be defeated. Bonus shar-es are given from the reserves created out of undistributed profits. If undistributed profits are' not allowed to be issued in the form of bonus shares to the shareholders, naturally the position will be that those who are in the management will distribute all' the profits among the shareholders and as a matter of fact, these undistributed profits belong to the shareholders. As I understand, the legal opinion is that workers have no right over these undistributed profits and therefore, we cannot stop the issue of bonus shares. The Taxation Enquiry Commission also bai said to this effect. And that clause was inserted on the recommendation of the Bhabha Committee.

About the question of taxation, the point will be certainly examined. My friend, Mr. Parikh spoke of these preference shares and I think since the last year and-a-half or so, we do not allow preference shares at all.

Wrth regard to taxation referred to by Mr. Bhupesh Gupta, up till now in order to encourage undistributed profits to be ploughed back, we nave granted one anna rebate. , But one anna, so far as these undistributed profits are taken to reserves. But now the matter was discussed by the Taxation Enquiry Commission regarding bonus shares. The Government have not taken any decision on that recommendation whether to tax them or not. That matter is under the active consideration of the Government. If the Government come to the conclusion that the bonus shares should be taxed—in what form we cannot say at present—that will also apply to the bonus shares which are being issued this year. Therefore, I may assure Mr. Bhupesn Gupta that so far as tax evasion is concerned, or the tax effect is concerned, Government are considering that matter very carefully. In what form or whether they will be taxed or not, I cannot say. I can only say that that matter is under consideration of the Government.

SHRI H. C. DASAPPA: May 1 know, Sir, for my information whether they are going .to stay the issue of bonus shares and whether if in the meantime they do issue bonus shares they will also become li'able for tax?

SHRI M. C. SHAH: According to the Finance Act and the Income Tax Act all those bonus shares—I do not know what will be the form of the taxation, but so far as I understand--will be liable to taxation. If the Government comes to the conclusion that a certain form of taxation should be levied on the bonus shares, it will be levited.

SHRI H, C\ DASAPPA: Will it have retrospective effect?

SHRI M. C. SHAH: So far as income-tax is concerned it is always determined on the basis of the previous year's income. Any amendment in the income tax law applies to that. Suppose we just do it in March 1955,

[Shri M. C. Shah.] then the accounting year will be 1954-55. For the income of 1954-55. that Income Tax Act will apply. Therefore, I am afraid, I cannot accept the amendment by my hon. friend. Mr. Bhupesh Gupta. About the living wage and other things they can agitate.

Mr. DEPUTY CHAIRMAN: Mr. Bhupesh Gupta, do you press for i"t?

SHRI BHUPESH GUPTA: Yes, sir.

MR. DEPUTY CHAIRMAN: The question is:

25. "That at page 43, lines 6 to 8 be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The auestion is:

"That clause 75 stand part of the Bill."

The motion was adopted.

Clause 75 was added to the Bill.

Clauses 76 and 77 were added to the BiU.

Clause 78 *(Application of pnemiums received on issue of shares)*

MB. DEPUTY CHAIRMAN: There is an amendment.

SHRI BHUPESH GUPTA: I hope in between there will be a little rils-cussion on this. That gives me a little respite. I do not want the Minister to go so easily. Sir, I move:

26. "That at page 46, lines 3 and 4 be deleted."

(Amendment No. 26 also stood in the name of Shri Abdur Rezzak Khan.)

MR. DEPUTY CHAIRMAN: The clause and the amendment are open for discussion.

SHRI BHUPESH GUPTA: Si*, th> clause is again concerned with bonus shares. Here you find a provision:

"(a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares."

Here you find that certain shares which are not issued can then be issued as fully paid bonus" shares. It is again a contrivance to cheat the public exchequer and to strengthen the position of monopolistic element in the company and also sometimes to deprive the workers. Sir, I can give you one good example as far as these bonus shares are concerned. There had been a contract between the Calcutta Tramways Co. on the one hand and the Government on the other hand, limiting the percentage of dividend that they could give. Now in order to obviate that position they have resorted to issuing bonus shares and all that. Because of doubling it they give the same amount, but the percentage remains at a low leve[1]. That is how they are obviating the contract. Here again in some cases you will And that a company suddenly makes a profit and then gets out of its obligations to cheat the exchequer by issuing bonus shares. As you know. Sir, there is no end to the ingenuity of the monopolists. Their imagination and resourcefulness is limitless in such matters and they always resort to such practices. I, therefore, say that this thing be deleted.

SHRI KISHEN CHAND: Sir, "Ap plication of premiums received 'jn issue Of "shares" is the heading of clause 78 .....

MR. DEPUTY CHAIRMAN: How much time do you want?

SHRI KISHEN CHAND: I will take a few minutes. Unless I explain the whole clause 1 cannot explain about the amendment.

The usual practice is there are certain shareholders who hold certain shares. Then there is an additional

issue of the capital which is made at a premium. The premium amount forms into a special fund. The usual practice, followed by almost all the companies is that it forms a reserve fund and it is never utilised either for any expenditure or in any other way as in giving bonus or dividend or meeting other expenses. You are asking certain shareholders that in order to permit them to take those shares, because the assets of the company are more than the market value of 'the shares, a premium is being charged. Therefore, I should like to know from the hon. Minister what has led him to alter it and introduce this change in the common practice about the premium? With this introduction I come to the amendment.

In sub-clause (2) of clause 78 it is said that this premium amount can be SDent in *so* many various ways such as:

> "in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;"

My contention is that when a premium was charged it was specifically charged on <the understanding from certain shareholders that because the assets of the company are more than the paid up share capital, therefore, they are paying premium. Now, to utilise this premium, paid by these shareholders, in giving bonus shej-e to rest of the shareholders is most unfair. I will have to give a cevtc^rete example. Supposing there are already 1,000 shares.

MR. DEPUTY CHAIRMAN: One minute more.

SHBI KISHEN CHAND: Suppose there are one thousand shares already issued and we want to issue another 100 shares. Now these subsequent 200 shares are issued at a premium. How is it justified to give a premXim secured on these 200 shares to the holders of 1000 shares? I cannot understand. If he restricted the giving of bonus share to only those persons who have paid the premium, there would have been some reason and some justification for argument's sake. Although I would have opposed even that thing, but in the present case where the premium obtained from some shareholders is being given in the shape of unissued share capital to all the shareholders it is most unjustifiable.

MR. DEPUTY CHAIRMAN: It *seems* the hon. Member will take some time.

SHRI KISHEN CHAND: Yes, Sir.

MR. DEPUTY CHAIRMAN: He can continue tomorrow.

The House stands adjourned til[1] 11 A.M. tomorrow.

The House then adjourned at six of the clock till eleven of the clock on Friday, the '3rd Septerber 1955.