[Shri J. S. L. Hathi.] the Districts. Slight showers continued till yesterday in certain Districts. Relief operations are continuing. Further amounts are being allotted by the State Government for flood ; relief work.

SHRI B. C. GHOSH (West Bengal): What about Orissa?

SHRI J. S. L. HATHI: About Orissa, Sir, the statement gives the detailed information up to 21st September 1955. Since then there have been no recur- J ring floods. But so far as Bihar is] concerned, we have the information that during the last few days there were heavy rains in the Nepal area, and that more floods were expected. We are in constant touch with the Bihar authorities. This is the information which we received last night. The floods have receded. That is contained in the statement which I have already laid on the Table.

PROF. G. RANGA (Andhra): Sir, there have been floods in the districts of Kistna, East Godavari and West Godavari in Andhra in the first week of this month. I do not know whether the Government of India have received any reports to that effect. I would like them to make enquiries, and if possible, they should place a statement, on some later occasion, before this House, containing all the information.

SHRI J. S. L. HATHI: About Andhra also, the information is contained in the statement.

SHRI KISHEN CHAND (Hyderabad) : Sir, may I ask for some information from the hon. Minister? In view of the recurring floods, is the | Government taking serious steps for their prevention? We have been getting the reports about the floods from year to year saying that all the necessary steps are being taken in the mat- j ter, and all that; and yet the floods happening from year to year. I think, considering the loss of life and pro- j pertj, and the loss of agricultural] property, the Government must take very serious steps. And we want to have a discussion in this House on this subject.

SHRI BHUPESH GUPTA (West Bengal): Sir, as you know—and I have already requested that—we would like to have a discussion on the flood situation. It is good that the Government makes a statement from time to time. But we come across a lot of things from various sources, and we have no means of stating our position and ventilating the grievances of the people, until and unless we have some opportunities in Parliament to discuss such matters. And, natural calamities like these should be a subject matter, in our view, for discussion in Parliament.

THE COMPANIES BILL, 1955—*continued*

Clause 78 *(Application of premium received on issue of shares)*—continued

SHRI KISHEN CHAND (Hyderabad) : Sir, yesterday I was speaking on the amendment to clause 78. And I have already pointed out how the utilisation of this premium money for the payment of bonus shares, for the issue of bonus shares, is highly prejudicial to the economic stability of the companies. In this connection, I will read out the very heading of clause 78 (2), which says:

> "The share premium account may, notwithstanding anything in sub section (1), be applied by the com pany ....."

It means that normally sub-clause (1) should have been applied. But by giving an exemption we are utilising the premium paid on shares, which should have formed the reserve fund, for the issue of these fully paid-up bonus shares. Therefore, I fully support the amendment moved by Mr. Bhupesh Gupta.

MINISTER FOR FINANCE (SHRI C. D. DESHMUKH): Sir, we have been able to accept this amendment. This point has been considered The effect of the amendment is to prevent the application of share premium account in paying up unissued shares of the company to be issued as fully paid-up bonus shares. Now this is based on a well known practice. and the Company Law Committee specifically recommended that section 56 (2) of the U.K. Act should be adopted. And I have not seen any real objection as to why it should not be adopted.

MR. CHAIRMAN: Do you press your amendment?

SHRI BHUPESH GUPTA (West Bengal): Yes, yes.

MR. CHAIRMAN: The question is:

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

The motion was negatived.

MR. CHAIRMAN: The question is:

"That clause 78 stand part of the Bill."

The motion was adopted.

Clause 78 was added to the Bill.

Clause 79 (Power to issue shares at a discount)

MR. CHAIRMAN: There is one amendment. No. 27.

SHRI BHUPESH GUPTA: Sir, I move:

27. "That at page 46, lines 29-30, for the words 'or such higher percentage as the Central Government may permit in any special case' be deleted.

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

SHRI BHUPESH GUPTA: Now, Sir, I do not know what the U.K. practice Is in such matters.

MR. CHAIRMAN: Well, we do not ! I imitate U.K. in all matters.

SHRI BHUPESH GUPTA: As you will realise, Sir, I am not very much anxious about the U.K. practice, as the hon. Minister is. because, somehow or other, it seems that whenever we have to look forward *to* somebody for guidance, we look forward to U.K. I have practically forgotten those people. But the hon. Minister, who, I suppose, had been there much earlier than I had been there, does not seem to forget any of those people.

SHRI C. D. DESHMUKH: But the U.K. Act was passed after both of us had returned from U.K.

SHRI BHUPESH GUPTA: Anyway, Sir, now here in clause 79(2) (ii) it has been stated as follows:

> "(ii) the resolution specifies the maximum rate of discount (not exceeding ten per cent, or such higher percentage as the Central Government may permit in any special case) at which the shares are to be issued;".

That relates to the discount on the issue of shares.

Sir, I do not want to give any authority and power to the Government to raise the percentage to a higher level. They do not say 'lower percentage', but they say "higher percentage'. They are taking the power not with a view to reducing the percentage in certain cases, but with a view to raising it. It is a. one-way traffic, and that traffic is in the interests of the monopolistic element. Those people are indulging in all manner of speculation. When I utter the word 'monopolists', the Finance Minister takes down notes. And I think he should take note of these monopolists. Therefore, Sir, as you know, in our country, a lot of speculation takes place before an allotment of shares is made. So many tricks take place behind the scene, and certain Deople—whether you call them interlopers or something else, I do not

[Shri Bhupesh Gupta.] know—have also come into the scene, and they reap certain profits.

If we had our way, we would see to it that there is no such scope for any form of speculation. Speculation in the country is of many types. We want to put a stop to it. It is a scheme which I cannot support, that always a set of people should live in the country whose business is to make profits out of transactions in shares. This is something which we cannot at all support. You will see that in our country, in Calcutta, Bombay and in very many places, it is not as if the common man goes in for share scrips and all that sort of things and makes money out of it. But there are so many big financial concerns and houses who indulge in this kind of share speculation and make money out of this sort of transaction. Naturally they have under them a whole army of people—their agents and all that—who function for them and we know, from whatever little knowledge we have of the business world, that these people do not derive much benefit. Somehow or other they also get exploited by the top ones in the business. Now I would ask the Government not to raise the percentage. Already it is 10 per cent, which is quite high. Now they think in terms of 10 per cent, for those people, monied j people, rich people and for them it is always 10, 11 or 20 per cent.; but the moment it comes to the workers, the toiling people, there is no percentage at all. It disappears. You see that the Bank Award is modified against the interests of the employees and the Finance Minister, artlui as he is, finds always arguments to put across such things. Here again, we know that ingenious as he is, he would have no dearth of arguments to raise the discount rates whenever he thinks the gentlemen of the big money required such rise in their discounts. Therefore, Sir, I am very sorry, that somehow or other, after 3£ years, we find it difficult to place much confidence in those hands which are so kind to the monopolists and big people.

Therefore we are against givinj power to the Government. I. power is required, let them tak power to reduce the percentage to raise it; and I am prepared to such powers even to the hon. Fir Minister who is a very tough pi sition for many of us. I hope, that this amendment will be acce and I don't know why the Cong Party is not supporting me when I moving this amendment. None of 1 amendments I have formulated exclusively from the Communist 01 Socialist point of view. I have taken the position of a small medium businessman and from that angle I am moving this amendment. After all it is their interest which has got to be protected. Sir, Mr. Dasappa,—you, Sir, were not here—when I made such suggestions from their angle, told me that I had sold my intellect to a foreign power I was a little surprised.

MR. CHAIRMAN: You need not refer to them.

SHRI BHUPESH GUPTA: I can understand such utterances from people who generally don't possess that commodity called intellect—intangible property in this case—but I don't know how a person like him who is supposed to have some intellect can make such suggestions as this when I am tabling the amendments from the point of view of many people who sit across the floor on that side of the House. I hope the Finance Minister will accept this amendment. I am aware that yesterday, before he left, he made it clear that he would not accept any of the amendments and he gave us a promissory note for the future saying that some day he will see that the law is amended or the Bill, as it is, is amended. You cannot put us off like this on promissory notes. All that we want now is that you accept some of the amendments if you think they are reasonable amendments and they can be also placed before the other House and the formalities completed. There should not be any reluctance on the part of the Finance

Minister on that score. Therefore, I request the Finance Minister to accept my amendment and change his frame of mind a little, if only for the sake of a gesture, shall we say, in these matters.

SHRI JASPAT ROY KAPOOR (UttaT Pradesh): Mr. Chairman, I am glad that my hon. friend Mr. Bhupesh Gupta, has made a plain confession that he is moving this amendment not on behalf of the party which he represents but on behalf of those whom obviously he does not represent. That being the case, I see no reason why he should have waxed eloquent on behalf of persons whose mind obviously he is not expected to know. This amendment seeks to protect the interests of the shareholders but surely shareholders cannot find a worse representative than my hon. friend, Mr. Gupta. For, surely even he would not claim that there are many communists who invest their money in these industrial concerns. Though, I should think, the shareholders need to be protected against themselves even in this country, in this particular case, 1 see no reason why their rights should be interfered with. If they want to pass a resolution to the effect that bonus shares should be given at a discount of more than 10 per cent., I see no reason why they should not be permitted to do so except in some rare cases where the Central Government may not consider it advisable to permit them to do so. My hon. friend Mr. Gupta blows hot and cold in the same breath. He would have no objection to vest in the Government the right to reduce the rate of discount. He is prepared in one breath to trust the Government to some extent but on the other hand he is not prepared to trust the Government if the Government thinks that a discount of more than 10 per cent, is also necessary in the interest of the advancement of the particular concern if the shareholders adopt a resolution to that effect. That being so, I oppose this amendment and support the clause as it stands.

SHRI KISHEN CHAND: Mr. Chairman, I support the amendment. The hon. Member who moved this amendment has already pointed out that issuing shares at a discount is an indirect way, at a subsequent date, to give advantage to the shareholders. I shall try to explain it. The underlying idea is this: Supposing a share of Rs. 100 is given to the shareholders at Rs. 90 that means his investment is only 90 per cent., while he will be getting dividend on full 100 per cent. Here power is given to the Government to allow a discount of even more than 10 per cent. It may be any rate —there is no limit stated. It may be as high as 50 per cent. That means only Rs. 50 will be paid on a share of Rs. 100 and yet the dividend will be paid at full maximum value. All along I have been opposing the idea of bonus shares and instead of giving bonus shares, this is an indirect way of asking for a» smaller payment on the value of the shares thereby the full benefit of the bonus shares will be derived by the shareholder. He shall be paying a smaller amount and getting the full share value. The hon. Minister for Finance, when it is convenient, always quotes the case of U.K. But may I ask, is the whole Bill based on the U.K. law? Are we trying to copy only the defective parts of the company laws in the world, just amalgamating them and presenting them? Whenever any hon. Member raises an objection, the hon. Finance Minister quotes the case of U.K. or U.S.A. or some other country and he says this part of the Bill is present in such and such countries. Therefore the hon. Minister should very carefully see that any idea of bonus shares, whether directly or indirectly, whether by the issue of fully paid-up shares or by issuing shares at a discount is prejudicial to the general scheme of a socialistic pattern in this country and I therefore fully support this amendment.

SHRI C. D. DESHMUKH: Sir, Members on both sides of the House draw attention to provisions in the U-K. Act. The value of it is that you have

[Shri C. D. Deshmukh.] a provision which has been in existence for a few years now and which according to our knowledge, has worked well. That forms the starting point whenever we have such a starting point for our consideration. I drew attention to the fact on the previous occasion that the Company Law Committee had given independent thought to it, and that only reinforces, so to speak, the equity or the necessity of that particular provision. Now, obviously, it is not every provision for which we can run to the U.K. Act, for the simple reason that our Bill is a very much bigger and more complicated one and the most important provisions in our Bill, namely those relating to the managing agents, secretaries and treasurers, have no counterpart in the U.K. Act. Therefore, this gibe need not be flung at any one who draws attention to something in the U.K. Act perhaps which has given rise to cases in courts. I shall leave that point there.

In regard to the merits of this particular provision, one has to concentrate attention on the typical case, that is to say, on the kind of case which it is designed to meet. Obviously, I should imagine, every single provision of this Bill is capable of being misused. There may be cases in which some clique or some speculation has produced circumstances under which a company desires to issue shares at a discount larger than the limit provided here. Now, it is precisely here that the Government's discrimination comes in. Government will go into the circumstances in which such an issue is proposed to be made and if there is evidence—and there must be—in regard to, shall we say, cliques, intrigues or speculations, then it is not unreasonable to assume that Government will not give the permission. There may, however, be genuine cases in which a company has had an unfortunate experience over a series of years. In other words, it ha? to give a certain incentive to tlie prospective investors. That is not unknown, say qualitatively, at any r<»te. even s'n Government securities although they are fixed and they have fixed rates of interest. But if, judged in the light of

the market returns, one finds that money is not likely to come in at par value, then a discount rate is fixed.

They do not range as much as 10 per cent., because they vary from year to year but discounts of Rs. 2/8/-in Rs. 100 and so forth, are not unknown. And it is in order, I believe to meet the circumstances of a company which is in need of capital and which has had a somewhat discouraging experience and which hopes that by a small incentive it will be able to attract money, that this provision is intended. And I might add that it is not due to the artfulness of the Finance Minister, but to the deliberations of the Joint Select Committee. Therefore, when the hon. Member is making slighting remarks, he need not imagine that they are confined only to the person of the Finance Minister. I do not know how many Members of this Bouse were there on the Select Committee.

AN HON. MEMBER: Fifteen.

SHRI C. D. DESHMUKH: There were fifteen and these Members, most of ; them, have fully considered this pro-I vision and to my knowledge there is no minute of dissent on this. This is quite an innocuous provision which the Select Committee—it is I think in paragraph 36 of their Report—wanted to introduce here.

Well, the trouble with the hon. Member opposite is that with all his show of reason, his basic hypothesis is wrong and he puts forward that hypothesis only when it suits him. He belongs to a party which is essentially authoritarian in character and yet he made the astounding statement that he objected and did not believe in ; authoritarian power being given to the ! Government. One could imagine what I his objection is. His objection is giv-! ing power to this Government. If it were any other Government, there is not a single section under which he will not take power.

SHRI BHUPESH GUPTA: Yes.

MR. CHAIRMAN: He agrees

SHRI C. D. DESHMUKH: He agrees. Therefore, it is not a question of exchange of reasons. And he has also put wrong words in my mouth, basing himself on the press report rather than the report of my speech. What I said yesterday was precisely the opposite. I said that although the time element is there, I shall conceive it my duty to give my reasonable answers to amendments put forward, and if I succeed—as I hope I shall succeed—in proving that the amendment is unnecessary, or we can wait, or it can take the form of rules, in that case, I expect the hon. Member will not press it. That is a sort of a gist of what I said. I never said that I find it impossible to accept any amendment, that I have made up my mind against any amendment because if I accepted any the passage of the Bill would be delayed. If only the hon. Member will take the trouble of going through my speech again, he will find that he has been under a misapprehension.

And finally, the most curious part of it all is, after having assumed all the show of reason, he appeals to me for a gesture. I cannot exchange gestures with the hon. Member either, because his gestures are far too violent for me.

SHRI BHUPESH GUPTA: Yours also are violent.

MR. CHAIRMAN: Well, have you been persuaded, Mr. Gupta?

SHRI BHUPESH GUPTA: No, not at all.

MR. CHAIRMAN: The question is:

27. "That at page 46, lines 29-30, the words 'or such higher percentage as the Central Government may permit in any special case' be deleted."

The motion was negatived.

MR. CHAIRMAN: The question is:

"That clause '79 stand part of the Bill."

The motion was adopted.

Clause 79 was added to the Bill.

Clause 80 *(Power to issue redeemable preference shares)*

MR. CHAIRMAN: Mr. Jain has two amendments.

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

28. "That at page 47, at the end of line 15, after the words 'redemp tion' the words 'or out of the sale proceeds of any property of the company' be inserted."

I also move:

29. "That at page 47, lines 16 and 17 be deleted."

MR. CHAIRMAN: The clause and the two amendments are now open foi discussion.

SHRI SHRIYANS PRASAD JAIN: Sir, clause 80 provides that if the preference shares of a company are to be redeemed, they can only be redeemed out of the profits of the company or out of the company's share premium account. My contention is that besides these, preference shares should also be capable of being redeemed out of the sale proceeds of the properties, if any, of the company. Here there is a distinction made between the profits and the sale proceeds which according to me is a purposeless restriction. It will be wrong to contend that the sale proceeds of the property of the company should not be utilised for the purpose of this redemption. I am unable to appreciate this point and I do not think there can b^ *nv logical argument to prove that sal& proceeds should not be utilised for redeeming prefershares of the company. The company sells the property and sompW^y eise buys it and the amount that the company has received for that propertv can be very usefully utilised

[Shri Shriyans Prasad Jain.] getting rid of the preference shares that are not required for the running of this company. Therefore, I would suggest that the sale proceeds of the property of the company, which are not required for the functioning of the company may be utilised for redemption of the preference shares.

I would also submit that in the existing Act, such a provision is already there. When the present Bill was sent to the Select Committee that provision was there. Sir, when I was moving my amendment to clause 60 yesterday, it was said that Government would not like to disturb anything that was already there in the present Act. On this ground, Sir, I would say that since this provision is already there in the present Act and since there has been no complaint, as far as I know, that this facility has been misused or that it was not in the interest of the companies, there is no reason why we should not have a similar provision in the present Bill.

The other restriction is that no such shares can be redeemed unless they are fully paid-up. Supposing a company wants to redeem its partly paid-up shares, these cannot be redeemed by virtue of this provision. The company will call for the balance amount, make them fully paid-up and then redeem them. This will mean a delay of two, three or four months. According to me, it is a purposeless restriction. When the company no longer needs these funds for its working, it should be in a position to redeem these shares. Therefore, I would request the Finance Minister to accept this amendment; it will not come in the way of the proper running of the concerns.

SHRI BHUPESH GUPTA: I oppose this amendment. You have heard the hon. Member. He has, however, not explained some more things that he ought to have. After all, there is a lot of difference between philosophy and preference shares. In this amendment, iw> wants the assets of the company to be sold for the purpose of redeeming the preference shares.

SHRI SHRIYANS PRASAD JAIN: Those which are not required for the functioning of the company.

SHRI BHUPESH GUPTA: Who are the holders of such shares? They are generally big people, not the small or the average shareholders. These shares are issued, as we know, in favour of the rich people, people who really command the companies. These are issued at their own will and for their own reasons. Sometimes they do it in their own interest and sometimes, of course, they also take the broader interest into view. Having done that, they now want that whenever they feel like redeeming such shares, they should be in a position to sell the assets of the company and redeem these shares. In other words, the assets of the company[v] are to be sold and the sale proceeds utilised for the purchase of these shares. We are opposed to this kind of thing. We have also got to think of the equity shareholders. The assets of the company, in the final analysis, is the property of all those who have contributed to it. By adopting such procedure the rights of the others are prejudiced and jeopardised. I know, they will say, "What happens in case of liquidation?". There, of course, the preference shares get preference. Here, we are not dealing with a case of liquidation. Here, we are dealing with a case where a company may, at its discretion, sell certain properties and then proceed to redeem the preference shares. In practice, this will be one of the ways of the rich people trying to re-imburse themselves at the cost of the ordinary shareholder. The assets of the company, so to say, get more or less mortgaged to these preference shares especially when the management of the company or the boss of the company has an interest in such pre. ference shares. Therefore, I am opposed to it. I find that all the amendments given notice of by the hon. Member are in another direction

The Finance Minister knows it very well. After all, he is not a businessman; the Finance Minister is in a Government which wants to retain its political power. Naturally, he has to give certain concessions to smaller people here and there and, there-iore, it is that he has given little concessions to those people. The others who are not holding political authority but who certainly back up such authority do not even tolerate that. They want their pound of flesh on every single clause and on every single item. I cannot convince them of the unjustness of their case; but I think that such amendments should nonetheless be rejected. If I have spoken on this amendment it is because of my desire to unveil the motive behind such kind of amendments. The Finance Minister naturally would not go as far as J would go in such matters but they should be rejected for my reasons and also for the reasons that the Finance Minister may have in his own mind.

SHRI LALCHAND HIRACHAND DOSHI (Bombay): Sir, I support this amendment. What is provided dn this amendment is only this, that if there are surplus funds with a company, those funds may be utilised for the redemption of the preference shares for which provision has already been made in the Articles of Association. Also, when the preference shares were issued, they were meant to be redeemed. If they are redeemable shares, this clause gives you permission to utilise only certain funds; what is aimed at in the amendments is that if funds become available due to other reasons, *e.g.,* by sale of machinery, etc., those funds should also be allowed to be used for the redemption of these preference shares. What will be the result of redeeming these shares? That will be giving greater •strength to the equity capital on which we are assuming that the whole of the functioning of the company rests. It is the equity capital that ha* to ' - strengthen «»J from time to time. *"Vic this reason only were th» preference shares, when issued, made redeemable so that the equity capital which takes the brunt of the responsibility may be strengthened. When these shares are to be redeemed, they

J will not be redeemed by a mere resolution of the Board of Directors or by the mere wish of the managing agent; a specific provision will have to be there in the Articles of Association and then a special resolution will also have to be passed for the redemption of such capital. Therefore, the vote of the equity capital will first be taken before any action is taken. The only thing that is provided in these amendments is that if there are any other surplus funds, they should be allowed to be used for the redemption of the preference shares. I, therefore, feel that the opposition that has come from the hon. Member on the other side, is nothing but opposition for the sake of opposition and has no basis and no reason. I would, therefore, strongly support these amendments and plead with the Finance Minister to accept them.

SHRT V. K. DHAGE (Hyderabad): I oppose these amendments. The two Members who supported these amendments did not go to the root of the proposition. The object of this clause is that there should be no reduction in the capital of a company. If one were to sell the property of the company—one may have surplus funds —it will affect the capital which will be reduced and that is why it has been specifically provided in this clause that there should be no redemption of preference capital unless the profits of the company make it possible to do so. That is the simple point and the amendments suggested by the hon. Member are not feasible. They should not be accepted.

SHRI C P. PARIKH (Bombay): I am sorry I am not in agreement withthese awndments for two reasons.

£.HRI BHUPESH GUPTA: Family ! discord.

SHKI C. P. PARIKH: I cannot be in agreement with all the persons at all times. The argument is that the preference shares may be redeemed out of sale of machinery etc. The point that I want to ask is this: If there is j a reserve fund at that time, why j should not that fund be utilised for the payment of these preference shares instead of the sale proceeds of machinery, etc.? ii may also be said that the sale proceeds of machinery and asset, etc., could be utilised in case there was no reserve fund but that argument is also not valid. The preference capital may be of two varie- : ties, those paid for in cash and those paid for in bonus shares. If it is paid in cash, then naturally, Sir, at the time of issue it was contemplated that the fixed assets would require such capital because the fixed assets could not be met by other resources. Therefore when the preference shares are paid for in cash the fixed assets require them for the development and expansion. Now as regards this, Sir, when the assets are sold, naturally they are sold for replacement. Where will the replacement funds come from is another thing. Therefore I say that this amendment should not be accepted on the, ground that the company I must have full scope for expansion whereas the profits must first be utilised for redemption rather than the sale of assets.

Now, Sir, another question which has come in is as regards bonus shares to which Mr. Gupta referred. Bonus shares or preference shares are of two types, redeemable out of profits and paid in cash. As regards redeemable out of profits they were to the extent of Rs. 77 crores in the last five years and I think, Sir, owing to our policy of taxation which was a little lax in my opinion, that amount j is escaping taxation. Although it is ' not the point at issue here, I say, Sir, i when redemption is to be brought forward on account of the sale of fixed assets that argument gets stronger that those bonus shares which were issued should not be paid out of the sale proceeds because the sale pro- | ceeds are meant for expansion and therefore with regard to the future issue of bonus shares I think, Sir, permission should not be given unless for reasons which are very strong for expansion of the company because bonus shares, when they are redeemed ate passed on to a man who does not pay super-tax and the man selling it, who is liable to pay the super-tax, escapes fronv it—and as I said it Li 8 to 10 annas by way of super-tax only. In order that he may not have to pay the tax on them he sells the shares to a man who is not liable to super-tax or whose income is less than Rs. 5,000 and I know and the Finance Minister will know of cases where many preference shares which were issued out of profits were sold by the recipient to charitable concerns and they have claimed refund from the company on these shares because charitable institutions can claim refund. This whole lacuna was there and I think, Sir, in connection with any new permission that may be given to preference shares all these points may be borne in mind.

SHKI C. D. DESHMUKH: Mr. Chairman, I oppose this amendment but not necessarily for the reasons which have been advanced by all the Members who have spoken on this side, that is to say, on the side of opposing the amendment. Here is a case where one is concerned with the rights and wrongs of cases rather than the possibilities of circumvention. Before I come to the merits of it, I must make some reference to the argument used by the mover as to whether this is in the original Act or it is not. As it happens, Sir, in amendment No. 28 he said that this was not in the original Act and therefore we should not have this provision, that is to say, restricting the rights. But I should like to •ooint out then that so far as amendment No. 29 is concerned, that provision already exists in the present Act. Now that shows the danger of going too much by whether a particular provision is found either in our Act, the old Act, or in the original Bill or in the U.K. Act. One should

taKe note of these facts but finally come to a conclusion on the merits of a case-Now, as 1 said, this clause to which amendment No. 28 relates is not in the original Act but to Mr. Gupta 1 must say that it does not find a place in the British Act, section 58.

Now as regaras the other one, amendment No. 29, mat provision exists in our Act in section 105B(1), provisu (b) and also in the U.K. Act, section 58(i), proviso (b). Now whatever conclusion one has to draw from this, MemDers may draw.

I now proceed to the merits of the matter. This question was discussed at some length in the Joint Select Committee and I am convinced that the decision that we have come to in either case is the right one. The crux of the situation is how do we affect the rights of third parties? It is not so much a question of existing share-holders or new shareholders or the need for a company to expand or the issue of bonus shares, which seems largely irrelevant in the present context. But what we are concerned with is how by taking a particular action we shall be affecting the rights of third parties. Now it is obvious that if we sell part of the assets we might be taking the risk of affecting the rights of creditors and therefore it is that the law makes a distinction between redemption which is here in clause 80 and redemption of share capital in clauses 100, 101, 102 and so on and so forth. Now if there is property which the company does not want or assets which the company does not want and it wishes to sell for this particular purpose and they want to redeem preference shares, it seems *o me that they must then go through the process of redemption of capital and there hon. Members will find that there is the special resolution required under clause 100, then under clause 10? an application to the court is required for a confirmatory order, objections by creditors and settlement of loans of objecting creditors. Now therefore it is for .the purpose of pro' tec ting the rights of third parties that this distinction has been made and I am convinced that it has rightly been made and it is for this reason that I oppose both these amendments.

MR. CHAIRMAN: Do you press your amendments, Mr. Jain?

SHRI SHRIYANS PRASAD JAIN: I beg leave to withdraw them.

Amendments Nos. 28* and 29* were, by leave, withdrawn.

MR. CHAIRMAN: The question is:

"That clause 80 stand part of the-Bill."

The motion was adopted.

Clause 80 was added to the Bill.

Clauses 81 to 86 were added to the Bill.

Clause 87 *(Voting Rights)*

MR. CHAIRMAN: There are two amendments.

SHRI BHUPESH GUPTA: Sir, I move:

30. "That at page 50, line 16, after the word 'shall', the words 'unless he or she is a foreigner other than a Pakistani or a national of a foreign country but of Indian origin,' be inserted."

SHRI KISHEN CHAND: Sir, I move:

31. "That at page 50, for lines 19 and 20, the following be substituted, namely:

'(b) his voting right on a poll shall be calculated as follows: —

one share of paid-up equity capital, one vote; in excess of one share, one vote per ten shares up to one hundred and one shares ;

in excess of one hundred and one shares, one vote for every hundred shares, subject to a maximum of one hundred votes'."

(The amendment also stood in the name of Mr. V. K. Dhage)

*For text of the amendments *vide* col. 4174 *pvpra.*

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

SHRI BHUPESH GUPTA: Sir, this amendment is a very simple one, if simplicity has its appeal to the hon. Minister. Here this clause deals with voting rights and, as you see, I want these voting rights to be taken away from the foreigners in company matters. I want these people. the foreigners, to be disenfranchised in company affairs in the interests of the company. Of course I have made an
-exception—unless such foreigner is a Pakistani or a national of a foreign
-country but of Indian origin. I have in mind people of Indian origin, those who live in Ceylon and various other
.countries' in the world even if they
.do not politically happen to be citizens
.of India.

Sir, when I move such amendments J always come up against metaphysical argumentations and also a certain amount of business casuistry. I am at once told: How can we discriminate between those who are Indian nationals in company matters and those who are foreigners subject to the exceptions that I have given here? Yester-,day, Sir, we were given a sort of lecture on international law in such matters. Mr. Shah gave that lecture and J am very sorry you were not present in the House and you missed the most interesting lecture ever delivered on international law by an hon. Member of the Government. At one time I have also been a student of international law.

MR. CHAIRMAN: No further comments on international law.

SHRI BHUPESH GUPTA: Sir, if Mr. Shah were there, he would have raised it. Mr. Deshmukh is after all more businesslike and comes to brass "tacks straightway.

MR. CHAIRMAN: No compliments please.

SHRI C. D. DESHMUKH: Is it in order to say that an hon. Member lectures to the House?

SHRI BHUPESH GUPTA: I want to be frank. I want to make this discrimination because in our country a large number of companies are in the hands of British elements. I do not know the total number of British shareholders in our companies who have got votes. Naturally all share-holders have got votes but the Government has not been able to give us some idea as to the total number of British shareholders in our country. Any patriotic Government should have put in practice what they had preached in the past in the liberation struggle. We must know the total number of British shareholders becstose we want to find out the kind of grip that they have on our economy. Yesterday, the Finance Minister gave us some very interesting figures about managing agencies and the biggest ones in the managing agency system seemed to be held by the British. We know that apart from managing agencies, there are a large number of concerns and undertakings in our country, not necessarily managed by managing agencies. The majority of hhaVehoklers in such' concerns are British or the effective shareholding is in the hands of the British. I will show how things happen. If he is an Indian shareholder he would be normally guided, apart from his enlightened pelf-interest, by the interests of India. He would not be exercising his right guided by certain other extraneous interests, alien to our country. By 'country' I mean the various classes living in the country and I am not pressing forward the aims and objects of any particular class. For instance, if Mr. Parikh were on a Board of Directors and if he had his vote, h-3 would be naturally concerned about his wealth and all that, but certainly he would not be interested in things in which the British shareholders are interested. There is nothing common with our aspirations and interests as far as the British shareholders ar concerned. Therefore I would be in favour of making a discrimination here, a very broad discrimination, and I know that unless we make such

a discrimination and take away their right of voting, in many concerns the alien interests will operate.

I can give you an example, the example of Calcutta Tramway Co. where you have also the Indian shareholders. It is not as if the entire shareholding is in the hands of the British. There you have got some Indian shareholders but a large chunk of shares is held by the British. In 1953—the hon. the Finance Minister will please note—the company decided to enhance the tram fare for the second class, and the Indian shareholders were opposed to it. Some Indian shareholders who were there made statements, came out in the public and said that as shareholders they were opposed to the enhancement of the tram fare. Similarly various other people associated with that particular concern made their point of view known and they talked more or less in conformity with the national interest, with the public interest. But it was not possible for either them or the Government to do anything in the matter because the decision was taken there in England. Whether the tram fare in Calcutta should go up or not was decided upon not by our people— capitalists or no capitalists—but by somebody else in some other country and we were told, when we entered into discussions with the Government, t^at they were helpless in the matter, that after all it was a joint stock company and that the Board of Directors had *to look to* the interests of the shareholders and go by what it thought to be the wishes of the shareholders. We were completely helpless. I am not going into that story; how the Government supported it initially and then had to eat humble pie, that is not for me to state here; but one thing came out very clearly, that is, how these British shareholders operate in our country. That was revealed clearly in the case of the Calcutta Tramway Co.

Sir. we talk about our sovereignty; we talk about our economic independence that we want to build; we talk about our own rights and what not. At the same time a large number of ('oncerhs in our country occupying strategic positions in our economy, concerned with public utility services and such other things as coal mines, tea plantations etc. are in the grip of those shareholders who are motivated by interests other than Indian and who look forward to their own class and country and not to India or the Indian public. We, therefore, want that such people should not at least be given the right to vote. I suggested yesterday that we should not have" such shareholders in the nsw companies and my very constructive and patriotic suggestion was turned down by hon. Members from that side *of* the House for reasons which I do not know. There was a time when they and we together from a common platform spoke in such accents and passed similar resolutions. I can produce plenty of books and material' written by eminent Congress leaders, including the present Prime Minister' of India wherein they had said that these companies should be got rid of. Not that they were talking about individual shareholders but after all this collection of shareholders makes an entity which is called the British interests in India. Now, today they should at least accept the suggestion that these people be not given the right to vote. You have given them the right to take away our money; you have given them the right to remain in possession of India's assets, of India's companies, fields and plantations. We want you not to give them the right to vote. That is the most important demand that I make and the Finance Minister should not think that this is a violent gesture that I am miking. This gesture, if you like, I got from the non-violent leaders of the Congress Party. At one time they made this suggestion with all their non-violence behind it. It is not a violent gesture at all. I do not know what definition he gives nowadays to the word "violent". If things injure the British vested interests in this country and if such things are violent, then of course I am a violent

[Shri Bhupesh Gupta.], person and I cannot help it. If things such as these "which serve the inter ests of the country and the people, guarantee economic independence to our country, and eliminate the foreign vested interests, are called violent, then of course I will be a violent per son. Now, Sir, I say, do not bring in the question of violence.....

MR. CHAIRMAN: Now they will say you are giving a lecture.

SHRI BHUPESH GUPTA: We are under no obligation with regard to U.K. We can do such a thing. Do not bring in international law. Of course, you, Sir, know international law but most of them do not know anything about international law. The managing agents at least are very very ignorant about it. So do not bring in such things. We can do it. They might say, "If you do such a thing, England will retaliate; other countries will retaliate." Do not bring in other countries. Against whom will England retaliate? We do not have any shares in England. Our tradition is not that way. We go out of our country; we send Ambassadors like you who carry the message of peao?, goodwill and culture of India. Therefore I say England cannot take any retaliatory action; even if she did, we do not stand to lose anything. As far as other countries are concerned, I do not know what other countries they have in mind. They are not going to take any retaliatory action against us just because we have taken this step against the British shareholders here. On the contrary, they would welcome such measures on our part. Tha talk against colonialism, the Bandung Declaration—all these things are good, but I think we must now begin somewhere and let us eliminate these interests from India's economy if not by one shot, at least gradually, and the Finance Minister—well, I know where I am crying—should at least answer the question as to why we should allow these people the right to vote which is exercised against Indian interests, no matter whether It is nvne or somebody else's. When such rights are exercised against us, we want to take away the teeth of such people. He believes in taking the teeth; I am told he has said this in the other House. Take away the fangs of the British capital one after another and make it harmless in this country so that we can mould and fashion our economy in the way we like.

12 NOON

SHRI KISHEN CHAND: Sir, I have moved an amendment about the voting right. If you read clause 87 (I) (a), it will be seen that in a meeting every shareholder present has the right of voting. But what happens is that a few shareholders who hold a large number of shares, if they do not carry their opinion by their votes on any resolution, immediately demand a poll and when a poll is demanded then every shareholder has not got one vote only, but in proportion to the number of shares. The result is that if in a meeting there are one or two shareholders who hold a large number of shares, then by the exercise of this right by one individual, the resolution is passed or defeated and the result is that the rest of the shareholders become disinterested. It was due to the disinterestedness of the shareholders that this Companies Bill has come, because the shareholders did not take interest in the management of their companies, the minority interests were being sacrificed and oppressioiT^was "taking place and the Government has taken all the powers in their own hands.

I have already pointed out in the first reading of the Bill that with thirty thousand companies, and one advisory body it will be very very difficult for Government to properly do supervision work and it will lead to a great deal of corruption. The better way would have been that the small shareholder should have a voice in the management of his company and that is only possible if the voting right of the big shareholder when a poll is demanded is reduced. Therefore, I have submitted a simple Tor-

mula that for the first share, there will be one vote; after that one vote for every subsequent ten shares up to one hundred shares; in excess of one hundred and one snares, one vote for every hundred shares, subject to a maximum of one hundred votes. I may just quote the example of the Reserve Bank of India Act, 1934, and the hon. Finance Minister having been Governor of that Bank will probably realise that when that Bank was instituted and the public were allowed to subscribe, there was one vote for every five shares, but there was a maximum limit of ten votes. The hon. Finance Minister will come round and say that in the Reserve Bank we did not want concentration of shares and we made it as broad-based as possible and a larger number of people were asked to subscribe to them. Well. here we are giving more liberal voting rights *to* the big shareholders, because we are permitting not ten votes only but we are permitting up to one hundred votes and they are •going to get one vote for every hundred shares.

Let us take the case of voting right in the political field. At one time only •the rich people, people highly qualified academically were allowed to have any voting right. Gradually the world "has changed towards giving adult "franchise, one vote for everybody. Only some years ago in England when I was a student of Cambridge University, we had two votesr orue^as a citizen of Cambridge and another as a graduate of Cambridge University. But that right has been removed. This plural voting right has been sr ly removed from every sphere of life, in the political life and in the civic life. In municipalities at one time a person could only vote if he had been paying a rent of Rs. *If-* per mensem. A person who was paying a rent less than that was not given any vote.

Then, if you consider, because a person having a large number of shares has a bigger stake in that company, he should be allowed a bigger I voting right, may I draw your attention to the fact that the person having a big property in a city should have a bigger voting right in the municipality, because he has a bigger stake? Will that argument stand even one minute's consideration? Will anybody even think about it? Similarly, in the political field if we argue that because certain people have a bigger stake in the country, they should have more votes, nobody will consider that for a moment. And, therefore, in this Companies Bill as long as you keep this inequality of voting right and as long as you permit one or two persons or even half a dozen persons to entirely control the company, control the election of the directors, control the passing of any resolution, the result will be that a large number of shareholders who cannot have their opinion influence the decision of the company, naturally will become apathetic to it. The result will be that the company will be entirely managed by one, two or half a dozen people and when they start oppressing, the Government comes in with all this Companies Bill with more than six hundred clauses. I am sure that the hon. Finance Minister, if he had really made the rhareholders the final authority by giving them this differential right of voting, would have really helped in the better management of companies, than by bringing in all sorts of penal clauses.

Then, I come to the point which has been raised in the first amendment. There also, I may point out that when the Reserve Bank of India Act was passed in 1934, it was stated that a shareholder shall be qualified to be registered as such .....and no person who is not—now you come to the definition—domiciled in India, either an Indian subject of His Majesty or subject of a State in India or a British subject ordinarily resident in India, and so on. Sir. we find that in 1934 when India was not independent, even then, when the Reserve Bank of India Act was passed, it was considered essential that the shareholding and the voting right be restricted to per ons

TShri Kishen Chand.] who are domicile in India, and normally resident in India. The hon, Member who spoke before me pointed out that in the case of public utility concerns where the interests of the general masses of our country are involved, it is not right to give voting rights to foreigners who may not be resident in India, who may not realise the importance and the significance of that public utility concern for our country. Yesterday when we were discussing a clause about shares, we maintained, though it was not accepted by the hon. Finance Minister piloting the Bill, that foreigners should not be allowed to hold shares in our country. But if we are permitting them to hold shares in our country, we should not permit them to have voting rights. And even if it is not voting right in any and every company, let there be restriction after considering the nature of the company. If it was all right in the case of the Reserve Bank of India, why should it not be right in the case of public utility concerns?

Therefore, I will once more request the hon. Finance Minister to consider the whole question from an unbiassed point of view and see whether he cannot by giving differential voting rights and curtailing the voting rights of all large shareholders permit the small shareholders to take active interest in the management of the company and whether he does not think it proper that persons who are not domiciled in India or ordinarily resident in India should not have voting rights in companies which are of national importance such as transport, etc. Therefore, I will pres^ my amendment.

SHRI JASPAT ROY KAPOOR: I will deal only with my hon. friend. Mr. Bhupesh Gupta, of course, with his amendment. Somehow I have developed a strong fancy for him because of the quaint way in which he places himself. I should think that we should be obliged to him for having moved this amendment and some otier amendments of this nature for. thereby he exposes the working of his own mind and the working of the mind of the party to which he belongs.

SHRI BHUPESH GUPTA: Can you ?ee it?

SHRI JASPAT ROY KAPOOR: Well, I see it in all its loathsomeness. How ever loathsome the sight may be, we still appreciate Mr. Gupta's frankness. What is it that this amendment sug gests? It suggests that we should deprive every foreign investor in this country of the right of voting excepting such foreign investors who have betrayed the interests of this country and have gone away to Pakistan regardless .....

SHRI BHUPESH GUPTA: Are they traitors?

MR. CHAIRMAN: I do not think it is necessary to talk about it.

SHRI JASPAT ROY KAPOOR: It is very necessary.

MR. CHAIRMAN: No, it is not.

SHRI JASPAT ROY KAPOOR: In this amendment, Sir, ...

MR. CHAIRMAN: He has talked about nationals of Pakistan.

SHRI JASPAT ROY KAPOOR: No, Sir. He talked about such persons who were formerly residents of India —India, of course, as it is today—and who have gone away to Pakistan. His amendment suggests that such per sons who are evacuees should have the right of voting, but not even the original residents of Pakistan mean ing thereby_____

SHRI BHUPESH GUPTA: Many Hindus, incidentally, in East Bengal have properties in Calcutta. He should know it. What can I do with such ignorance?

SHRI JASPAT ROY KAPOOR: Will he please read his amendment again?

SHRI BHUPESH GUPTA: Yes.

SHRI JASPAT ROY KAPOOR; It makes an exception in the case of

those persons who are Pakistanis or nationals of a foreign country, but of Indian origin. Now, a Pakistani of Indian origin is entitled to have vot ing rights here. Now, 'Indian origin' in the present context of things means one who was a resident of India as it is today and who has now gone away to Pakistan. The implication of this is that if the late Mr. Jinnah were alive today—may his soul rest in peace—he would have been entitled to the voting rights.....

SHRI BHUPESH GUPTA: No, no.

SHRI JASPAT ROY KAPOOR: It is, of course, very inconvenient for my friend, Mr. Bhupesh Gupta who may be every now and then .....

(Interruptions.)

MR. CHAIRMAN: Order, order.

SHRI JASPAT ROY KAPOOR: But on some occasions, he should exercise a little restraint on himself. It means very clearly and I am sorry if he is being exposed too much, he does not relish it, but this is as it is. If the late Mr. Jinnah were alive today, he would have had all the rights of a shareholder, because he would have been a Pakistani of Indian origin.

SHRI BHUPESH GUPTA: I did not say that.

SHRI JASPAT ROY KAPOOR: But Gaffar Khan, who is an original Pakistani, but not a Pakistani of Indian origin, cannot have those rights. This is the clear, unambiguous implication of this amendment.

SHRI C. D. DESHMUKH: May I point out that 'Pakistani' stands in a separate category irrespective of origin and in any other case, a national of a foreign country but of Indian origin?

SHRI JASPAT ROY KAPOOR: No, Sir. This is how it stands. If I have forgotten.....

(Interruptions.) 79

MR. CHAIRMAN: Order, order. The Finance Minister has explained what Mr. Bhupesh Gupta means and these two people are agreed. You are opposing both of them.

SHRI JASPAT ROY KAPOOR: I know a little more of Mr. Bhupesh Gupta and his mind than my friend, the Finance Minister.

MR. CHAIRMAN: Do not talk about his mind.

SHRI JASPAT ROY KAPOOR: This is how it stands. I would be glad if he now further amends it. But you might be pleased to read the amendment which says "That at page 50, line 16, after the word 'shall' the words 'unless he or she is a foreigner other than a Pakistani or a national of a foreign country but of Indian origin'." There is no comma after 'Pakistani*. If there were a comma, it would give that meaning.

MR. CHAIRMAN: We want a comma.

SHRI JASPAT ROY KAPOOR: Even if that were not his intention—I am not prepared always to take him at his word so far as the intention is concerned. But if that be his intention, I fail to see how or why he should have particularly great affection for the Pakistanis and not for the Ceylonese or for the Burmese who are living close by. If we want to show any special regard for our neighbours, we should show this regard for all citizens of neighbouring countries. Sir, I see no reason why this should be accepted. What will be the result of the acceptance of this amendment? The simple motive, is that foreign capital should be scared away. Now this point was debated at considerable length yesterday and I do not want to waste the time of the House by repeating those arguments. But it is necessary, in the interests of the country, to have foreign capital subject, of course, to any restrictions which the Central Government consider it necessary to impose in the interests of the country.

[Shri Jaspat Roy Kapoor.j But the motive behind this is to scare away all foreign capital and I particularly United Kingdom capital.

Throughout his speech, he was , referring to foreigners in general, but j to the United Kingdom people in J particular. The United Kingdom seems to be constantly haunting him. | But, Sir, we find that if it is not a j care of the United Kingdom

, and it is a case of U.S.S.R. they would perhaps have not only no objection, but they would, perhaps, give such foreign assistance special concession. May I, in this connection, read out a portion of the pamphlet to which I made a reference yesterday, entitled "Commu-' nist Party and problems of national reconstruction"? On page 31, they say—this pamphlet has the impress of all the sincerity of Mr. Bhupesh Gupta and it appears it has been written by him—"Faced with such realities and guided by their urge for capitalist development, the Indian ruling class and its planners have begun re-formulating their approach and have already given some indication of a new orientation." Beautiful sentiment! "The Government's agreement with the Soviet Union for the building of a steel plant in the state j sector, for example, represents a sig- I nificant departure from the earlier abject dependence on the British and j American imperialists for capital goods and technical know-how." Sir, as I have read it and as I look at him, I find a glow of jubilation on his face. Although he would have no objection to associating freely with the U.S.S.R., but if it is a case of associating ourselves in country's interests, with any other foreign country, he takes serious objection to it.

Sir, that being the case and these being the facts, I think we should not touch these amendments even with a pair of tongs and reject them most unceremoniously.

SHRI C. P. PARIKH: Mr. Chairman, these two amendments go to the very root of the formation and the principles under which joint stock companies are formed. As regards the first amendment of Mr. Bhupesh Gupta, it was sufficiently discussed yesterday, I mean, the principle of it. He said yesterday in amendment No. 17 that foreigners should not be shareholders in this country. That was rejected. Today he brings forward another amendment that they should not have voting right. He forgets there are existing shareholders in the country, as well as future shareholders that may come in. I do not want to repeat the arguments which I advanced yesterday, because he has very well understood them as he never interrupted me yesterday which he usually does.

In this connection, I want to bring in a few points. Foreign capital can come into India only under the licensing system which has been laid down for industrial development. If our nationals are unable to promote any industry then only foreigners will be allowed to have any industry in the country. Another condition is that 51 per cent, of the shares in most of the cases will be in the hands of Indian nationals. These two conditions are there.

Then technical training will have to be imparted to Indians. That is the third condition. Then there is the' Capital Issues Control Order. All these conditions are there. I do not want to repeat my arguments. First of all he wants to create a nervous feeling among foreigners in this country. That is his object. He has no sympathy with those investors, from whatever country they come to invest their capital here.

Now, Sir, as I explained yesterday, we require huge capital for our industrial development. Over and above, we require machinery as well as technical skill, and as I pointed out, machinery cannot be handled by us in any way we desire. Many machines have been installed but, if they go out of order, they cannot be restarted unless we call in foreign aid for that. Therefore, shareholding is required in order that their capital is invested

and we want that capital to remain invested in order that our progress in mechanical and technical skill and technical know-how does not suffer.

Sir, the main thing is that our industrial development is very small, although it may be big looking to the progress that we have made in five years; but we have to make still much faster progress. On that account we want to create confidence among investors outside that India is a safe field if they come here on our terms, which are such that they are not able to exploit our country against the national interest.

Now, Sir, I will come to the amendment of Mr. Kishen Chand. That also I am unable to understand how it is brought forward in the way in which it has been. He wants to convert a majority into a minority. He wants to give the minority control over the majority. How can this happen? About co-operative societies, as he pointed out yesterday, it may be a different thing. But what is the progress of co-operative societies in this country? The progress of co-operative societies has been thoroughly reviewed in the Rural Credit Survey Report where it has been said that unless the State participates and promotes the co-operative societies and partakes share capital, if necessary, to the , extent of 75 per cent, till then the growth of co-operative societies will be retarded. That point has been conveniently forgotten.

Then my hon. friend brought up the point about the Reserve Bank. Many Members might not be aware of what was happening when the Reserve Bank shares were floated. The Reserve Bank was an institution entirely controlled by the Government as regards shareholding. He conveniently forgets that the public were not issued all the shares that they dernanded. Also in matters of allotment the number that could be allotted' to any shareholder was limited.

[MR. DEPUTY CHAIRMAN in the Cha'ir.]

When we are talking about the voting rights, we forget about the equity capital and the persons who have taken risks. They should not be at the mercy of those who want to take advantage of that. I will give you an illustration. We have shareholders' meetings oftentimes, and persons holding one or two shares each come to the meeting, about 50 or 100. What they ask is, "You give us cloth at nearly the market rate or less than the market rate, and the other shareholders will then suffer." Does it imean that the capital resources of those who have invested more should be exploited by the minority by such argument? I think he has to understand that the policy of industrial control has to remain and that those who take risks should not be denied the benefit of the risk capital that each one has invested. He has said:

> One share, one vote; 10—100 shares, ten votes; in excess of 101 shares one vote for every hundred shares;

but he conveniently forgets that in the country there are many companies whose paid up share value is Rs. 10 only. There are ten lakh shareholders and, therefore, about 10,000 shareholders will have control over 9,90,000 shareholders. That is what his amendment comes to.

SHRI KISHEN CHAND: Now all people have got control over them.

SHRI C. P. PARIKH: He conveniently forgets that in clause 408 the Finance Minister has taken all measures in his contemplation in order that the minority is not oppressed or those who are holding lesser number of shares are not oppressed. These, I think, will protect the minority. Therefore, this amendment in my opinion should be rejected.

DR. W. S. BARLINGAY (Madhya Pradesh): Mr. Deputy Chairman, in spite of what has fallen from the lips of hon. Mr. Parikh, it seems to me that there is a good deal in the amendment of Prof. Kishen Chand. After all, it seems to me that there is no

[Dr. W,. S. Barlingay.] necessary conflict of interests between the various shareholders themselves. Here there is no real contrast between minority and majority. The interest of all the shareholders tends to be the same. What I suggest is that a vote must approximate to a reasoned judgment. There is no necessary conflict between the interest of the minority and the majority. Tht activities of all the various sections of voters are directed towards a common end. Clause 87 (1) (b) says: —

> "His voting right on a poll shall be in proportion to his share of the paid up equity capital of the company."

Of course, everybody knows that that always is the case in the case of companies. But after all, are we not revolutionising the very process of the company meetings and why should we not do it in such a manner that reasoned judgment of any issue will be the result. I, therefore, suggest that there is a good deal in the amendment of Prof. Kishen Chand. I may not repeat his other arguments, his argument on the basis of what happens in the Reserve Bank and so on and so forth, but I do suggest, Sir, that there is something good in that amendment. It has got to be looked into very carefully.

SHHI S. N. MAZUMDAR (West Bengal): Mr. Deputy Chairman, Mr. Kapoor has characterized the amendment by Mr. Bhupesh Gupta as "loathsome" but after listening to the speech by him, I can only say that the attempt to distort the point of view of a political opponent is revolt, ing and nauseated. Mr. Kapoor said that Mr. Bhupesh Gupta's amend-ment has revealed the working of his mind, but the speech of Mr. Kapoor also gives a revelation of the working of his inner mind. It was a surprise to me that his outlook is so haunted and dominated by communa-lism that he forgets the people of Pakistan. To give some facilities to the people of Pakistan is some sort of enormity of monstrosity to him.

We have advocated this because in spite of the fact that India has been artificially divided, the people of India and Pakistan have close ties— economic ties, cultural and historical ties—and it should be our endeavour to develop all these common ties so that our hearts may beat in unison and most of the bitterness that is now prevailing may be dispelled, so that our energies may be diverted to more constructive and peaceful lives.

SHRI JASPAT ROY KAPOOR: Must not our attitude towards Nepa-lese be the same? Why exclude Nepa-lese?

SHRI S. N. MAZUMDAR: Nepal and Pakistan are not on the same footing. And when I say that our feelings towards the people of Pakistan should be such and such, that does not mean that we have to cherish a sort of hostile feeling towards the people of Nepal.

Secondly, Sir, Mr. Kapoor has again distorted our point of view, not only the point of view of Mr. Bhupesh Gupta, but our point of view, regarding the question of foreign capital. Sir, it was made very clear on several occasions on the floor of this House yesterday that we are for foreign assistance, if it can be had without any strings attached to it. It can be from any foreign country, including the United Kingdom. We are not against it. And the portion which he has read out from the booklet of the Communist Party has been misinterpreted and torn out of the context. Yesterday also we made it clear that the Soviet assistance which has come in the form of the steel plant is not the Soviet private capital investment. We make a distinction " between the ™*"i two. Hon. 'Members are open to criticise our point of view, but let them not put their own interpretation into our mouth and then criticise it. Let them have the honesty and the frankness to take what we say as it is and I then criticise it.

Now, Sir, as regards this question I of foreign capital, it is true that it was

discussed to some extent on the floor of the House yesterday—why yesterday only? We were discussing this question on so many occasions—but unfortunately there has been no opportunity to discuss this question in a thorough manner. And I wonder, Sir, why the Government has not undertaken a study or an enquiry into the question of how foreign capital is working in India. It is now 7 or 8 years since the Government's policy about foreign capital was enunciated. Since then there have been many complaints from many sides that foreign capital has flowed into the consumer goods producing industries, flowed into industries where indigenous capital and initiative is forthcoming. Sir, this thing is against the declared policy of the Government. There have been complaints from industrialists and other sections that foreign capital, at least in some industries, is working to the detriment of our national interests. And I remember, Sir, that when this question was raised by me on a previous occasion, the Minister lor Commerce, Mr. Kdrmar-kar, gave a challenge to me and said, "Let us study this question thoroughly, in a scientific and objective manner." And I accepted that challenge. But the Government is completely shelving this question. This is not a demand which has been raised only by us.

Now, Sir, coming to the other point, yesterday, the hon. Finance Minister developed a new argument and said that we should allow foreign capital investment here so that they may have some stake, and if we do not give them that facility, the foreign firms which have the monopoly of technical know-how, will give us wrong advice. Sir, I think it is a very strange and distorted conclusion from the findings of the Public Accounts Committee. If that Logic is continued, then it means that in every major project that we plan in India, the foreign capital will have to be given a stake. That is the logical conclusion. As I said yesterday, this conclusion, to my mind, cannot arise from the findings of the Fuouc Accounts Committee which were referred to by the hon. Finance Minister yesterday. And in this connection, Sir, I can assure him tnat in the conditions of the world today, even if foreign private cdpital is not given any stake in this country, that will not mean that we cannot get foreign assistance. And I would like to make it quite clear. Sir, that when we, in our booklet, or in our speeches, mentioned any change in the Government's policy that they are i taking help from the Soviet Union, we did not mean that they should take help from the Soviet Union exclusively. We simply meant that the Government should recognise the existence of two world markets and take advantage of these markets and get assistance on beneficial and favourable terms. And we are very much pleased to see that the Government is, to some extent, taking that advice and is turning for capital equipment and other resources to the other market incontrast to its previous policy of completely depending on the capitalist market

Now, Sir, as regards the capitalist market, I hope the Finance Minister will bear me out and will agree—I do not know whether he will agree or not, but I will request him to do so—that the big capitalist countries, today, have to export their capital, either in the form of loans or in the form of machinery and other capital equipment, to other countries. They cannot subsist without that. If the flow of foreign capital is checked frere, those capitalist countries, in order to maintain their high rate of profit, will export their capital in another form. If this comes in the form of capital equipment, there is no objection to take advantage of it. And he need not be apprehensive that it will not be forthcoming, if we take certain measures here, the measures which we think are necessary for our national interests. Now I do not want to go into the whole history of foreign capital. If I speak only for five minutes or so, that will not convince the hon. Members. But I have given

[Shri S. N. Mazumdar.] them a very good suggestion. Let [them make an attempt to study the j whole question objectively and find out how foreign capital has worked from the year 1947 to the year 1955.

.With these words, Sir, I support this amendment.

SHRI RAJENDRA PRATAP SINHA (Bihar): Mr. Deputy Chairman, I ! wish my hon. friends, the capitalists and the industrialists, as also the ! Finance Minister could appreciate the spirit and the genesis of the amendment which has been moved by my ! hon. friend, Mr. Kishen Chand. I am very happy, Sir, to find that the fairness of his argument and also of the spirit of this amendment has been accepted and appreciated by my friend, Dr. Barlingay, even though he does not sit with us. And I am sure, Sir, that in time to cotme more and more of the Congressmen will appreciate the force of the argument advanced by my friend, Mr. Kishen Chand.

Now the question is why such an amendment has been brought forward for the consideration of this House. A point was raised by my learned friend, Mr. Parikh, with regard to the question of minority and majority. He says that the minority will dominate the majority. But what has happened till today? The majority has persecuted and exploited the minority. This is an obvious fact in the company administration, Sir, which even the Finance Minister has accepted, and that is evident from the fact that so many clauses have been introduced in this Bill in order to stop persecution by the majority of the minority. Had there been no persecution by the majority, in the companies, of the minority, these clauses would not have found a place in the Bill itself. Therefore, if such a demand is made, it Is there because the majority has abused the powers which we have ! £iven to them. My friend was talking about majority and minority. ' Majority of what? He is always ! thinking in terms of majority of money that a person may possess but things are vastly changing, the society is revolutionising. We cannot equate money and men at par. .

DR. W. S. BARLINGAY: Intelligence.

SHRI RAJENDRA PRATAP SINHA: I am coming to that. Therefore the society, the State and the Finance Minister will one day have to recognise that in a company the shareholder and the share will not be treated at par. I mean to say that the number of people composing the company— who are members of the comoanv will have to be treated equally. All the people, all those comprising a company will have to be treated equally. Because you hold 51 per cent, of the shares—maybe by two persons—these two persons cannot dominate 49 per cent, shareholding, maybe, by 40 persons holding one share each. This will have to go—may not be today but tomorrow or the day after and I think, if you are anxious to maintain your control over the company management, the only way by which you can do is, in the future, by fair-play and efficient management. If you are honest, efficient and fair, the 49 per cent, will not turn you out but will retain you to manage the company. Therefore the best safeguard for your continuing to manage the company is not your Share-capital but your capacity to manage and to conduct yourself honestly and fairly.

There is another point which I would like my hon. friend there to appreciate. He has talked about risks. Risks of what? He says that two persons have risked all their money in the company and therefore their interests should be regarded at a higher level than those of the other people. Others have also risked. Supposing I have got only Rs. 10 and I have invested that in one share. My risk so far as the money is concerned, is just the same as that of the one who has invested Rs. 1,000. It does not make any difference. Then there are thousands of labourers who are working there. There are other peor/le who die

in the factory working and their families are living—all these conceptions will have to be taken into consideration. It may not be done today by the hon. Finance Minister but tomorrow they will have to be taken into consideration. Therefore the risks will have to be equalised. The risks of all the people will have to be considered at par including the labour —all those who constitute the company. My conception is that a company consists both of capital and labour. Their interests do not vary and those people should be put in charge of the company who are capable, efficient and honest in managing the company. If you want to develop the form of management envisaged in this Bill—the Secretary and the treasurer form of management—this can only happen if we accept this amendment. In the long run, ultimately that form of management will develop only if the amendment proposed is accepted. Otherwise the big people, the managing agents, who are there today will continue and control the companies.

SHRI H. C. DASAPPA (Mysore): Mr. Deputy Chairman, I would much rather prefer to deal with the amendment of my hon. friend, Mr. Gupta, first. This question of voting right is a thing which is incidental to the ownership of shares. I am afraid he has introduced a foreign element into this particular chapter and particular clause by referring to the foreigners who may possess shares. When a person becomes a member of a company and purchases shares, he must have some rights as a shareholder. It is a necessary concomitant of the right of possessing a share. Now if a person is to be disenfranchised from exercising his rights as a voter by virtue of his possessing the share, I am afraid, it is just the same as saying that no foreigner can own a share, or should ever be permitted to own a share. I do not think that a provision like this exists in any set-up of companies in any part of the world.

SHRI KISHEN CHAND: In Reserve Bank.....

SHRI H. C. DASAPPA: I am not ! answering Mr. Kishen Chand. I am only answering now Mr. Bhupesh Gupta. The discussion also, I may ;ay, has been extended far beyond the frontiers of this chapter relating to voting rights. Both my friend Mr. Gupta and Mr. Mazumdar have been talking of the existence of forei?" companies functioning in this land and the way in which they have been working to the detriment of the country. That, I believe, comes under Part 11. There is a separate chapter for that and those clauses are 594 and onwards. I don't know why my friends both Mr. Mazumdar and Mr. Gupta, who, I expect, have a very clear mind in this respect, should introduce all ' \hose considerations- in determining what right a shareholder should have. So I feel that absolutely it is irrelevant for the consideration of this particular clause here.

As regards Mr. Kishen Chand, I must say that it is a radical suggestion, a thing which has not been accepted as a necessary part of the functioning of any company law.

DR. W. S. BARLINGAY: That is no ground for rejecting it.

SHRI H. C. DASAPPA: It is not. What I say is, it requires a great deal more of thinking than a mere summary consideration here at such short notice. There may be something to be said in favour of that but it must also be seen.....

SHRI V. K. DHAGE: You can keep over the clause.

SHRI H. C. DASAPPA: The moment we accept that suggestion or we incorporate it in this, it means a terrible danger of thorough dislocation in all companies. We simply don't know what a small body of shareholders mustering themselves strong at a meeting could do in the circumstances of the case if they choose ts come together with a previous intent of upsetting the existing order *rit* things.

DR. W. S. BARLINGAY: May I ask j a question to my hon. friend? When the concern is being managed by a managing agent, how can there be any i dislocation? There will be no dislo- I cation whatever.

SHRI H. C. DASAPPA: NO, no. It is just in the company that is being managed by the managing agent that the trouble will arise. And the trouble can be more aggravated because every action of the managing agency can be negatived or neutralised by a body of shareholders who are in a hopeless minority so far as shares are concerned. I may make the posi tion clear by means of an illustration. Suppose there are a hundred share holders holding single shares. And you have also a body of a hundred shareholders owning about 9,000 or 10,000 shares, each of them having 90 or 100 shares. If my hon. friend Mr. Kishen Chand's argument is to be accepted, then what happens is, those 100 shareholders holding single shares will muster strong at a meeting and upset the entire arrangement of the managing agency. Sir, it is so obvious to me that I do not think that it needs any argument. Of course, I am not saying that a proposal of that kind need not be considered at all, but it has to be.....

SHRI BHUPESH GUPTA: That is to say, it is the purse that counts and not the shares.

MR. DEPUTY CHAIRMAN: Order, order.

DR. W. S. BARLINGAY: Will they work against their own interests?

SHRI H. C. DASAPPA: Sir, my hon. friend Dr. Barlingay asks me the question whether they will work against their own interests. But I would ask him why he thinks that those with a single share each will have a greater interest or a greater stake in the concern than those who possess a hundred or thousand shares each? It may be that the shares are confined in the hands of a few. But who will have greater interest in the successful functioning of the concern which is a common concern? These hundred persons may lose at the most Rs. 1,000 in all, if they possess a Rs. 10 share each. But the other twenty or thirty persons who own greater number of shares each, will stand to lose a much greater sum, maybe a lakh of rupees. Why should my hon. friend think that the few people who have a larger stake in the company will work against the best interests of the common concern? If anything, psychologically considered or even from a commonsense point of view 'the larger shareholders will have a greater risk and a greater interest in the concern. That is the natural thing to expect.

SHRI KISHEN CHAND: In that case. my hon. friend should oppose adult franchise also, on the same ground.

SHRI H. C. DASAPPA: But why should anyone confuse the issues? So far as adult franchise is concerned, that is a different thing altogether. But I am afraid it will take me a long time to convince my hon. friend Mr. Kishen Chand.

MR. DEPUTY CHAIRMAN: No, you need not dilate on that point.

SHRI H. C. DASAPPA: No, Sir. I will not dilate on that. It is quite obvious that those who have invested greater sums in the concern will be more directly interested and they will have a greater stake than individual shareholders who may choose to invest small savings. My fear is that this is too radical a suggestion for u* to accept on this occasion.

SHRI SHRIYANS PRASAD JAIN: Sir, I rise to oppose the amendment moved by Shri Kishen Chand. If that amendment is accepted, then I feel it will strike at the very root of the capital formation and the formation of all joint stock companies. No

joint stock company will be formed, [once this amendment is accepted. As j for present companies, those that exist now, the amendment will create chaos j and dislocation and there will be great disturbances in the administrative | field.

I may inform my hon. friend, Mr. ! Kishen Chand, that it is not the individual but it is the money that brings in the vote and we cannot apply the analogy of political administration or the administration of political parties in the case of the" administration of the Board of Directors which is quite a different matter. My hon. friend wants those who have comparatively a lesser stake in the company to be put in charge of its affairs and yield greater power over those who have higher stake in it, who would like to put his money in the hands of such people, however innocent they may be, and to put them in charge of the company and when he who puts in more money will have no say in the matter of the administration of the company? Nobody will. And as I said, this will stop all future company formation.

, Dr. Barlingay and others have said that the interests of all the directors "are common. I perfectly agree with that statement. But why should it be argued that he who has a lesser stake in the company should be in charge of the administration? I would point out that the person who has a higher stake will safeguard not only his own interests but will safeguard the interests of the minority shareholders also, since the interests are common. And when there is oppression of the minority by the majority, there are so many provisions in the Bill by which they can go to the Government or go to court and get their grievances redressed. The proposed amendment, instead of redressing any grievance, will only, put in difficulties in the way of company's formation and also in the administration of the companies.

Dr. Barlingay stated that there will not be any dislocation where the companies are managed by managing agents. But my hon. friend seems to forget that besides the managing agents, there are the Board of Directors who according to certain provisions guide the managing agents in the formation of the policy of the company and in certain other matters. When the minority shareholders have more right in the matter of votes than the majority shareholders, then the former will be elected to the Board and these are the people who have less stake in the company, how can my hon. friend say that there will be no chaos or dislocation? I cannot understand his argument.

On these grounds, Sir, I oppose the amendment.

SHRI V. K. DHAGE: Sir, I do not know why our friends on the other side should be so apprehensive of the effects of the amendment that has been given notice of by us.

SHRI SHRIYANS PRASAD JAIN: It is not the apprehension, but the impracticability of the amendment that I spoke of.

SHRI V. K. DHAGE: It will be noticed that under clause 87(a) every person shall have one vote. It is only in the case of a ballot being demanded that the number of votes can be according to the capital that one possesses. Therefore, ordinarily speaking, the provision is that each person shall have one vote. This principle is recognised so far as the Co-operative Corporation Law is concerned. There, every person, irrespective of the capital he is holding, is given only one vote when he is present. There is one »estriction in the case of the Cooperative Corporation Law, and that is with regard to. the possession of capital by one single person, which, I think, is about 10 per cent., and not more. No person can possess more than 10 per cent, of the capital issue. Applying that analogy here, in case a poll is demanded, it has been provided in our amendment that he shall have hundred votes, which is the maximum. That is to say, he

[Shri V. K. Dhage.] will have to take in all, about 10,000 shares or a little more, 10,010 or 10 less than 10,000, something like that. That being the case, there need be no apprehensions by a person possessing more shares, that is to say, holding blockholdings. The provision that is suggested here is based on the same kind of -principle as in the Co-operative Corporation Law. While there is limitation on the possession of capital there is limitation on the power of voting here. That has Deen restricted to 100 votes; you ip.M.$_{ma}$y$_{)}$ jf y$_{OU}$ like, increase the number from 100 to 150. I do not mind that but a limitation on the number of votes that a person can exercise has certainly a healthy influence without in any way exercising any kind of an oppression on those who hold block shares.

SHRI C. D. DESHMUKH: Mr. Deputy Chairman, I oppose both these amendments. If the second one is approved, then, I think, there will be an end to joint stock companies as we know them; if the first one is accepted, then there will be an end to foreign investment. I shall deal with the second one first. It is not possible to postulate in advance what precisely the effect is going to be in any given company. Maybe in some companies the majority may not turn into a minority; in other cases that result might follow where it is a matter of taking a poll. But the fact would remain that those who have a financial stake will not be able to exercise voting powers proportionate to those financial stakes and that is at the basis of the scheme of the whole Bill. Now, hon. Members might ask, "Why should we have this law for the joint stock companies and a different law for co-operative credit societies or for some other special form of companies? Or, why did we have a special law for the Reserve Bank?" So far as the Reserve Bank is concerned, in regard to both the amendments, the answer is a very simple one. The Reserve Bank was, even when it was a shareholders' bank, expected to be the main assistance to Government in the direction of the country's monetary credit and economic policies. It was, therefore, felt that even in its constitution it should reflect a widebased democratic spiril and that was why when shares were issued, not more than five shares were issued to any single individual while at a latter date a limit was placed on the number of votes that could be cast by any individual shareholder. It was not a question of expanding the Reserve Bank or of allowing the Reserve Bank to s art other industries; it was just an institution by itself. Indeed, it was regarded as reasonable that trafflcing in shares should not be permitted; even if they were quoted on'the Sock Exchange, the range of variations was very small. The profits were limited according to a formula which was given in a schedule to the Reserve Bank Act of 1935. Finally, the surplus profits— the dividends were restricted—were to go to the S'ate. Therefore, the ti-ansition from the shareholders' Reserve Bank to the nationalised Reserve Bank was so smooth that hardly anyone noticed it and today, of course, it is entirely an ins'itution owned by Government. For the same reason—although I am now on the second- point—it was considered desirable not to allow foreigners to hold shares there, especially because the operations of the Bank, went to the heart of the fiscal, and monetary management of the country; that way it was permissible to keep foreigners from that particular field. Therefore, the Reserve Bank is essentially a case apart.

Taking the co-operative law, we all know that co-operation is the union of small men who have not got the power or money or who have not got individual credit-worthiness but whose credit-worthiness consists in their union together. That is why a limit was placed on individual shareholding. It has its own laws. It is regulated not by the Company Law

but by the laws passed by ihe various State Governments.

There are two Central Laws in which, we have some limit on the voting rights and to which hon. Members have not referred but to which. in all fairness, I ought to refer. One is the Banking Companies Act. In the Banking Companies Act, under section 10(4), voting rights of any one shareholder should not exceed 5 per cent, of the total voting rights of all shareholders. There isx some kind of limit. Here again, there is a reason. The banking companies are essentially credit institutions. We do not desire any further promotional activity, so to speak, in the banking field and much of ' their working capital comes not from shareholders but from depositors, as I had occasion to point out in connection with some other debate, and about ten times as numerous as the shareholders. Therefore, the Shareholder does not predominate so much, or his fortunes or his reactions are not quite so important as in the case of an ordinary joint stock company.

Then comes the Insurance Act. Under section 6B(7), after 1950, no one can hold more than 5 per cent, of the equity capital. Here again, it is well-known that the capital of insurance companies is very small as compared with the funds of which the management has command. Much of the fund of the life insurance companies—it is called the Life Fund—really belongs to the policy-holders who again are far more numerous than the shareholders. Where, therefore, there is ? good reason for a distinction of making some limit, we do so but, by the same token, since we have to attain an entirely different object, namely, rapid industrial expansion in all directions, we should avoid putting any such limit on the total holding or the total voting power. That is the scheme on which, as I said before, this Bill is based.

1 SHRI V. K. DHAGE: May I interrupt? Our objective in putting forward the amendment is not to curtail the possession of capital; it is only to curtail the voting power.

SHRI C. D. DESHMUKH: I understand that but if you curtail voting power, you will automatically curtail the capital. I do not know whether hon. Members have any share themselves and to what extent they support this structure of joint stock enterprises. It would be presumptuous on my part even to try to guess but all I can say is that they seem singularly dispassionate and indifferent in this matter. 1 can only judge from my own reactions and I should certainly object to putting a lot of money which would be as honestly earned as the money belonging to hon. Members, in j any venture where I am told that I shall not exercise voting powers beyond a certain limit. I am quite sure that that reflects the possible reaction of the ordinary citizen. It is only a matter of judgment, but I am quite convinced that if we were to introduce a provision of this kind into this Bill, then we might say good-bye for ever to any hopes of expansion of the private sector. Now, if that is a consummation devoutly to be wished for, as it possibly is in the eyes of hon. Members opposite, then obviously we cannot argue about the matter because we have got quite different ideologies. We have, that is to say the country has deliberately made its choice and it is that the private sector should be enabled to operate to its maximum capacity and efficiency. I am quite convinced that a provision like that will impede the legitimate progress of the private sector.

Now, Sir, I come to the first point in regard to the voting rights of the foreigners.

I agree with the Leader of the Communist Party that this i_s not a violent gesture, but, in my opinion, it is a shocking gesture.

SHRI BHUPESH GUPTA: Why should you be shocked?

SHRI C. D. DESHMUKH: I am amazed at a suggestion like that. Obviously he has in mind Rs. 350 crores. Whatever it is, that is the book value. The actual value is very much more of the investments of foreigners in this country. Now at one fell sweep he suggests that all of them should be deprived of their voting rights. I say it is shocking, such conduct in international relations,—I do not say international law—because that subject is not very familiar to me but I am well aware of what is regarded as good international conduct and I can think of no country which would even entertain a thought of this kind, that *is* to say, by just a stroke of the pen, so to speak, to take away the voting rights of people who have such a large stake here. Now that is due to historical reasons.

(Interruptions.)

1 cannot deal with these mutterlngs Irom the opposition bench.

I think there is a historical explanation for it. At one time we all opposed it in a sense because we felt that economic power was joined to political power. Now the situation is entirely different. The question was asked why we are now saying something different. The answer is very obvious. Today we are an independent country. We are captain:; of our own souls and therefore we can deal with this situation, and if there ia any friendly foreign country coming with capital to work in this country and ready to observe the laws of this country in regard to joint slock enterprise, then we welcome their assistance. We are only st the beginning of expansion of our industries and maybe^en years time we shall not even recognise the present picture. The total capital at work might be several times large and what appears to hon. Members opposite as something very terrible may then shrink into its proper perspective. In any case I do think it very important that we should adhere to recognised | Codes of conduct in international re- I lations. Now that is so far as exist- 1 ing investment is concerned.

So far as future investment is concerned, I have no doubt whatsoever that there will be no future investment. Why should anyone put his money here in risk-bearing capital, equity capital, if he knows that'is not going to be able to exercise any sort of control?

Now one hon. Member said that by necessity, by virtue ot necessity, other nations have to Invest their capital abroad. Well, it may be true in the sense that there is a surplus of capital in those countries. That would be a truism. There are certain countries which engender a surplus of capital, there are other countries which absorb that capital. That is how this traffic goes on. But there is no reason why we should proceed to the next step and imagine that all these billions of dollars worth of capital is only waiting on its tiptoes to enter India.

I think one hon. Member who spoke here—I think it was Professor Ranga —gave figures. He referred to a publication and said billions of dollars have gone into Canada, into South America, into the Middle East and all over the world. Now we are concerned only with our needs of expansion and it is well known that we need capital. Therefore it would be foolish to hinder this process of inflow of capital —as it is I do not believe that the conditions are any too favourable. For that reason we have not gone out of our way to extend special incentives to the foreign investor. As one hon. Member pointed out, there is also a very great screening as to the enterprise in which we receive foreign capital. Now, subject to those safeguards, as I said the other day, I really do not see why we should take any step which would discourage the entry of foreign capital. Now there is room for difference of opinion as to whether you should encourage the entry of foreign capital without limit, whether that process is free of danger and whether any alternative methods also are free of danger or not. Now the first point I make is that the world

is not showing such an excessive eagerness to throw its capital into India. We have to wean it almost from people who are either nervous or reluctant or unfamiliar with th

e scene. I gave the figure the other day, about 131 crores, in five or six years, which is no great amount considering our needs. Therefore we have to consider this particular point as to whether equity capital is the best form in which capital need enter into the country. Now at some stage or other we may take the view—I do not say that that stage has been reached today—but supposing at some future time we find that about 75 per cent of the total capital at work in this country is held by foreigners, I have no doubt that we shall have to» take a view of the situation and, may be, we will have to take some action. But such a situation is not likely to arise so far as the exercise of economic power is concerned. I do not think there is very much of a difference, it is of course a truism to say that U.S.S.R. has no private capital at work in any other country. How can they? There is no private capital to my knowledge with all the instruments of production in the hands of the State. But I should not be overanxious to lay down as an axiom that if we receive export credits or if we receive long-term loans even because export credits are long-term loans which is the only thing that has been extended to us by some countries, but even if it is a long-term loan cases are known where the existence of that indebtedness has led to the spoiling of international relations between the two countries and I do not wish to quote instances, but instances are not unknown where pressure has been put on countries not for the sake of equity capital but for the sake of other payments.

SHRI S. N. MAZUMDAR: Foreign assistance without strings.

SHRI C. D. DESHMUKH: Well, I am trying to define what these strings are. I say that to call export credit not a string and to call equity capital a string is unscientific. In certain circumstances both could be.....

SHRI B. C. GHOSE: Strings.

SHRI C. D. DESHMUKH: .....em barrassing. I do not know about strings, whether they could be des cribed as strings, but they could be certainly embarrassing. But that situa tion is not likely to be reached for a very long time. *(Interruption)* I do not give in.

The next question is: Is there any proof that powers have been misused? There is only a statement, a bare statement to that effect made by the hon. Member. No proof has been given that foreign shareholders do, so to speak, cut their nose to spite India's face—I do not know of any instance. The only instance he has given is in regard to the Calcutta Tramways. Now, Sir, that is not a company, an Indian company at all, and therefore there is no question of foreign shareholders here exercising their rights against the wishes of the Indian shareholders and we are given to understand that the Indian shareholders were not in a majority. That is my information. If they are not in a majority, they have no right to complain. After all, if they happen to be foreigners and they happen to be in a majority, well, they take the view. Why should I imagine that they take a view which was against the interests of the country? It may not have been palatable to the citizens of Calcutta. That is another point. But, as I said, my information is that the Calcutta Tramways is a sterling company registered in the United Kingdom.

SHRI BHUPESH GUPTA: That is true.

SHRI C. D. DESHMUKH: If that is so, all that the hon. Member has said in regard to this company is com pletely irrelevant.....

SHRI BHUPESH GUPTA: Why?

SHRI C. D. DESHMUKH: ..... in regard to the point that we are discussing.

SHRI BHUPESH GUPTA: I mentioned the instance to show how they operate.

SHRI C. D. DESHMUKH: The shareholders are not here, the shareholders are in London.

SHRI BHUPESH GUPTA: Some are here.

SHRI C. P. PARIKH: Meetings cannot be held here.

SHRI C. D. DESHMUKH: The whole administration of it is there. The effective operation of the company is in England. We do not know their total capital, all that. That is there. Therefore it is not regulated by our Acts. Therefore, as I said, the example of this Calcutta Tramways is irrele- : vant. No other example has been given; no evidence has been furnish- I ed and therefore I submit that there | is no case whatsoever for introducing ! this revolutionary element in the | rights of voting of foreigners.

MR. DEPUTY CHAIRMAN: The question is:

. 30. "That at page 50, line 16, after the word 'shall', the words i 'unless he or she is a foreigner other than a Pakistani or a national of a foreign country but of Indian origin' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The j question is:

31. "That at page 50, for lines 19 and 20, the following be substituted namely: —

'(b) his voting right on a poll shall be calculated as follows: —

one share of paid up equity capital, one vote;

in excess of one share, one vote per ten shares up to one hundred and one shares;

in excess of one hundred and one shares, one vote for every hundred shares, subject to a maximum of one hundred votes'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 87 stand part of the

Bill."

The motion was adopted. Clause 87

was added to the Bill.

Clause 88 (Prohibition 0/ issue of shares toith disproportionate rights)

MR. DEPUTY CHAIRMAN: Thore is one amendment.

SHRI LALCHAND HIRACHAND DOSHI: Sir, I move:

32. "That at page 51, lines 19-20, the words 'or rights in the company as to dividend, capital or otherwise' be deleted."

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

SHRI LALCHAND HIRACHAND DOSHI: The only object to be achieved is, whenever there is difficulty, to facilitate finding equity capital by giving certain advantages to the equity shareholders whereby it would be possible to get equity capital easily.

[THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL,) in ihe Chair]

In this it is not intended to vary the voting rights. The voting rights will remain proportionate to the shares subscribed. What is proposed is an alternative method of subscribing to the equity capital. We have got different methods of management and we also want to provide different methods of subscribing to equity capital. And as 1 said the voting right is not in any way affected. There Rave been cases in the past where the

shareholders of equity capital are given advantages in different forms and thereby it has been possible to attract more capital to finance "the activities of the company. That is the only object in moving this amendment and I do hope it will be accepted.

SHRI B. C. GHOSE (West Bengal): On a point of order, what the hon. Member wants is in reference to equity capital and not preference capital. If it is equity capital, we have already adopted the definition of preference capital and equity capital in clause 85. What he wants to introduce in this clause 88 would convert it into preference capital. Preference capital under clause 85 is that, as respects dividends, Which carries or will carry a preferential right to be paid a fixed amount or an amount calculated at a fixed rate. Equity capital cannot be paid a preferential dividend. So the hon. Member should have started from clause 85 if he wanted to make any distinction in clause 88. Now. having adopted thp definition in clause 85, I am afraid we cannot do anything in clause 88.

SHRI V. K. DHAGE: The amendment is out of order.

1 THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) : There is no point of order in it. If you have anything, you may say that after he has finished his speech.

SHRI B. C. GHOSE: Then I withdraw my point of order. If a point of order is raised it has to be settled straightway. I will say what 1 want to say later on. I withdraw my point of order.

THE MINISTER FOR REVENUE AND CIVIL EXPENDITURE (SHRI M. C. SHAH) : Sir, I do not accept the amendment. We do not propose to give disproportionate rights so far as voting is concerned and also so far as dividend is concerned. No sort of disproportionate rights will be given to shareholders, with request to either voting or to dividend. That is the scheme of the Bill and we do not propose to accept any other scheme.

SHRI B. C. GHOSE: I should like to know from the hon. Minister whether with that definition in clause 85 it is possible to accept an amendment of this nature.

SHRI M. C. SHAH: When I say that I am not prepared to accept the amendment where is the necessity of going into this?

SHRI V. K. DHAGE: The question is not of his acceptance or otherwise. The question is whether it is consistent with clause 85 which has already been adopted.

SHRI M. C. SHAH: I do not accept it. That is all.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) : Mr. Doshi, what about your amendment?

SHRI LALCHAND HIRACHAND DOSHI: I would like to withdraw.

The amendment No. 32* was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): The question is:

"That clause 88 stand part of the Bill."

The motion was adopted.

Clause 88 was added to the Bill.

Clause 89 was added to the Bill.

Clause 90 *(Savings)*

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) : There is one amendment, No. 33.

SHRI LALCHAND HIRACHAND DOSHI: I am not moving *i{.*

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) : The question is:

"That clause 90 stand part of the Bill."

The motion was adopted.

*For text of the amendment *vide* col. 4220 *supra*

Clause 90 was added to the Bill.

Clauses 91 to 104 were added to the Bill.

Clause 105 *(Penalty for concealing name of creditor)*

THE . VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) : There is one amendment.

KAZI KARIMUDDIN (Madhya Pradesh) : Sir, I move:

34. "That at page 58, in lines 20 and 22, the word 'knowingly' iff deleted."

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) : The clause and the amendment are open lor discussion.

KAZI KARIMUDDIN: I have to submit that the word 'knowingly' is meaningless here because the positive act of concealment involves knowledge. Even if the word 'knowingly' is kept there, according to the definition of 'concealment' given in the Penal Code, it is no offence under section 415. An explanation is given that a dishonest concealment of facts is deception within the meaning of the section. If the word 'fraudulent' or 'dishonest' is used before the word 'conceals', it will have some meaning but 'knowingly conceals' and 'knowingly misrepresents' is meaningless. Therefore my submission is that the word 'knowingly' may be taken out and I may move a verbal amendment to add the word 'dishonestly' or 'fraudulently' before 'conceals' and 'misrepresents'.

SHRI M. C. SHAH: I cannot accept it, Sir. The effect of this amendment would be that even if there has been concealment unknowingly—he may not be knowing that he Has concealed something—he will be penalised. We are advised by the Law Ministry that this is quite all right and therefore we want to have it. If any concealment has been there unknowingly, we cannot penalise that man.

KAZI KARIMUDDIN: Can there be any concealment without knowing it?

SHRI M. C. SHAH: That is what we have been advised by the Law Ministry and I think as I said yesterday also we have to accept the advice of the Law Ministry in such cases.

SHRI V. K. DHAGE: May we know what is the advice of the Law Ministry in this regard?

SHRI J ASP AT ROY KAPOOR: Would you not have our advice rather than the advice of anybody else outside?

SHRI M. C. SHAH: Law Ministry is our legal adviser.....

SHRI J ASP AT ROY KAPOOR: May be anything, but it is Parliament which should be the final adviser .....

SHRI M. C. SHAH: Therefore, Gov ernment will go by the advice of the Law Ministry which has considered this question very, very carefully .....

SHRI BHUPESH GUPTA: On a point of order....

SHRI M. C. SHAH: Therefore we should accept that and that alone. The Member of Parliament may make certain interpretation of certain words. The Member of Parliament may say that this ought not to be there. The Member of Parliament has got a right to point out certain things. But what we usually do so far as the legal aspect of the matter is concerned is, we will be always justified in accepting the advice of the Law Ministry .....

SHRI JASPAT ROY KAPOOR: W* make laws, not they. It is for us to make laws according to the best of our wisdom. Even apart from the advice of the Law Ministry.....

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHAVI-AL) Order, order.

SHRI BHUPESH GUPTA: Madam, will you ask the Minister.....

SHRI M. C. SHAH: When I am standing, when I am not yielding, when my friend. Mr. Kapoor, advises other Members to observe the Parlia mentary rules, I think he should also conform to those rules. What I say is this. If a Member of Parliament says something that legally it ought to be this way, it ought not to be that way, then we are justified in saying that our view is this. There is noth ing wrong in saying that. Parliament makes laws, certainly. If Parliament decides that this word should go, then the Government cannot go against it. But the Government must express their view. There is no slight on Parliament. I think my hon. friend, Mr. Kapoor, stretched it too far unnecessarily. It is conceded that Parliament is the sovereign body. I do not say Parliament is not the sovereign body. We are to obey the mandate of Parliament. But when we put in this word, we say that we have put it in because we feel that it is correct.....

SHRI V. K. DHAGE: The hon. Minister says that in a matter of this kind, the Law Ministry have been consulted and they have expressed their opinion in the matter. May I know as to what that opinion is? Will the hon. Minister read it out to us, so that we may be able to understand the reasoning behind it?

SHRI BHUPESH GUPTA: On a point of order, Madam Vice-Chairman. The hon. Minister has said that he has got the legal advice. I have no objection, if he refers to certain legal advice that he may have got. But it is for him here in this House to satisfy the Members of the legal validity of the case. He can adopt any argument he likes. We are not concerned with the Advocate-General or the Attorney-General. I mention them but when we say that the legal grounds are, he can advance those grounds. He can even repeat them.....

SHRI M. C. SHAH: I object to that. The hon. Member must observe decorum. He is not the person here to.....

SHRI BHUPESH GUPTA: Now, he can parrot-like repeat it. He can read it from any piece of paper. I have no objection. But every time we ask some such thing, he has consulted somebody—Advocate-General or Attorney-General and what not, we are not concerned—but we are making the law. We would like to know the implications of the law. If he has a particular interpretation to make, for that reason he can seek any advice he likes outside. But he should not tell us that he has consulted and just fob us off by mentioning certain names. I think it is not right. Henceforth, Madam Vice-Chairman, whenever we ask him to explain certain legal positions and legal formulae and legal propositions, he should try to explain them instead of telling us as to how the Attorney-General had certified it. It does not speak well of those people who adorn the Treasury Benches.

SHRI M. C. SHAH: Is he giving a sermon?

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) : He is seeking some clarification.

SHRI M. C. SHAH: Because he never hears others he goes on, whether it is relevant or irrelevant, in any way he likes.

DR. W. S. BARLINGAY: Madam Vice-Chairman, may I respectfully point out the proper position in thiu case? I can assure Mr. Shah that I will say all this most respectfully without meaning any offence whatever. The whole point is this. There is no objection to the Ministry considering any opinion which the legal department has given. There is absolutely no objection to that. The only objection comes in when it is stated on behalf of any Member—let alone a Minister—of this House that the opinion of the legal department or the Attorney-General or for that

[Dr. W. S. Barlingay.]

..... .

matter the Supreme Court is binding I on this House, when it is said, for instance, that no further argument can be advanced against it, I wish to point out that even the Govern ment .....

SHRI M. C. SHAH: I have not said that no arguments can be advanced. My friend, Dr. Barlingay, may not be attending to what I have been saying. Any Member can advance any argument that he wants to make. He may be satisfied, or he may not be satisfied with what we say. We say that this word "knowingly" was used after careful consideration. It was discussed in the Joint Committee. We nave referred to this clause with regard to the legal implications of those words. We have looked into the English Act. In section 71 of the English Act, there is a word "wilfully". Instead of that we hsive used the word "knowingly". Therefore, we say the word "knowingly" is necessary • and it cannot be omitted, because of n certain interpretation put by the lion. Member who has moved an amendment. He has every right to move that amendment. He has every right to advance his 'arguments in favour of it. But I say that we cannot accept those arguments. I think I am perfectly justified in saying that I cannot accept those arguments.

DR. W. S. BARLINGAY: If he says that we must necessarily accept the opinion of the legal department then alone that is wrong, otherwise there is no objection.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) : Do you press your amendment?

KAZI KARIMUDDIN: Although I do not quite agree with the reasoning given by the Minister-in charge, I withdraw my amendment.

The amendment No. 34* was, by leave, withdrawn.

•For text of the amendment, *vide* col. 4223 supra.

THE VICE-CHAIRMAN (SHRTMATI CHANDRAVATI LAKHANPAL): The question is:

"That clause 105 stand part of the Bill."

The motion was adopted.

Clause 105 was added to the Bill.

Clauses 106 to 110 were added to the Bill.

Clause 111 *(Power to refuse registration and appeal against refusals)*

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): There is one amendment.

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

35. "That at page 61, line 23 the words 'in writing' be deleted."

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) : The clause and the amendment are "open for discussion.

SHRI C. P. PARTKH: I have to say only a few words about this. The words "in writing" are there in clause 111- But in sub-clause (5), I think these words "in writing" are not necessary. Representations can be imade in so many words. If the representation is not made "in writing", then it is barred. I think that will not be proper, because some interviews may be given, personal explanations may be given. On that account I have moved the amendment and I think the words "in writing" may be omitted.

SHRI M. C. SHAH: Madam, I can not accept it .....

SHRI BHUPESH GUPTA: Why?

SHRI M. C. SHAH:.....becav the Joint Committee felt that writing" is absolutely necc And, therefore, we feel th-writing" is necessary. In tl of Shri Parikh it may necessary.

SHRI tSiiUFJKStt liUFTA: We WOUIO like to know why he is feeling that way?

THE. VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) : Mr. Parikh, do you press your amendment?

SHRI C. P. PARIKH: No.

The amendment No. 35* was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) : The question is:

"That clause 111 stand part of the Bill."

The motion was adopted.

Clause 111 was added to the Bill.

Clauses 112 to 148 were added to the BUI.

Clause 149 *(Restrictions on commencement* of *business)*

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) : There is one amendment.

SHRI V. S. SARWATE (Madhya Bharat): Sir, I move:

101. "That at page 77, after line 13, the following proviso be inserted, namely: —

'Provided that in cases where the company has been publishing yearly reports, the contracts shall become binding on the expiry of three years from the date of their execution, even though the company may not have been entitled to commence business or exer-• cise borrowing powers'."

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): The clause and the amendment are open for discussion.

SHRI V. S. SARWATE: Sir, hon. Members should know that section 149 in the Company Law is in the interest of the creditors. This section lays down that a company should not borrow or should not commence business unless a certain amount of share capital has come in, which means that the creditor advances his money. Against his advance there would be the security of certain share capital. So, the interests of third party, that is the creditors and the persons who enter into contracts or agreements with the company, are hereby safeguarded. That section is meant for safeguarding the interests of third party, the creditors. It sometimes so happens and it has happened—I know because I was practising myself in Company Law with a certain company. Though it was not entitled to commence business, it went on borrowing. The creditors went on giving their money as loan. This went on for a number of years. With the borrowed money, the company went on managing its business. After some time before the company got the necessary certificate of commencement of business, it went into liquidation. The result was that the creditors who had advanced money all suffered and none of them was able to recover any money. What happened was that, though the company derived advantages and went on running the concern with the borrowed money, still the persons who gave the money on credit suffered. This should not happen. Therefore. equity requires that the creditor must be protected; it is in his interests that the section is enacted here. He takes certain risks and advances money. If I am saying here In the proviso which I have added "in cases where the company has been publishing yearly reports", this would make their position secure. All the shareholders know all these reports. They would understand that certain money has been taken on loan. This protects the shareholders. On the other hand, the creditors know that their money is there. So, I am saying that "in cases where the company has been publishing yearly reports, the contracts shall become binding on the expiry of three years." I have given

*For *text at* the amendment, *vide* col. 4228 supra.

[Shri V. S. Sarwate.] sufficient time. Three years is generally the period which is allowed in the case of limitations. After three years it generally becomes time-barred. So, *I* have taken on that analogy the period of three years.

SHRI C. P. PARIKH: Certificate of commencement of business is not given for three years and the accounts are published for three years! Are there instances where for three years certificate of commencement of business is not given?

SHRI V. S. SARWATE: I know of cases where they went on for gix or seven years.

SHRI C. P. PARIKH: No certificate of commencement of business?

SHRI V. S. SARWATE: No. Because of the laxity of the directors, the certificate was not obtained.

Two conditions are required; certain share money is to be collected and further, the directors are to go to the Registrar and obtain the certificate for commencement of business.

SHRI C. P. PARIKH: Will the hon. Minister kindly elucidate whether there is no certificate given for three years?

SHRI M. C. SHAH: He refers to Madhya Bharat. It is not so here.

SHRI V. S. SARWATE: I have appeared in these cases. And there were more than one case where owing to the negligence of the directors, no certificate of commencement of business was acquired and, therefore, all the creditors suffered. So, I have taken 'three years'. If within three years the certificate of commencement of business is obtained, the proviso would be unnecessary, superfluous. In that case, no harm results. But if within three years there is no certificate of commencement of business obtained, then the creditors should not suffer. That is the objective of the proviso. If as my friend suggests the company cannot exist, there would be no commencement of business certificate and in that case, the proviso-would be unnecessary. It would do no harm in that case. It would not be applicable to that case. I say that, if the business commencement certificate is not obtained till after three years, then the state of things continues for years. The general principle is that it should be taken to be valid and it should be recognized. So, equity requires that in such cases. I have sufficiently hedged around, and I submit this taking into consideration the equity and rights which the creditor should have in such cases. Where a certain right has been given for his protection and if he does not want to have that protection, in that case he should be allowed to have his contract, which was provisional, to be made binding after three years. That is my submission.

श्री कन्हैयालाल वॉ० वैद्य (मध्य भारत) : उपसभानेत्री जी, इसके पहले कि मैं थोड़ा इस संशोधन पर कहूं, मैं हाउस से यह कहना चाहूंगा कि माननीय श्री भूपेश गुप्त ने बादविवाद में बोलते हुए दो, तीन बार "पैरट लाईक" शब्द को रिपीट किया हैं। मैं समझता हूं कि हाउस की प्रतिष्ठा के लिहाज से अगर उन शब्दों को एक्सपंज कर दिया जाय तो ज्यादा अच्छा हो। माननीय मंत्री, श्री शाह ने भी उस वक्त आपत्ति की थी और हाउस की डिग्निटी को मेनटेन करने के लिए मैं आवश्यक समझता हूं.....

SHRI B. GUPTA: Not at all.

श्री कन्हैयालाल वॉ० वैद्य : मैं इस विषय को लेकर कोई एक पार्लामेंटरी डिबेट नहीं उठाना चाहत.। मैं यह कहना चाहता हूं कि उन शब्दों को एक्सपंज कर दिया जावे।

जहां तक श्री सरवटे का संशोधन हैं, उन्होंने मध्य भारत के बारे में जो बातें कही हैं उन बहुत सी कंपनियों के विषय में, तो मैं भी इस सम्बन्ध में जानकारी रखता हूं। यह ठीक हैं कि इस प्रकार की कंपनियों के फ्रॉड और अव्यवस्था की बातें वहां चलती रहती हैं और

यह भी ठीक हैं कि वे सब काली कहानियां उस वक्त की हैं जब कि पार्ट "बी" स्टेटों में राजाओं के राज्य थे। अब यह बात जरूर हैं कि उन राज्यों का इंटीग्रेशन हो गया हैं लेकिन इंटीग्रेशन होने के बाद भी कम्पनी ला के सम्बन्ध में जो कायदे कानून ब्रिटिश राज्य के जमाने में चलते थे वही स्थिति अब भी चली आती हैं। श्री सरवटे ने कहा हैं कि वे स्वयं एक प्रेक्टिसिंग लायर रह चुके हैं और वहां की स्थिति को जानते हैं। मुझसे भी मेरे कुछ माननीय मित्रों ने जानकारी चाही हैं। तो मेरा यह कहना हैं कि इस प्रकार की स्थितियां वर्षों तक वहां चलती रही हैं कि सर्टीफिकेट इश्यू नहीं होता हैं फिर भी डायरेक्टर्स अपने अधिकार के अन्तर्गत रुपया लेते रहते हैं, और जिम्मेदारी से बचने के लिए बहुत से मामलों में उन्हें लिटिगेशन में जाना पड़ता हैं और जनता को बहुत परेशान होना पड़ता हैं।

इसलिए जहां तक श्री सरवटे का संशोधन हैं, मैं उसका समर्थन करता हूं। इस संशोधन को स्वीकार कर लेने से विशेषतः इस धारा में कुछ ज्यादा प्रभाव तो नहीं पड़ता हैं कि जिससे कोई नयी व्यवस्था आ जाती हैं बल्कि यह एक सेफगार्ड के नाते से हैं। जब ऐसी घटनाएं देश में हुई हैं तो मैं आवश्यक समझता हूं कि जब हम विस्तृत रूप में इस कानून को बनाते हैं तो जिससे उन घटनाओं की पुनरावृत्ति न हो, माननीय मंत्री महोदय को चाहिए कि वे उस संशोधन को स्वीकार कर लें।

SHRI M. C. SHAH: I think there is some misconception. If my friend just sees sub-clause (4) of clause 149, he will find;

> "Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding."

As a matter of fact, by this subclause it has been provided that no contract shall be binding on the company so long as it has not commenced working. Now, if anybody enters into a contract, and then he enters into a contract with the directors, the l directors will be liable for the com- j pany that has accepted the liability ! of these contracts when it starts working. Therefore, if we accept the amendment it will cut across the principle that has been laid down in sub-clause (4) of clause 149.

My friend complains that for some years the commencement certificate is not given.

SHRI KANHAIYALAL D. VAIDYA: For six years.

SHHI M. C. SHAH: I am afraid it must be due to the negligence of the directors or it may be that the conditions for obtaining the commencement certificate may not have been fulfilled, or the directors may not have applied for the commencement certificate. Otherwise on inquiry, I find that the Registrar always Issues the commencement certificate when there is an application to him for issuing the certificate of commencement after fulfilling the conditions which are required to be fulfilled. Therefore, it is possible, it may be a fault on the part of the directors. Perhaps they may have tried to defraud the unaware people. Those unwary people must suffer because when the Act specifically says that no contract shall be binding on the company until that date, on which it starts working, it is the business of those people to know the working of the company. If we accept the amendment it will cut across the principle that has been enunciated in sub-clause (4) of clause 149. For that reason I cannot accept this amendment. If there is any complaint with regard to the issuing of commencement certificate and the negligence of the Registrar, I am prepared to look into the matter and mend matters immediately.

SHRI V. S. SARWATE: Madam, I beg leave tc withdraw my amendment No. 101.

Amendment No. 101* was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRIMATI CHANDRA VATI LAKHANPAL) : The question is:

"That clause 149 stand part of the Bill."

The motion was adopted.

Clause 149 was added to the Bill.

Clauses 150 to 175 were added to the Bill.

Clause 176 *(Proxies)*

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

37. "That at page 90, lines 41-42, for the words 'but a proxy so appointed shall not have atiy right to speak at the meeting', the words 'and a proxy so appointed by a member of a private company shall also have the same rights as the member to speak at the meeting' be substituted."

SHRI KISHEN CHAND: Mine is a consequential amendment. It falls. Since it has been rejected before, it cannot be moved.

SHRI JASPAT ROY KAPOOR: Madam, i move:

102. "That at page 90, line 40, for the word 'person', the word 'member' be substituted and the words and brackets '(whether a member or not)' be deleted."

SHRI JASPAT ROY KAPOOR: Madam, I move:

103. "That at page 90, lines 41-42, the words 'but a proxy so appointed shall not have any right to speak at the meeting' be deleted."

THE VICE-CHAIRMAN (SHRIMATI CHANDRA VATI LAKHANPAL) : The amendments and the clause 176, both are open for discussion.

SHRI C. P. PARIKH: The amendment, which I hare moved to clause 176, is not an amendment practically. I am asking this House to adopt what the Select Committee has agreed to. Members of this House were also in the Select Committee and I do not find that any comments or any adverse remarks were made or any opposition arguments were advanced in that respect. Therefore, I think, what was originally standing in the Select Committee's report should stand.

Regarding the proxies those who are members of a private limited company would like to speak and vote because in private limited companies there are persons who may be widows, who may be minors, who may be illiterate and they are unable to explain matters. They might have inherited those shares from those who might have contributed to the company and the situation might be different at that time. Therefore, in order to arrive at an agreement mutual discussion is necessary, and, therefore, the proxy should have a right to speak. That is what the Joint Select Committee agreed to. I do not know the reason why afterwards it has made the change because there are 17,000 joint stock companies which are private limited and they have to be protected as regards their running. And because private limited companies will still expand in future it is all the more necessary that these safeguards should remain in order that those who contribute to the private limited companies' membership do not suffer when they are no longer there.

SHRI JASPAT ROY KAPOOR: No. Your amendment suggests that even a stranger proxy holder should have a right to speak.

SHRI C. P. PARIKH: That was originally recommended by the Select Committee. As regards public limited company, a non-member should not have a right to speak. You have not read my amendment. That is the difficulty. You may not hear me but you must read my amendment. It is as clear as daylight and if you read also I what is written in the Joint Select

*For text of th« amendment *vide* t-ol. 4229 *supra.*

Committee's report it is the same thing. For Mr. Kapoor's sake I will read this amendment:

> "That at page 90, lines 41-42, for the words 'but a proxy so appointed shall not have any right to speak at the meeting', the words 'and a proxy so appointed by a member of a private company shall also have the same right as the member io speak at the meeting' be substituted."

It means a non-member appointed by a member of a private limited com- | pany only shall have the same right as the member to speak at the meeting. So it only applies to a private limited company and not to a public limited company. That is what was originally in clause 175 of the Joint Select Committee's report. I think it is necessary that the original clause should be restored.

SHHI JASPAT ROY KAPOOR: Maddm Vice-Chairman, at the outset 1 would like to dispose of mv hon. friend. Mr. Parikh's amendment, for obviously it appears to me there is a good deal of misunderstanding in his own mind about the implication of his own amendment.

SHRI C. P. PARIKH: But not ir the mind of the Joint Select Committee?

SHRI JASPAT ROY KAPOOR: The import of his amendment is much wider than what he thUks to be. What he suggests is not only that the right of speaking should be conferred on a proxy holder, who may not b^ a member of a private company, but he at the same time wants the deletion of the disqualifying sub-clause in clause 176, which imposes a disqualification on a non-member whose

„ /ceded. So there are two points
2 P.M. >■.-„ - „" , . „ . f
£hght_of speaking is not con-involved TrT his amendment.

SHRI C. P. PARIKH: On a point of order, Madam. Mr. Kapoor was a Member of the Joint Select Committee. And I am only saying what he |

has endorsed in the Select Committee,

SHRI JASPAT ROY KAPOOR: I should think, Madam, that it is never too late to be wise. And now we are concerned not with the Report of the Joint Select Committee, but with .....

SHRI S. N. MAZUMDAR: Unless he has submitted a minute of dissent, can he speak on the clause to which he agreed in the Joint Select Committee?

SHRI JASPAT ROY KAPOOR: Madam, I thought I was treading on very safe ground when I was following the hon. Finance Minister who had tabled so many amendments in the other House and which have been accepted though he was a member of Select Committee. But whatever be the position, Madam, we are at this stage concerned, not with the Report of the Joint Select Committee, but with the Bill itself, as it has emanated from the Lok Sabha. And clause 176, as adopted by the Lok Sabha, makes a specific provision to the effect that if a proxy-holder is a non-member, he shall not have the right to speak. That is *the* essential point. Now this disqualification has been imposed in this clause in this way. I will read the whole clause for the benefit of the House. It reads as follows:

> "Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) ....."

So a non-member is entitled to hold a proxy,

> "..... as his proxy to attend and vote instead of himself; but a proxy so appointed shall not have any right to speak at the meeting."

So a proxy-holder shall not have a right to speak at the meeting. N«w

[Shri Jaspat iioy is-apoor.j my hon. friend, Mr. Parikh, wants that at page 90, lines 41-42, for the words 'but a proxy so appointed shall not have any right to speak at the meeting', the words 'and a proxy so appointed by a member of a private company shall also have the same right as the member to speak at the meeting' be substi

tuted. So the implication is that the disqualification prescribed in clause 176 goes off, and an entitling clause is inserted instead of it, giving the right to a non-member of a private company also to speak. So obviously the previous disqualifying clause goes away. So this is a very major amendment and not a very formal thing, as seems to appear to my friend, Mr. Parikh. So, 1 should think, Madam, that Mr. Parikh's amendment is not only against the adopted provisions of clause 176, but it goes violently against my own amendments No. 102 and 103, which suggest that a non-member should not have the right to hold the proxy even, let alone the question of speaking at the meeting. I submit, Madam, that it is against the elementary principles that one who has no stake in a company should be allowed to hold a proxy on behalf of a member and attend meeting and influence decision. I have not been able to understand what necessity there is for providing in the Bill that a non-member should be entitled to hold a proxy. In a company there are a large number of shareholders, and if any shareholder, at any time, is not in a position to attend the general meeting, he should have no difficulty in finding out some other member to hold proxy on his behalf. Why should he go out of the entire field of membership? Why should he go beyond the list to find a person worthy of his confidence? There must be some very strange reasons. Even a shareholder holding one share can be a member, and if any person is not in a position to find even one person, out of the whole list of! shareholders, to hold proxy on his behalf, well, he must be in a very strange position, and he must be holding views which are certainl^contrary to the views of the rest of the members of the company.

SHRI C. P. PARIKH: There may be two shareholders in a private limited company.

SHRI J ASP AT ROY KAPOOR: I am, for the time being, dealing with the public limited company. If my hon. friend's amendment is so framed as to empower a non-member to be a proxy-holder in a private limited company, I, for one, will have no objection. I was speaking against his amendment because of its very wide implications. If what he means is properly conveyed by his amendment after it is suitably amended, I will be in agreement with him. But that is not the position now. Let him modify his amendment, and then, I hope, there will be no objection in accepting the spirit of the amendment. But, for the time being, I had in my mind only the public limited companies. My submission therefore, Madam, is that my amendment should be accepted, the implication of which is that only a

member of a company should be a proxy-holder. And if he is a proxy-holder, obviously, in his own right, as also holding a proxy on behalf of one of the members, he shall have the right to speak also. And therefore the latter portion, which is a disqualifying portion, will have to go. These two amendments, Madam, have to go together. If No. 102 is accepted, No. 103 follows. And if No. 102 is rejected, then No. 103 automatically goes away. Madam, I would earnestly appeal to the hon. Minister to seriously consider this suggestion, and if he will seriously consider it, *mmm*, I am sure, he will agree to accept this amendment. It is no use trying to introduce in a "homogenous body of shareholders somebody who might create trouble and discord, for in a case where a non-member, is appointed a proxy-holder, it will almost invariably be with a view to creating

some trouble in the company. A bono *fide* member of a company if he honestly wants to have himself represented properly in -fle interest of the company, shall have no difficulty in finding another member. I fail to see, to provide for what contingencies this suggestion has been inserted, that a non-member should also be a proxy holder. I can very easily envisage many occasions where one who has no stake, for ulterior objects, with ulterior motives, would attend a company meeting to create trouble and discord. Let us save companies from such persons and I would therefore earnestly request the hon. Finance Minister not to lightly think of this subject. I can very well conceive of occasions—I have some personal experience of some persons who want to attend a meeting only to CTeate trouble, and come there not to set things right but to make things go absolutely wrong.

SHRI B. C. GHOSE: I am sure the hon. Minister would be able to answer my hon. friend, Mr. Kapoor. This point was very much in the mind of the Joint Select Committee and the considerations that he had urged were also taken into account. There are advantages and disadvantages and one had to come to a conclusion as to what would be best in the interest of the shareholders. If this provision is here, it was because we felt—the Members of the Joint Select Committee—that it was in the best interests of the shareholder. The position is that it is not so easy for a member to know or find another member in the place where he may be living. He may be in a village and it is not necessary that there should also be another member of the same company living in the village. A meeting of the shareholder may be called in a certain place. He may know somebody there whom he can use as his proxy and we felt at the same time that that might create trouble because if ah outsider was allowed to attend the meeting, then undesirable persons might be Rivew proxies and they might attend the meetings and thereby create difficulties. We did not want that at the same time. Therefore we have made a provision that he will not be permitted to speak, not to take any part in the proceedings of the meeting, not to create disturbance in the meeting but when he is armed with the power of voting in a certain way by a member for whom he is a proxy, that he should be able to exercise that proxy so that the opinion of the member concerned on the issue might be made known. We felt that we were giving a certain right to the shareholder and at the same time avoiding the difficulties to which Shri Kapoor had referred, because we were not unconscious that there are undesirable persons who might create difficulties, but here we wanted *to* avoid that as much as possible. At the same time we wanted that there might be members living in distant places who might not be able to exercise their votes at all but might have an opinion on the subjects which will come up for discussion in a shareholders' meeting or on any issue that might be put in the form of a resolution at a shareholders' meeting. Therefore it was desirable that he should cast his vote and with a view to adjust these conflicting considerations, we came to this scheme of thing? and I think that it was a good scheme; that the Joint Committee had adopted and that it should therefore commend itself to the House.

SHRI RAJENDRA PRATAP SINHA: Madam Vice-Chairman, I stand to object to the amendment moved by my hon. friend Shri Kapoor. I could not understand the logic of his arguments. What is the sanctity behind his asking that a non-member should not be permitted to hold a proxy? We are doing away with all kinds of untouchability and we should d< •way with this untouchability also in the companies' affairs. Why It wks adopted that a non-member should be 1 permitted to hold proxy has been very well explained by hon. Mr.

[Shri Rajendra Pratap Sinha.] Ghose. The point is that this Companies Bill is before us to safeguard the interests of the shareholders and this can only be achieved as has been explained by my hon. friend if we permit non-members to hold the proxies but I do not accept the view of the Joint Select Committee with regard to not permitting the proxies to speak at the meetings and here I support my hon. friend Mr. Parikh and he will appreciate that I do support him wherever he is in the right as I have no prejudice against him.

SHRI B. C. GHOSE: Mr. Parikh has no amendment so far as public companies are concerned.

SHRI RAJENDRA PRATAP SINHA: I was saying that about private companies. A situation might develop, as was pointed out by Mr. Parikh himself, where there may be two persons forming a private limited company. Those two may be living quite a distance apart and there may be a shareholders' meeting. Now that gentleman may be holding 50 per cent, of the share in that company and the other may be holding another 50 per cent. One may have gone outside the country and important matters may be coming for discussion at the shareholders' meeting. The other man can only send in a proxy to ditto or vote against any proposition that may be raised but the other shareholder is debarred from knowing the views of t other shareholder. It is impossible for him at that point to find out what the other shareholder has to say at all although he may hold the shares. It is a strange proposition. Therefore I submit that this must be changed. We must accept that in such contingencies in a private limited company, the shareholders may be permitted to send non-members with the power to speak. After all what is a proxy? The proxy represents the shareholder as a whole. He must represent all his rights—his rights to vote and to speak He must be placed in a position to get his views expressed in every matter and to get the other views modified. The**other members' views may be modified by permitting him to speak. What really happens is that private limited companies are formed in a family or in a group of friends. Seven persons usually form a private limited company. It is impossible to find another member and therefore not to permit him to speak will be very unfair, very unjust to the other members of that private limited company. I don't know whether the Joint Select Committee considered this, aspect of the question and what led them to come to this conclusion even with regard to private limited companies. It is never too late to mend oneself and I hope the hon. Minister will not stand on ceremonies and he will accept an honest advice and get it passed by the other House as well. Thank you.

SHKI H. P. SAKSENA (Uttar Pradesh): Madam Vice-Chairman, I am on my legs to speak on clause 178 relating to pioxies. I have my quarrel with a portion of the wording of this clause. It, therefore, follows that my remarks may apply to either Mr. Kapoor's amendment or to Mr. Parikh's amendment. But that is not ro" concern.

SFRI JASPAT ROY KAPOOR: Let it strike anybody.

SHRI H. P. SAKSENA: This clause says:

> "Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself; but a proxy so appointed shall not have any right to speaK at tb<2 meeting."

My quarrel is. with the last portion of it—

"shall not have any right to speak at the meeting." I have stood up, Sir.....

SHRI JASPAT ROY KAPOOR: You mean, Madam.

SHRI H. P. SAKSENA: I am thankful to Mr. Kapoor for inviting my attention to that slip. Madam, in this ..'ree world, in this free age of democracy, I do not see any justification for the use of these words—"shall not have any right to speak". What right have we to arm ourselves with the authority to muzzle anybody? You cannot muzzle anybody. The person has been very rightly and very legally appointed as proxy. If I appoint such a proxy, it means that I have full trust and confidence in him and I send him as my representative to act for me, to vote for me and also to speak for me. Why should he be prohibited from speaking?

A very fantastic objection was raised by an hon. Member, or rather the view was expressed by him that the person selected and sent to the meeting may create mischief there, that he may be an undesirable person. But who is the man, I would like to know and see his face, who is the judge to say that such and such a person is a desirable one and such and such another person is an undesirable man? It was the inherent right of the person who appointed him as his proxy to see whether he was a desirable person or not. He appointed him as his proxy which means that he took him to be ai desirable person and so appointed him as his proxy. If this man attends the meeting and misbehaves there and if he acts against the accepted notions of a meeting, whether it be a company meeting or any other meeting, then he will be dealt with by the presiding officer of that meeting. So there need be no fear on that ground, that he may create mischief.

SHRI JASPAT ROY KAPOOR: There are subtle ways of creating mischief which are outside the controlling powers of the presiding offi cer.

SHRI H. P. SAKSENA: If there are subtle ways of creating mischief they can be brought into play by even not uttering a single word from the mouth. I can attend a meeting, keep sitting there and yet create such a horrible mischief as would make it impossible for any proceedings to go on.

SHRI B. C. GHOSE: Really?

SHRI H. P. SAKSENA: Yes, I have indulged in these things, I may tell Mr. Ghose. I have disturbed scores of meetings. I have done it. I have made a nuisance of myself. I have played at that game several times.

SHRI JASPAT ROY KAPOOR: That is exactly what I mean. One can create trouble silently by mere attending.

SHRI H. P. SAKSENA: Mr. Ghose will have to reckon with a public life of over fifty years in analysing me. I entirely agree with Mr. Ghose and I do not agree with Mr. Kapoor and with due respect to him I would ask him to keep to his seat. Sir, my friend Mr. Kapoor has been over delighted to find that I have supp tried his argument, of a person being undesirable. Now, this was only as a reply tc that point which was raised, that a person may not be permitted to speak. Now, so far as the power of speaking and participating in the meeting is concerned, I do not think anybody can take *it* away. Therefore, I am not in favour of retention of these words which say that he shall not have the right to speak at the meeting.

SHHI SHRIYANS PRASAD JAIN: Madam, I have the greatest respect (and regrrd for my hon. friend Mr.

[Shri Shriyans Prasad Jain.] Parikh's view, but in this matter, I do not agree with him and I am totally in agreement with Mr. Kapoor. Mr. Parikh referred to the proceedings of the Joint Select Committee.

SHRI C. P. PARIKH: Of which .my hon. friend was a member.

SHRI SHRIYANS PRASAD JAIN: Yes, of which I was a member and I may inform my hon. friend that this clause was discussed at very great length and it was voted twice, not ■once, and ultimately whatever decision was arrived at, it was translated into this clause.

SHRI C. P. PARIKH: There is no note of dissent from any member.

SHRI SHRIYANS PRASAD JAIN: If my hon. friend will only go through the Report, he will find that certain members did dissent on this point and.....

SHRI C. P. PARIKH: But there is no amendment.

SHRI SHRIYANS PRASAD JAIN: I have not put in a dissenting note. But when any particular or new thing comes to notice or in the light of changed circumstances, the Government can and it has acted very sensibly in the Lok Sabha, in spite of being a party to the Report of the Select Committee, they brought in amendments. Not only the Government, but several members of the Select Committee also tabled amendments in the Lok Sabha and they got through. So it is not as if whatever decision had been arrived at in the Joint Select Committee should be binding on the Government and on the Members who were members of the Select Committee.

Madam, so far as this clause is concerned, I am not a lawyer, but Mr. Kapoor who is one, has explained the position. But as far as the intention of Mr. Parikh is concerned, I feel that what he wants is that so far as private companies are concerned permission may be given to an outsider and he should have the Bight to speak at the meeting. But Mr. Kapoor feels that this will apply to public limited companies also. Whatever may be the position, I am not one of those who think that any outsider may speak and interfere in the administration of the company, whether it be a private or a public-limited company. I am in agreement with the principle that if a member is not able to attend a particular meeting and if he cannot find any member to substitute himself, he may send as a proxy an outsider so that he may go and give his vote. But so far as speaking is concerned, that is a very vital matter and it should not be provided that any one even though he is not directly connected with the company can go and speak at the meeting whatever he likes. We have got experience in Bombay and Calcutta where there are a class of people who go round among the members and come to the meetings as proxies and disturb the proceedings. My hon. friend Mr. Saksena who seems to know the art of disturbing meetings has described what he had done and after hearing him, I am confirmed in my views that an outsider should not be allowed to speak at these meetings.

SHRI H. P. SAKSENA: My hon. friend should not forget that I was talking of political meetings. I have never attended any company meeting.

SHRI iSHRJYANS PRASAD JAIN: I am very glad my hon. friend has clarified the position, because all the time I was wondering how a person of Mr. Saksena's stature could go and disturb a company meeting.

Then Mr. Sinha asked if there are two members, how is a proxy to be sent? I would in this connection refer my hon. friend to clause 174 where it is clearly stated that even if it is a private company, two members must necessarily be present in person and unless there are two such

persons, the meeting cannot be held for want of quorum.

SHRI RAJENDRA PRATAP SINHA: Make it three.

SHRI B. C. GHOSE: Yes, make it three.

SHRI SHRIYANS PRASAD JAIN: The argument was only restricted to two; even if there are three, this question does not arise. One of the two is sure to get the proxy of the third man. Supposing an outsider is given the right of speaking? How does it matter? It does not really matter at all excepting that the outsider can create some nuisance. He will not be able to carry any conviction.

SHRI RAJENDRA PRATAP SINHA: If the third man holds more shares than the two put together?

SHRI SHRIYANS PRASAD JAIN: I cannot understand how such a situation can arise? If the third man has more shares then naturally he will be the person holding charge of the company, not the other two. Under the present Bill, only the man with larger shares will manage the concerns.

SHRI RAJENDRA PRATAP SINHA: It is not debarred. Is a minority shareholders debarred from managing a company?

SHRI SHRIYANS PRASAD JAIN: He is not debarred but we have to take the practical view. We cannot go on on the basis of ideology. I do not know of any concern managed by the minority shareholders. Could the hon. Member tell me of an instance where a concern is managed by the minority shareholders?

SHRI RAJENDRA PRATAP SINHA: He may be doing it with the consent of the majority .shareholders.

SHK SHRIYANS PRASAD JAIN: In case, such a question will not arise. Where does the diffei nee arise? I am totally opposed to any outsider being given the proxy. So far as this point is concerned, it has already been included in the Bill; but so far as speaking in the meetings is concerned; I do not want any outsider to be given the right to speak. After all, the meeting is a domestic affair. Somebody might bring a lawyer or a solicitor and it will become some sort of a political arena. We want the homogeneity of the meetings to be retained. If there are differences of opinion, they cannot be ironed out in the Board meetings or in the general meeting. They will have to be ironed out in private meetings. If we bring in an outsider, it will be very difficult to reconcile different points of view; on the other hand, it will create more complications.

SHRI M. C. SHAH: Madam Vice-Chairman, my hon. friend, Mr. Ghose, has explained the discussions that took place in the Joint Select Committee. He has explained them in detail and I do not think I should take the time of the House by repeating the same things. It has been advisedly put there that a proxy may be given to an outsider but, at the same time, the proxy has not been given the right to speak at the meetings. The Joint Committee gave the proxy the right of speaking.

TMR. DEPUTY CHAIRMAN in the Chair.]

Representations were received from many quarters. It was represented to Government that when the proxy was not allowed to speak in the public limited companies, there was no reason for allowing him to speak in the case of private limited Companies. ʳn the earlier case, the reason was that, if the proxy was allowed to speak, he might create trouble or discord. That was what was apprehended. Really speaking, the case for preventing the proxy from speaking in the private meetings is on stronger grounds. My friend, Mr. Parikh, does not want the proxy to speak at public

iShri M. C. Shah.] meetings but wants him to have j the right to speak in private meetings. • I do not understand on what justifiable grounds we can accept his amendment. If there is going to be discord and mischief in the case of public meetings, there are more chances of such disturbance and discord being brought about by the proxy in the case of private meetings. 1 am glad that both the capitalists have fallen out on this issue. Shri Shri-yans Prasad has supported the view taken by the Government. On very strong grounds of not allowing disputes and discords being raised in the private company meetings, we do not propose to accept the amendment of Mr. Chandulai Parikh.

With regard to Mr. Jaspat Roy Kapoor, it has already been explained by Mr. Ghose that there are advantages and disadvantages. As a matter of fact, we have adopted a golden mean; that means, allowing outsiders to hold proxies but not allowing them to speak.

SHRI RAJENDRA PRATAP SINHA: What is meant by "public meetings"?

SHRI M. C. SHAH: Let me finish. I know water finds its level; you are now in agreement with Mr. Chandu- ?avikh. I will reply to your point *p.'so,* if there are any.

SHRI RAJENDRA PRATAP SINHA: I wanted to know the meaning of ""public meetings."

SHRI M. C. SHAH: Meetings of public limited companies, not public meetings. The hon. Member is not very attentive when I speak. He has perhaps his own views and goes on harping on those. He has misconstrued what I said. I meant meetings of the public limited companies. The hon. Member should presume these things when we are discussing proxies to be given for attending meetings of public limited companies and private dimited companies.

I was referring to the amendments of my friend, Mr. Jaspat Roy Kapoor. As I said, it has already been explained by Mr Ghose. We have found a golden mean between two views held; some Members wanted to have outsiders to be given proxies and also the right to speak while some Members wanted no outsider to be given a proxy. Advisedly, the Joint Select Committee came to the conclusion that proxies may be given to those persons who are not members of the company but that they should not be allowed to speak. Therefore, the shareholders who could not attend could at least exercise their votes on a certain proposition; they may give instructions to their proxies. At the same time, the proxies are not allowed to create any possible disturbance.

I cannot accept both the amendments and the House may reject them.

SHRI C. P. PARIKH: In view of the change in the opinion of the Minister, *1* beg leave to withdraw my amendment.

SHRI M. C. SHAH: It is not a question of changing my opinion. It has already been passed by the Lok Sabha.

The * amendment No. 37 was, by leave, withdrawn.

SHRI JASPAT ROY KAPOOR: I do not want to disappoint my friend, Mr. Shah. I beg leave to withdraw the amendments.

The * amendments Nos. 102 and 103 were, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 176 stand part of the Bill."

The motion was adopted

Clause 176 was added to the Bill.

Clauses 177 to 197 were added to the BUI.

•For text of the amendments *vide* col. 4235 *supra.*

Clause 198 *(Overall maximum managerial remuneration and minimum managerial remuneration in the absence or inadequacy of profits),*

MR. DEPUTY CHAIRMAN: We shall now take up clause 198.

SHRI KISHEN CHAND: I move:

39. "That at page 99, lines 32-33, lor the words 'shall not exceed eleven per cent, of the net profits of the company' the words 'shall not exceed eleven per cent, ten per cent and eight per cent of the net profits of the company whose paid up capital is below ten lakhs of rupees, below fifty lakhs of rupees and above fifty lakhs of rupees respectively with marginal adjust ment' be substituted."

SHRI C. P. PARIKH: I move:

40. "That at page 99, lines 34-35, the words 'except that the remuneration of the directors shall not be deducted from the gross profits' be deleted."

41. "That at page 99, lines 42-43, *lor* the words 'in accordance with the provisions of section 387' the words 'unless he is either an associate of the managing agent or shares in the remuneration payable to the managing agent' be substituted."

SHRI BHUPESH GUPTA: I move: j

105. "That at page *99,* line 32, after the words 'its manager', the words 'and persons in effective management of the company' be inserted."

107. "That at page 99, line 32, for the words 'eleven per cent', the words 'eight per cent.' be substituted."

SHRI KISHEN CHAND: Sir, I am not moving amendment Nos. 42 and 43 but I move Nos. 110 and 114. I move:

110. "That at page 100, lines 1 to 3. for the words 'such sum not exceeding fifty thousand rupees per annum as it considers reasonable', the words 'such sum not exceeding fifty thousand rupees or one per cent, of the total paid up (equity and preference) capital, whichever is less, per annum as it considers reasonable' be substituted."

(The amendment also stood in the name of Shri V. K. *Dhage)*

SHRI BHUPESH GUPTA: I move:

111. "That at page 100, line 2, for the words 'fifty thousand rupees' the words 'twenty thousand rupees' be substituted."

112. "That at page 100, after line 3, the following proviso be inserted, namely: —

'Provided that the Central Government may authorise higher amount for reasons recorded in writing'."

SHRI B. C. GHOSE: I move:

113. "That at page 10*, line 6, after the words 'or more of them', the words 'and the company passes a special resolution sanctioning pay ment in excess of fifty thousand rupees per annum' be inserted."

SHRI KISHEN *CB.ANB:* I mr.ve-_:

114. "That at page 100, line 8, after the words 'fifty thousand rupees', the words 'or one per cent, of the total paid up capital (equity and preference) whichever is less,' be inserted."

MR. DEPUTY CHAIRMAN: Mr. Gupta, you have given notice of four amendments today. They are out of time. You can move them only il the hon. Minister agrees.

SHRI M. C. SHAH: I have no objection. Let him move all the four.

SHRI B. C. GHOSE: From the attitude of the hon. Minister it seems that he has not seen them. It is not a pleasing reply.

MR. DEPUTY CHAIRMAN: He has seen them.

SHRI B. C. GHOSK: Then I am sorry; I withdraw my remark.

MR. DEPUTY CHAIRMAN: Yes, Mr. Gupta.

SHRI BHUPESH GUPTA: I move:

184. "That at page 99, line 32, for the words 'eleven per cent', the words 'six per cent' be substituted."

185. "That at page 99, lines 40 to 43 be deleted/

186. "That at page 99, lines 44-45, for the words and figures 'sections 352, 353, 354, 356, 357, 358, 359 or 360', the words and figures 'sections 353, 354, 356, 357, 358 or 360' be substituted."

187. "That at page 100, line 2, for the words 'fifty thousand rupees', the words 'twenty-five thousand rupees' be substituted."

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

SHRI KISHEN CHAND: Mr. Deputy Chairman, I think this is one of the most important clauses in this Companies Bill. It relates to the overall commission that is allowed for the expenses and therefore, Sir, I will have to just read out the relevant clause for a better understanding of the amendments. Now, Sir, clause 198 consists of two main parts. The first part is the total remuneration. I will not read the whole clause because that is not necessary but just two lines that are relevant. "The total remuneration payable by the company to its directors, its managing agent or secretaries and treasurers, if any and its manager, if any, shall not exceed eleven per cent, of the net profits of the company, computed" in such and such manner. That is one oasic part, that the overall expenditure shall not exceed eleven per cent.

Then, Sir, are the other sub-clauses which go on and then it says in subclause (4):

> "Notwithstanding anything contained in sub-sections (1) to (3)" *•• "to all of them together, by way of minimum remuneration, such sum not exceeding fifty thousand rupees per annum as it considers reasonable."

So that means in clause lg^ there is the overall limit of eleven per cent, fixed and in case the company does not make sufficient profits there is the overall limit of fifty thousand rupees fixed. As against this clause I have sent in three amendments. Now my first amendment is against that eleven per cent. I pointed out, Sir, when the Bill was being, considered, that there is great divergence in the size of companies in our country and the hon. Minister also in his reply pointed out that the average share capital amount of the 30,000 companies registered as joint stock companies in our country is only Rs. 3 lakhs. But there are a large number of companies which have got on an average a share capital of nearly Rs. 1J lakhs and there are a small number of companies which on an average have got a capital of over Rs. 1 crore.

Now if you put the small companies and the big companies in one category of eleven per cent, it may be too little for the very small companies and it may be too much for the big companies. I should like to know, when we know the pattern and the size of joint stock companies registered in our country, why did the Joint Select Committee come to the conclusion of having a uniform scale. I have tried to really divide up the companies into three categories. There are companies with a capital of less than Rs. 10 lakhs and then companies with a capital of less than Rs. 50 lakhs and companies with a capital in excess of Rs. 50 lakhs. My amendment is that for companies with a capital below

Rs. 10 lakhs the eleven per cent figure -may be right or reasonable but for companies which have got a capital of above Rs. 10 lakhs but below Rs. 50 lakhs, I think that eleven per cent, figure is too high and for companies whose capital is above Rs. 50 lakhs even that figure of ten per cent, would have been too high and I have suggested a sliding scale from eleven per cent, to ten per cent, and then to eight per cent. To understand this, we rausX first of all consider the scale of profMv' Supposing a company has got a capital of Rs. 10 lakhs, then the possibility is that, with very good management, it may make a very large profit, and if we take the normal profit of 10 to 12 per cent., then for that company whose capital is Rs. 10 lakhs, the profit will be about Rs. 1,20,000, and eleven per cent, of Rs. 1,20,000 will be about Rs. 13,000. That means about Rs. 1100 per month; it is reasonable. If the managing agents together with the directors and the manager get this overall remuneration in the case of companies which have capital below Rs. 10 lakhs, eleven per cent, will be reasonable. With that I have no quarrel. But my quarrel arises when the company has above Rs. 10 lakhs and below Rs. 50 lakhs. If a company has a capital of, say, Rs. 40 lakhs and if it makes 12 per cent, profit, it will be Rs. 4,80,000 and 11 per cent will be much too excessive as it will be about Rs. 50,000. There I have suggested 10 per cent., only a reduction of one per cent. I do not want to really suggest figures which are unpractical but we should be a little more reasonable. Comparing a company with a capital of Rs. 10 lakhs with another with a capital of Rs. 50 lakhs or a little less than that, will not be proper as the amount of profit will be much higher in the case of the bigger capital company than in the case of the smaller capital company. In spite of the fact that the responsibilities of the managing agents in bigger companies will be bigger, and making due allowance for it I still submit, Sir, that the overall remuneration of ten per cent, is quite reasonable in the case of big companies.

Then I come to stiU bigger companies. Take the case of a company with a capital of Rs. 1 crore. If they make 12 per cent profit, it will be Rs. 12 lakhs and 8 per cent, of Rs. 12 lakhs will be nearly a lakh of rupees. Now do they want a bigger amount than Rs. 1 lakh to be paid to the managing agents and to the directors and the managers? If they keep 11 per cent, the extra 3 per cent, would mean another 30 or 35 thousand rupees for which there is no justification. So my contention is, that considering the pattern of our joint stock companies, where the capital varies from Rs. 2 lakhs to Rs. 5 crores, to prescribe one uniform rule is most unfair.

SHRI J. S. RISHT (Uttar Pradesh): In case there are no profits?

SHRI KISHEN CHAND: I will come to it a little latter. I am first dealing with clause 198, sub-clause (1). I will come to sub-clause (4) just in a minute or two.

What I was trying to point out is that we have fixed one uniform scale of II per cent, which does not meet the situation where the capital structure varies from Rs. 2 lakhs, or even less, from Rs. 1 lakh to Rs. 5 crores or above. Therefore, we should have a sliding scale.

Now, I come to the question of minimum profit. Supposing there is no profit, then we have put a uniform scale of Rs. 50,000 which can be raised further by appeal to the Central Government. The Central Government may raise it to any amount. Now, here I should like to draw your attention to the case of a company, say, with a capital of Rs. 1 lakh. That company with the best of efforts can never make a profit in excess of Rs. 12,000. And if it is not run properly or if it is running at a loss, there will be no profit. If such a company were to pay any amount up to Rs. 50,000 as rmmvinff agency remuneration,

[Shri Kishen Chanu.j the company will go bankrupt in one year's time or two years' time. Even if only Rs. 25,000 is paid to the managing agents as their remuneration out of its capital of Rs. 1 lakh, the company will go bankrupt in a short time. Therefore there should be certain relationship, when you are fixing a minimum of Rs. 50,000, to the capital of the company and it is not right to leave it to the sweet mercy of the Government. Even if it is a concern with a capital of Rs. 10 lakhs and supposing it makes a profit of Rs. 50,000 will it be open to the managing agents and to the director and manager to come forward and say, 'the company has not made sufficient profit; we are not prepared to accept this? Normally, they would have been entitled to H per cent, of Rs. 50,000. That is only Rs. 5,500. Supposing they come forward and say that the profits are insufficient and therefore they should be paid the whole amount due to them, that is. Rs. 50,000, that is the entire profit made by the company. I do not think it is fair or reasonable. If there is no guiding principle, if the Central Government does not lay down certain principles, it will become arbitrary. They might say in this case they consider Rs. 40,000 to be reasonable; in another case they consider Rs. 30,000 to be reasonable. That is why I have sent in an amendment that in case of insufficient profits there should be a certain relationship between the remuneration paid the paid-up capital of the company. On the basis that a company in normal times makes a profit of 10 per cent., you are paying to the managing agents and directors 10 per cent, of the net profits. The result is that the profit is 10 per cent, of the share capital and 10 per cent, of that 10 per cent, comes to 1 per cent, of the original capital. I will make it clear by an example.

Supposing a company with a paid-up capital of Rs. 10 lakhs makes a profit of 10 per cent., that is Rs. 1 lakh, in that case the managing agents would get as their remuneration 11 per cent, of Rs. 1 lakh. That will be Rs. 11,000. Now, if that company makes as big a profit as Rs. 1 lakh, then the managing agents get remuneration of Rs. 11,000, but if the company does not make a profit and the company remains in the same condition with its capital of Rs. 10 lakhs, the managing agents can say that the profits are not there and so they will take Rs. 50,000 as their remuneration. It is a very curious situation. If the cbrrpany makes a full 10 per cent, proi.t they will get only Rs. 11,000 as remuneration but if the company does *not* make any profit, they can claim anything up to Rs. 50,000.

MR. DEPUTY CHAIRMAN: But you also retain the minimum of Rs. 50,000 m your amendment. You say, "such sua. not exceeding fifty thou sand rupees or one per cent, of the total paid-up capital ..... "

SHRI KISHEN CHAND: But the words "whichever is less" are there. I have to provide for big companies also. If I send an amendment which does not apply to big companies, it will not be right and fair. Now supposing there is a company with a capital of Rs. 5 crores. In that case, if that company makes a small profit or makes no profit at all, I would certainly give Rs. 50,000 as managing agents' remuneration. I do not want to leave it to the discretion of the Central Government or to the officers or inspectors who may somehow or other be persuaded by the managing agents to sanction an amount more than what the company can afford to pay. Our real object is that the joint stock companies should prosper and when we want the joint stock companies to prosper, we should really consider the case of both small and big companies and lay down definite rules. If you do not have definite rules and if it is left to the discretion of, say, the local Registrar of Joint Stock Companies or the advisory commission, it is possible that these

smah companies will suffer and in the ease of big companies what will happen is that they will not be satisfied with Rs. 50,000. They will immediately approach the Central Government and they will say that in that case Rs. 50,000 is inadequate and that the amount can be raised to any extent. They can go up even to Rs. 10 lakhs because there is no upper limit fixed. Is it right, Sir? So I submit, that I have in my amendment made it clear that it is the total paid-up capital including the preference and equity capital that has to be taken into account. I have tried to be very fair so that the interests of both the small and the big companies are served, both when they make fair profits and also when they do not make any profit.

There are certain other amendments whereby an effort has been made to remove some of the items which were deducted from the gross profit. If those items are not going to be deducted from the gross profit, the result will be that the managing agency commission will be increased. I opacse all such amendments which make use of indirect methods to increase the gross profit so that the remuneration of the managing agents may increase, because in this Companies Bill, after very mature consideration it has been decided that there should be an upper ceiling to the remuneration paid to the managing agents. Therefore, I request the hon. the Finance Minister to carefully consider whether when the size of the companies is so varying it would not be better to have a graded scale of remuneration

MR. DEPUTY CHAIRMAN: Mr. Gupta.

SHRI BHUPESH GUPTA: After Mr. Parikh, Sir.

MR. DEPUTY CHAIRMAN: Probably he wants to speak after you.

SHRI BHUPESH GUPTA: I wanted to hear Mr. Parikh because there are certain amendments in his name.

MR. DEPUTY CHAIRMAN: You understand each other very well.

SHRI BHUP[r] H GUFTA: It would have been bettev. Anyway, part of the ground has been covered by the previous speaker; yet I think this to a subject which calls for some discussion and at some length too because the clause deals with managerial remuneration which according to us is very high, as it is provided here. Sir, there are all types of companies; we do not deny it. There are some very big; there are some very small. Naturally, in settling this question one cannot just lay down a sort of over-all equity or percentage because that would not be right. Undoubtedly it is necessary to protect the smaller companies because we know that in their case the gross profit is very often very small. Naturally, a percentage in such cases may raise it to a relatively higher figure. I am not accepting this figure at all. But in the case of bigger companies this would not be true because they make enormous profits and even at a very low percentage the quantum of money the managing agents get would be very high. In the other House in the course of the discussion it was revealed that about 1,720 companies in 1951 made a profit of about Rs. 38 crores and that gives you an idea of the profits that are made. And these companies were again allowed various allowances and commissions etc. to the tune of Rs. 10 • 4 crores. Thus it 3 P.M. comes to 48:4 crores which is an enormous sum. We have got certain other figures given to us yesterday by the Finance Minister and that gave us some idea as to the amount of profit made by very big ^rns ih the country. And even generally speaking he told us that the managing agents during 1950, 1951 and 1952 earned on an average a profit of 27" 7 per *cent* which, again, is very high. Now, having taken his stand on that position, he says that by fixing eleven per cent, now he is reducing it considerably. I do not deny that from 27-7 per cent, to 11 per cent, there is a big reduction.

[Shri Bhupesh Gupta.] Nobody will deny it. It is a purely arithmetical proposition. Yet at the same time one has to note that the ceiling fixed here is exorbitantly high, especially in the case of big concerns.

Take, for instance, the Tatas for the period to which some of the Finance Minister's figures relate. During those years on an average the T

ata Company made a profit of five crores of rupees, the Associated Cement Companies, three crores of rupees, the Imperial Tobaccos, Rs. 2-8 crores; the Indian Iron and Steel Company Rs. 2" 44 crores. Such were the amounts of profit made by these concerns. You can imagine what the managing agencies of those concerns where there are managing agencies, will get if we allow them at the rate of eleven per cent. Now, in the case of Tatas, or of anybody, if they make a profit of five crores, it will come to about or over fifty lakhs by way of remuneration to the managing agents. Now, this according to us is very, very high. The question may be raised as to how they would otherwise manage the companies. Now, from all that we know of the companies, through the trade union experiences and from other material published from time to time, we find that the companies are not merely managed by the managing agents themselves. It is true that they are in a commanding position. They are the masters of these companies in very many ways. Yet it is also a fact that the management of the company, if I take a propter view of the matter, is considerably left in the hands of the officers of the company many of whom do not get very high salaries compared to what the managers or the managing agents get. Therefore, it would not be right to say that the management of the company is a matter which is entirely done by the fortunate managing agents and in which others do not have any part to play. I know that a number of concerns have their officers very highly paid, the Tatas, for instance, or the Associated Cement Companies, and so on. They have got some highly placed officials who are given enormous salaries. And, also, English concerns like Andrew Yule, and so on. But by and large if you look at even these big concerns, you will find that the officers of these concerns taken as a whole do not really get very, very high salaries. Some of them do. They are exce

ptions. As against that, the managing agents draw enormous amounts. That is something to which we take objection. And the managing agents aTe really rich people who handle such companies. In many cases they are millionaires, and they have got various concerns under their management. Apart from that they have got plenty of personal properties and other assets. And, therefore, it is not as if they need money for their maintance and all that. You will say that since they are managing, there should be some incentive. Yes, incentive. First of all, may I make my position clear that we are not at all interested in keeping this system of managing agency? Assuming that you have kept it as you have kept it, now what is the incentive? The incentive is profit as far as they are concerned. Nothing short of it. The only thing they will listen to is a high rate of profit. Now, you may say that it has been reduced, but they are not absolutely upset because they know, they have got ways and means of circumventing the existing law and making profits. And in any case, even eleven per cent, will give them enormous sums of money every year. But we are concerned, not from the angle of the managing agents, however important it may be according to them. We are concerned with the economy as a whole. We take a social view of the matter. It is inconr ceivable that in our country a set of people should be so privileged that they are in a position to draw such sums of money. We must remember that in our country the average national income comes to about Rs. 265 per year per head. This is the

per capita national income. I am not saying that there are people, even » middle class people, who do not get muc[1,] higher. Many people get much higher, but the overwhelming majority of our ccuntrymen, whether in the urban areas or in die rural areas, do not have even this much of income. You must remember it. If you take a family, the family income is about a thousand rupees or so, taking a standard family.

Now, such is the position in our country today when vast sections of our people are condemned to live a life which is far below the average standard—average standard even according to our- own economic facts. So, when such is the the condition, we cannot allow at the top a handful of people to grab the fruits of our labour, fruits of the labour of workers and toiling people, by way of managing agency fees and all that. It is socially unjust. Economically also it is detrimental to the country. You will ask: why? Because we feel that the money they get from managing agencies—sometimes such funds are used, I concede, for industrial development. But this industrial development is carried out not with a view to strengthening the economy as a whole, but, again, for making profit. A narrow view of the matter is taken. When a managing agency is interested in investing its funds, it does not take into account the country's interests. I give you an example. Take the instance of some of the managing agents in Calcutta. They eaVn enormous profits and think in terms of reinvesting this money in some industry which would fetch them immediate profits. When we are thinking in terms of planning, we will have to invest in some industries which will not immediately yield profits. Therefore, that money would not be available to us because they are guided by profit motive and profit motive alone.

You take another case. In India we ; live in an economy which is unbalanced | in very many respects. For instance Andhra is industrially backward. West Bengal is relatively industrially advanced. If the industrial concerns make some profits in West Bengal, it is necessary that some of the funds should be utilised for the industrialisation of places or States which are relatively backward. An ordinary capitalist will not take that view of the matter. But if I were there, 1 would certainly take that view or for that matter, anybody will take that view. The Calcutta industrialist will reinvest the money in his own concern or for developing concerns in and around West Bengal. Sometimes he may be justified from the economic point of view.., But on many occasions such things would not be justified in the light of bigger considerations that we have in mind. It is necessary today that the Government should have a better control of the funds because these are the products of the endeavours and the toil of the people and having got that control, it should be in the hands of the Government to determine where and how these funds should be used.

The managing agents form a coterie and earn. They utilise these funds in the manner they like. But this money is not spent usefully. That becomes idle money or it is driven into speculative channels, we know. Therefore, we have this money which is not permissible from the point of view of our economy. We have not got all the figures. But it appears that a large chunk of national income that comes from the industrial sector of our economy will be diverted into channels over which we have no control—channels which are undoubtedly very shaky. Whatever one may or may not say in defence or otherwise of the managing agents, it has been proved effectively, of late, that they are guided only by their own consideration. However much they pretend to be patriotic and broad-visioned people, they are more concerned with their own pockets than with anything else. Sir, we cannot accept that position as far as these people are concerned.

[Shri Bhupesh Gupta.]

Sir, here it is 11 per cent. *1* have given two amendments, one for 6 per cent and another for 8 per cent. If you do not accept this then at least accept 8 per cent. Now, I press that 6 per cent, should be fixed. Government in a sense can retain certain powers of discretion in the event of smaller companies requiring a little fund. But there again you have got something in terms of grant. But I am prepared to consider that. J have in mind the bigger concerns, the managing agents whether they control one company or forty companies. They should not be allowed more than 6 per cent. That is enough for any one who really thinks in terms of the economic advancement of the country. They think now is the time somehow or other to make money as far as possible and fill their pockets with both hands. But, if they really think that the Government has launched upon a scheme fl^-industria-lisation of the country and if they want to spend the money in such a way as to make the country progress, then, of course, they will have to change their minds. Therefore, I say: Suppose a company earns a profit of one crore of rupees. Now, 6 per cent, of that would be fairly high—six lakhs of rupees. I think the hon. gentlemen who sit across the floor there in those benches are very confident about the financial position. They will bear with me if I tell them that they are in a position to manage their concerns with less than six lakhs of rupees. Why they do not do it, I do not know.

I know how managing agents arr spending money. I live in a towr. which is infested with managing agents. I use that word because in Calcutta City most of them, I find stroll, about. I find one managing agent has got ten cars, twelve cars which they do not buy out of theii pockets. Somehow or other they sc devise plans that money comes from the management. The management gives them four cars, five cars—all huge cars. They spend a lot of money on many things which I need not go into. It is a very common thing. You go to the Great Eastern Hotel. You will find a huge party thrown there, where people are entertained.

SHKI M. C. SHAH: Were you invited or not?

SHRI BHUPESH GUPTA: I am very sorry. Tney never invited me to the party.

There, they throw big parties in Calcutta. Go to Calcutta and see. Some of you have gone to Bombay, their temple. Come to the other temple, Calcutta. There you will find in the Grand Hotel, Great Eastern Hotel that almost every day parties are thrown by managing agents and certain big people flock there. The entire cost is charged to the company. I can understand such kind of hospitality on the part of these people if they bear the cost out of their pockets. But they do not do that. This money comes out of the company funds and somehow or other they debit the company's account with this expenditure. Naturally they are worldly wise people. They spend with certain ulterior objectives. All we are concerned with is why this money should be spent in this manner. I do not know why, in order to run the managing agency you must always entertain one Minister or other, one officer or other. Then, all kinds of presents come out of the funds. Perhaps one can understand the managing agent making a present of a refrigerator to an officer out of his own money. Such kindness I do not rule out. But why such things should be charged to the company, I cannot understand. This is how they spend their money.

MR. DEPUTY CHAIRMAN: You are now concerned only with managers remuneration.

SHRI BHUPESH GUPTA: I am talking about remuneration.

MR. DEPUTY CHAIRMAN: Not refrigerators and all that. This clause is about remuneration.

SHRI BHUPESH GUPTA: Why do they take so much money?

MR. DEPUTY CHAIRMAN: Though it is very interesting, you are far beyond the point.

SHRI BHUPESH GUPTA: I can give you many more examples as to how they squander away funds atid how they make enormous fortune out of it. I think that we cannot afford to allow them to have so much money in the present situation. At any time it would be imperceptible, today it would really be a sort of crime if we allow them such funds.

Then, Sir, I suggest that a sliding scale may be fixed in order to protect these people. Here according to this clause they would, in any case, get Rs. 50,000, no matter how the company runs, i could understand if you give some money to meet certain essential expenses to the company which runs at a loss. But why on earth must you lay down in this clause that irrespective of how much more thev get, Rs. 50,000 is the minimum. In any case they will get Rs. 50,000. My hon. friend, Mr. Kishen Chand was giving an instance how in the event of making profit he would get much less than if he were not making any profit, because Rs. 50,000 is guaranteed to them. This again is wrong. We have suggested in our amendment that Rs. 25,000 should be enough. I think, in such contingencies they should try to manage certain concerns with Rs. 25,000. If they cannot, let them coma to Parliament and seek an amendment to the provision. Today they should not be allowed so much money for what they call for managing these things.

Then, Sir, in sub-clause (3) of tiause 198 you find:

> "Nothing contained in sub-sections (1) and (2) shall be deemed—
>
> (a) to prohibit the payment of a monthly remuneration to directors in accordance with the provisions of section 309 or to a manager in accordance with the provisions of section 387; or
>
> (b) to affect the operation of sections 352, 353, 354, 356, 357, 358, 359 or 360."

Directors are guaranteed their remuneration; it is his fundamental right The directors, manager, treasurer and the whole lot of them are guaranteed that right. Why should it be there. Please delete it. It is not necessary to retain a provision like that. The company should decide how it should handle this matter.

Then clause 352 deals with the payment of additional remuneration. That is to say the additional remuneration will not be affected by it and nothing in this clause will affect that. We say that we are not prepared to make provisions for additional remuneration. Additional remunerations should also be brought within the purview of the limitations that you set.

Again in clause 359 you find the commission etc. of managing agent as buying or selling agent of other concerns. Now whatever they earn as buying and selling agents will not be affected by any of the limitations under clause 198. Again a guarantee! That is to say the law has been conceived with the idea of serving these managing agents and managers and all that.

SHRI SHRIYANS PRASAD JAIN: You are not concerned with that. May I explain, Sir, that point?

SHRI BHUPESH GUPTA: We are concerned. Generally I do not speak unless I am concerned.

SHRI B. C. GHOSH: Sir, we are dealing with the over-all managerial remuneration, and if we knew as to what they are getting under other clauses which are not affected by clause 198, we would have an idea as to what the over-all managerial remuneration would be.

, SHRI M. C. SHAH: The overall re-l muneration is subject to clause 198.

SHRI SHRIYANS PRASAD JAIN: Mr. Bhupesh Gupta was just speaking about the commission which one gets over and above what he is getting as managing agent for acting as buying or selling agent of other concerns. What I want to explain is that the managing agent or his associate under clause 356 is debarred from getting any remuneration so far as selling and buying agent. Therefore, the question which has been put by him is not fustifled.

SHRI BHUPESH GUPTA: I have suggested abolition of two clauses here. Clause 198 inter alia refers to sub-clause 3(b) of clause 352, 353, 354, 356, 357, 358, 359 and 360 saying that nothing contained earlier shall affect this. In my amendment. I have suggested that clauses 352 and 359 be deleted from here. Why I want the deletion of these two clauses, naturally for the life of me, I cannot explain until I look in advance and refer to these clauses which are given later. It is quite relevant and Mr. Jain, I believe, certainly understands it much better than I do.

SHRI SHRIYANS PRASAD JAIN: He cannot understand the implication of clause 356.

SHRI BHUPESH GUPTA: Now, here again I want these things to be deleted. To protect the interest of those people at the top a precaution has been taken. No room for any kind of adverse interpretation against them is left here at all. Every precaution has been taken. I say the whole thing has been conceived with very wrong outlook. Are we formulating the Company Law to pay our homage and salutations to the managing agents or the managers or the bosses, or are we formulating the Company Law to protect the interests of the public, the consumers, the workers and the com-' mon man? That is the question that I a(sk. The whole intention of clause 198 is to somehow or other protect their interest. We are not prepared for this sort of thing. I suggest, therefore, the whole thing should be re-written. Begin at least with a part 1 of my amendment and, if necessary, take other amendments later. Because it is detrimental to the interests of big bosses, one of the three musketeers is burning his back. I think, I am grateful to him, because we are fighters, so are they. Now, I say, change the whole thing. You have not eliminated the managing agency system; you have not accepted the advice of the people since, you have retained it to see that their interests do not suffer.

I have told you, Sir, that the structure of our industrial economy is one which does not permit such a thing because we want the money to be saved from their hands to be invested into desired lines of industrial development. We do not want our funds to be driven away into speculative channels, to be utilised by them just as they like. They should be spent at the will of Parliament arid the will of the people. I think I have made some sense to my friends sitting on the other side, because such things I take from them. The arguments that I am advancing, I get from them. It is they who speak such things in the lobbies, outside in their public meetings and in their private conversations. But I know that these views that we express here will not be accepted, because they think that they do not suit the ruling class. I know that it will be breaking my head against a stone wall when I talk to them, because they will never listen to such arguments. But I think they should bow to the will of the people and should accept the suggestions and the propositions that we have made. Every time we are speaking on this subject, we are challenging your *bona fides*— the *bona fides* of the monopolists, not the *bona fides* of these honourable gentlemen here. We are putting their conduct to test, and we are challenging their bona *fides*. And I think some of them should show that chivalry to stand up and accept the challenge and endorse some of the amendments that we have given in order to prove that they are not only monopolists, but they have also certain other interests apart from the

interests of the monied-men, and our amendments should be acceptable to them.

And finally, Sir, I would only appeal to the hon. Finance Minister who is nodding—I do not know whether he is understanding or not understanding me, but he is nodding none the less, and I would appeal to him—to reconsider the whole position and not go Dy what he had thought earlier. And if he thinks that there is some grain of justice and social values in what I have been saying, he would be prone to accepting the suggestions that I have made, because these suggestions are made for helping whatever good work they have in mind by way of planned development of the country. Sir, with these few words, I move all my amendments except one, and I hope the Members from that side of the House will be rising in support of these very legitimate amendments that I have tabled.

SHRI C. P. PARIKH: Mr. Deputy Chairman, we must try to study under this clause 198 the size of the problem and the companies that will be governed by the principle of 11 per cent, remuneration, 11 per cent, of the net profits.

Now, Sir, this remuneration, as it has been clearly explained, is the overall remuneration, and the remuneration of managing agents, secretaries, treasurers, managing directors, managers and others is separately given under various clauses which will be coming afterwards. And there will be time enough to discuss those clauses then.

Now, Sir, first of all, I wish to point out that the managing agency companies which are private and limited are 780 m number. I have got the figures available for the year 1951-52. The Finance Minister has also circulated those figures. And the public limited companies—which are managing agency companies—are 152 in number. So the total number of the companies, both private and public limited, is about 930, of which 80 per cent, are private limited companies. Probably that problem can very well be understood. And then, Sir, as the Finance Minister has mentioned in his note and the speech that he made in the other House, a copy of which was circulated among the Members, 84 companies are managing more than one company. Out of these 930 companies, 84 companies are managing more than one company. The other managing agents manage only one company.

Now, with regard to the remuneration that will be payable over and above Rs. 50,000, there are only 775 companies which are making profits of more than Rs. 5 lakhs. So, on the basis of 11 per cent., these companies will be able to pay to the managing agents this much commission. But I may point out here, Sir, that all these companies may not have managing agents. So we find that only 700 companies which are existing in India will be able to pay to their managing agents a sum of over Rs. 50,000. Let us make the problems quite distinct, because the clauses also are quite distinct. There are only 700 companies where they will draw remuneration of over Rs. 50.000. They are only 700 companies in the whole of India according to the figures that are available to us for the year 1952-53 in the Central Board of Revenue Statistics. It means that only 700 companies are getting this percentage remuneration. And, Sir, the commission given by the big companies is about Rs. 6 crores. I have got the other statistics also, but I need not reproduce them here. There are 50 companies in India, big companies, which are paying to their managing agents about Rs. 4 crores as commission. That is paid by only 50 companies. So the problem is narrowed down to only 50 companies. Now, Sir, I will give you the list of ten companies which are paying a com mission of Rs. 2 crores. Out of 700 companies that are paying commission over and above Rs. 50,000, only ten companies are paying commission to the extent of Rs. 180 lakhs to their

[Shri C. P. Parikh.] managing agents. Now those companies are as follows.

I will first mention the Tata Iron and Steel Company which pays Rs. 35 lakhs to its managing agents. And I think, Sir, nobody should grudge it on that account, because most of the commission—nearly 90 per cent, of that commission—is spent in charity. Therefore, we should not grudge that commission, and the country should not grudge it, because it is well-utilised. Then, Sir, there is the Associated Cement Company which pays Es. 33 lakhs.

SHRI V. K. DHAGE: How much is spent in charity?

SHRI C. P. PARIKH: I do not know, but not 90 per cent., which I mentioned that Tatas are spending. And with regard to the others, the hon. Members may make their own conjectures. Then, Sir, the Delhi Cloth Mills are paying Rs. 21 lakhs, the Calico Mills Rs. 22 lakhs, the Scindia Steam Rs. 15 lakhs—although the company is not prospering—Wimco, that match factory, Rs. 12 lakhs, Madurai Mills Rs. 12 lakhs, Bombay-Burma Rs. 10 lakhs, Arvind Mills Rs. 10 lakhs, Ambica Mills Rs. 10 lakhs, Rohtas Rs. 10 lakhs and Jayajirao Mills Rs. 10 lakhs. So the total commission comes to Rs. 180 lakhs. It is one-third of the commission paid on a large scale basis. With regard to the others, I have given figures in the Economic Review of the A.I.C.C. which will be published tomorrow and Members can read that.

SHRI B. C. GHOSE: Why was it not published yesterday?

SHRI BHUPESH GU^TA: Send me a copy, if you want me to read it.

SHRI C. P. PARIKH: Let us understand the size of the problem in all their aspects, because the other remuneration is drawn as office allowance and it varies from Rs. 1,000 to Rs. 6,000 per month. The average for the whole country may be Rs. 2,000. On that the office allowance is Rs. 3 crores and this amount will no longer be given as office allowance to companies. In its place the minimum remuneration which is mentioned under subclause (2) will be given upto Rs. 50,000 or whatever figure may be agreed by agreement with the shareholders in the meetings. So those companies which are paying office allowance at present will now convert themselves and make a change in the articles and also the managing agency agreements that the commission paid will be a certain minimum if the profits are not adequate or there are losses, in order that the services of the managing agent or secretary or treasurer may be remunerated in such cases.

With regard to this sum of Rs. 50,000 which now will be distributed and will have to be given to certain companies where the profit range is less than 11 per cent. I say now many of the companies will have to take recourse to minimum commission because the 11 per cent, net profit commission will not come in this range. About 600 companies or more than that will not get Rs. 50,000 commission based on 11 per cent, of the net profits. That is the position.

PROF. G. RANGA (Andhra): What happens to them? Will they go into liquidation?

SHRI C. P. PARIKH: No company will go into liquidation, I can assure you, but they will make a change in the managing agency agreement stipulating the commission to a minimum which may be payable to managing agents and that agreement will be arrived at, with the shareholders' meeting concurring in that.

Mr. Gupta has advanced certain arguments that this remuneration may be brought down to Rs. 25,000 instead of Rs. 50,000. While advancing this argument, he has forgotten the size of the various companies. To certain companies, even the minimum of Rs. 50,000 will be inadequate. He has also forgotten that certain new industries) will have to be started In which there

will be no commission ev«i for 5 years because there will be teething troubles in each industry especially in the initial stages—that can be noticed from the last 5 years' floatations. Therefore the remunerations will have to be exceeded by more than Rs. 25,000 according to so many amendments have been put forward by various Members. I think they have to realize whether even the remuneration which is drawn by technicians or by a single manager in the company or a salesman should not be given to the managing agent who is devoting all his time for procuring all the finances. Therefore this Rs. 20,000 limit put down is quite ridiculous and impracticable. Instead of promoting the industrial growth of which he is desirous and which he is advocating, I think, it will be retarded. He wants to talk as if he wants the maximum industrialisation of this country but the measures he suggests are quite opposite to that and they will destroy the industrialisation of the country or will even destroy what is existing at present in the industries.

SHRI BHUPESH GUPTA: Mr. Shah.....

SHRI C. P. PARIKH: I think he has already answered you and if you have not learnt wisdom, I think you cannot be convinced by arguments.

The other point is about the 10 per cent, and 1 per cent, paid-up capital. With regard to Mr. Dhage and Mr. Kishen Chand's amendment Nos. 42 and 110.....

SHRI KISHEN CHAND: Amendments Nos. 42 and 43 have not been moved. Nos. 110 and 114 are moved.

SHRI C. P. PARIKH: Thank you for that. It means that some wisdom has dawned on you.

SHRI KISHEN CHAND: It was a clerical mistake. By mistake it was printed there. I had written one and there was a per cent. i.e.. for percentage one and zero was written and it had been read as 10. It was only a mistake in print.

SHRI C. P. PARIKH: I want to again ask an explanation from Mr. Kishen Chand that even in the second list that we have got, in the amendment 110 the percentage given is only 1 and not 10.

SHRI KISHEN CHAND: One is correct.

SHRI C. P. PARIKH: So you have changed your mind from 10 to one?

SHRI KISHEN CHAND: It was a clerical mistake by the Department.

SHRI B. C. GHOSE: NO change of mind.

SHRI C. P. PARIKH: But you have entirely missed the whole point and it is in this way. 1 per cent, is to be paid as the minimum remuneration. That is what he is advancing.

SHRI KISHEN CHAND: 1 per cent, of the share capital.

SHRI C. P. PARIKH: I will agree to that or Rs. 50,000 whichever is less. Let us understand the paid up capital, size etc. If the company has Rs. 10 lakhs paid-up capital, the commission will be Rs. 10,000 if it is Rs. 20 lakhs paid-up capital, the commission is Rs. 20,000. If it is Rs. 30 lakhs paid-up capital, it is Rs. 30,000 as commission and when the paid-up capital is Rs. 50 lakhs, the commission will be Rs. 50,000. Now how many companies have paid-up capital of more than Rs. 50 lakhs, I think, he has not thought of trying to enquire. I am dealing with the figures for that.

SHRI KISHEN CHAND: In case of insufficient profits.

SHRI C. P. PARIKH: I quite understand that but I am advancing my arguments on your proposal of 1 per cent, of the paid-up capital and how many companies have this capital. Public limited companies are 155 with over Rs. 50 lakhs capital. I hope Mr ^ Kishen Chand will note it. I caa

[Shri C. P. Parikh.] assure him that all these companies are making more than Rs. 5,00,000 profit and they don't come under this. Therefore you will see how impracticable the proposition is. Private limited companies which have a capital of over Rs. 50 lakhs are 19.

SHRI B. C. GHOSE: Private companies don't come under this.

SHRI C. P. PARIKH: That is very good. There were 155 companies in 1952 of the paid-up capital of more than Rs. 50 lakhs. So all those 155 companies, if he analyses the list, all of them are able to pay more than Rs. 50,000. So they don't come. Now he Is roping in other companies and he is not oblivious of what will happen to companies which have a paid-up capital of less than Rs. 50 lakhs.

Now he says, "be satisfied with Rs. 10,000". Will this be adequate for those who will be getting Rs. 1,00,000 and Rs. 1,50,000 and Rs. 2,00,000 as minimum remuneration, and who have discharged the duties of managing agents and have provided finance for the concern and administered ts affairs? Will this remuneration oe deemed adequate? Further there has been the employing of technical staff and so many other people who were in charge of the concern, each of whom may be getting more than Rs. 20,000. I feel if my hon. friend had known what remunerations are being paid at present, he would not have suggested the percentage that he has suggested. Remuneration on the basis of 1 per cent, of the net profit is quite impracticable and it will destroy the present industrial structure of the country. Nobody will be prepared to take up managing agency on the remuneration suggested here.

SHRI KISHEN CHAND: Will my hon. friend kindly suggest what remuneration according to him would be adequate? What remuneration will he suggest for a company with a paid-up capital of Rs. 1 lakh?

SHET C P PARIKH: I may tell E9F hon. friend that on the remuneration of Rs. 1,0P0 that he has suggested, he will not get even a worker to work throughout the year.

SHRI KISHEN CHAND: Does he want it to be Rs. 50,000?

SHRI C. P. PARIKH: You first of all /said one lakh and now that I have answered you, you now go to something else.

SHRI KISHEN CHAND: I ask, will he put the remuneration as Rs. 50,000 for a company with a lakh as paid-up capital?

SHRI C. P. PARIKH: Mr. Kishen Chand who is connected with industry, knows it very well and a company with a paid-up capital of a lakh of rupees, may even earn five lakhs. What is there to compare here?

KAZI KARIMUDDIN: Sir, the two hon. Members are addressing each other direct and that is not allowed.

SHRI C. P. PARIKH: I am sorry, I am grateful to Mr. Karimuddin for drawing my attention to it. But Mr. Kishen Chand goes on from one point to another. As soon as he is defeated on one point, he proceeds to another.

PROF. G. RANGA: Because he is a mathematician.

SHRI C. P. PARIKH: Now I come to the subject of having a special resolution. One hon. Member asked, "Why not have a special resolution?" That suggestion too is a most impracticable one. How can you have any such special resolution when there is a recalcitrant minority? Certain parties in order to get into power, will not have a special resolution. The entering into agreements with managing agents the appointment of managing agents, and even the sharing of remuneration are all based on ordinary resolutions. So there is no use depending on passing a special resolution for fixing the minimum remuneration.

Next I come to the point raised about the buying snd selling commis-

*ions. *1* don't really know how this question of buying and selling commissions comes into the picture at all. My hon. friend Mr. Bhupesh Gupta might not have paid much attention to the provisions that appear in this Bill, for he, I would like to point out to him, has been concentrating all his attention to what had happened in the past. He has not devoted his mind to the present and to the provisions contained in this Bill. According to the provisions of this Bill the managing agent or his associates—and these associates may number 200—cannot have any share in the buying and selling agency commission. Therefore, I fail to understand how he forgot this fact and then brought forward his suggestion. This commission can be paid only when the products are sold outside India and that will form a very insignificant portion also. Moreover there are several conditions to be fulfilled even when the sale takes place outside. Therefore generally he will find there is no receipt through buying and selling operations for the managing agents or their associates. That is a great departure which the hon. Finance Minister has made in these clauses.

Next, I come to my amendment, that is amendment No. 40. I suggest that the words "except that the remuneration of the directors shall not be deducted from the gross profits" be deleted from lines 34-35. I am really puzzled how this came to be put in here in clause 198, because clause 349 mentions that director's remuneration will be excluded while calculating the gross profit. I would like to draw the attention of the Finance Minister that we should have followed the same method in clause 198 also. On page 179 in sub-clause (4) of clause 349, it is stated that the director's remuneration is to be deducted. It is to be excluded here when calculating the net profits. I want the same principle to be followed in clause 198 also. I wanted to bring in the analogy here and I also wanted to know the principle on which this clause 198 was framed. I have advanced my arguments and I would not insist on my amend ment, No. 40. Of course it is .....,

MR. DEPUTY CHAIRMAN: So you do not insist on your amendment No. 40?

SHRI C. P. PARIKH: No, but it is for the House to decide, Sir.

As regards my amendment No. 41 by that amendment I seek to delete the words.

> "in accordance with the provision* of section 387"

in lines 42-43, and in their place insert the words.

> "unlets he is either an associate of the managing agent or shares in the remuneration payable to the managing agent."

I wanted clarification of the definition of the term "managing agent" from the hon. the Finance Minister; but in spite of repeated specific questions he did not give an answer. Earlier also, in the other House the Finance Minister made it clear that he was bringing in the manager in the over-all remuneration in order that there may be no circumvention by appointment of relatives or associates. If that was his intention, why should we not clearly provide for it here?

SHRI M. C. SHAH: I do not think the Finance Minister said it.

SHRI C. P. PARIKH: Yes he said and my hon. friend will be able to find it in his speech.

SHRI M. C. SHAH: No, he did not and my hon. friend should not put words in the mouth of the Finance Minister which he did not utter. If he says that the Finance Minister said, he should be able to show the words to me.

SHRI C. P. PARIKH: I shall do so when we come to the definition of manager.

SHRI M. C. SHAH: But the definition of manager has already been passed by the House.

SHRI C. P. PARIKH: I am afraid the hon. Deputy Minister has not understood me correctly. I say when the clause about manager comes up, I will have an opportunity to explain the position. All that I now say is that unless the change suggested by me is effected, it will not be possible to run the industrial concerns in the way we desire to see them run. We cannot do that unless there is some freedom given to the industrial con cerns to select their managers and if necessary they may be selected by the general meeting. What is the use of being kept in suspense? What will be the interpretation of the Finance Ministry about this clause? So I sub mit some clarity is required and in the case of business, clarity is very important because there may be lot of litigations if the situation is not clari fied. I do not understand how the Finance Minister will be able to demarcate, even when he is given the power, that such and such a man can be called a manager or not. I think it is impossible. I have taken the best legal advice. He will also take the advice of his department but the question is whether it is possible to differentiate between two border line cases. That is why I have moved this amendment.

With regard to the sliding scale and other points raised by Shri Gupta, I have to say that it is a welcome system but this is not the occasion. It is not necessary to argue that point in this clause. When we come to the remuneration that is to be given to the managing agents and secretaries and treasurers we can have our say on this matter. I do not now propose to come out with my reaction to what Mr. Gupta has said. I will also move an amendment and then speak.

SHRI B. C. GHOSE: Before I come to my amendment, I should like to make a few general observations on this clause. My friend, Mr. Kishen j Chand, has suggested that the overall remuneration should be 8 per cent.— it should be brought down from 11 per cent, to 8 per cent.

MB. DEPUTY CHAIRMAN: 11 per cent., 10 per cent, and 8 per cent.

SHRI V. K. DHAGE: In inverse proportion to the capital.

SHRI B. C. GHOSE: Yes; one was 8 per cent, and Shri Bhupesh Gupta has also said that it should be 8 per cent. What I want to suggest is that this is not a doctrinaire or an unfair proposal. Of course, it is a case of judgment and I want hon. Members to consider carefully certain facts which I shall place before them and I am sure that, although I may not get their votes, I shall at least be able to get their reason in my favour. What does this 11 per cent, mean? We must first realise that it is only for public companies. It does not apply to private companies. I am told that out of 30,000 companies, over 17,000 are private companies to which this clause will not apply. In the next place although we have provided for a 11 per eent. overall commission, there are other clauses which have the effect of either over-riding this clause or giving further remuneration to the managing agents. For example, there is clause 352 under which the Central Government, if there is a request from the company backed by a special resolution, may give additional remuneration to a company Clauses 356 to 360 also provide for cases where certain other remuneration, besides this 11 per cent,, may be paid to the managing agents. It is quite true, as Shri Parikh has pointed out, that so far as buying and selling is concerned within the country, there is very little chance for the managing agent to get anything more; in the case of buying within the country, the actual expenses may be paid to them and this will not be deducted from the managing agents commission or the overall commission. So far as selling is concerned, if it is in foreign countries, commission may be paid. Clause 359 deals with commission, etc., of managing agent as buying or selling agent of other concerns. There ma> be certain other earnings also as

a result of this provision. There is also clause 360 which speaks of contracts between managing agent or associate and company for the sale or purchase of goods or the supply of services, etc. Certain remuneration may be paid to the managing agents. These may not be large figures; I am prepared to concede that but this 11 per cent, is exclusive of all these items. In order to come to a judgment as to whether this 11 per cent, is or is not a high figure, we have to examine as to how it will apply and in what way it will affect the companies. Mr. Parikh has pointed out that only 775 companies make a profit of five lakhs of rupees or over. Only in their case would this question of even 10 per cent, commission to the managing agent be at all significant. In the case of the vast majority of companies, they will have to fall back upon the minimum remuneration clause. It is said that the present Bill has done away with office allowance. That is quite true but it has come in another form, in the form of minimum remuneration. That will certainly now become the office allowance. As Mr. Parikh certainly knows very well, in a very large number of companies which are very small companies, the managing agents depend upon the office allowance and not on the commission on profits. The commission on profits will probably be Rs. 2,000 or Rs. 5,000 a year but it is the office allowance that brings in their remuneration. The office allowance varies from Rs. 1,000 to—I should say—Rs. 2,500, not Rs. 5,000. It does not probably exceed Rs. 2,500 and the average would be about Rs. 1,500 a month Rs. 18,000 a year. What will happen is that for a large number of managing agents we would probably be increasing their remuneration because a very large number of managing agents are depending upon the office allowance. The office allowance, during the last few years, especially since the 1951 amendment, was being gradually brought down; formerly it used to be much higher but it came down in many cases to Rs. 1,500 and in some cases to Rs. 2,000 per month. That was the general scale of office allowance so that in many cases it would have been Rs. 24,000 or Rs. 25,000 a year. For the very large number of companies, we are making a provision under which, by arrangement with the company—and everybody knows that it will not be very difficult for the managing agents to have a resolution passed sanctioning a payment—the managing agent will be able to get a higher office remuneration. We know that the company which was getting Rs. 20,000 or Rs. 24,000, if it is wise, will not bring it up to Rs. 50,000 all of a sudden; it will increase it to Rs. 35,000 or Rs. 40,000. By this provision we are, in effect, increasing the remuneration of the managing agents in a very large number of cases. Let us be very clear about that. This Bill really affect? only a small number of companies which make very large profits. Those companies are of the order of 775 only. The question now is whether, in the case of these small number of companies, the 11 per cent, suggested is high or not. Would 8 per cent, be really very unfair? If the profits are large, then even 5 per cent, or 6 per cent, would yield quite a large amount. Mr. Parikh referred to the Tatas and said that they distribute 90 per cent, of their profits to charities. Probably they do; I do not know but what is important is that Tatas' managing agency commission is *1*\ per cent; in years when sufficient profits are not made, it comes down to, I believe, even 5 per cent. So, the biggest company that we have in our country do not accept voluntarily remuneration higher than *1*\ per cent, and is prepared to reduce it to 5 per cent, in bad years. If that is so, then in whose interest are we fixing the remuneration at II per cent? The large companies do not need it because 5 per cent, or 6 per cent, or even 7 per cent, will give them sufficient profits; the smaller companies do not need it because, in their case, it is immaterial; they have to fall back upon the minimum remuneration clause. It is only a small number of mediumsized industries which will profit by this 11

[Shri B. C. Ghose.]

per cent, figure. Their number would I be very very small. Now I ask, if those are the facts of the case, is it very preposterous on our part to suggest that the minimum remuneration should be reduced to 8 ner cent? Because even 8 per cent, will bring to many of the very large companies adequate remuneration. If they do not have adequate remuneration it means that more companies will have to fall back upon the 'minimum remuneration' clause. So in what way does it really affect the interest of the companies or the adequacy of the remuneration which the managing agents will get in relation to what they are getting today? I should like the hon. Minister to explain that point to me. When we suggest 7£ per cent, or 8 per cent, we are not being very unfair. We are going by the facts of the case as we find it today in regard to managing agents in this country and I hope, Sir, that no managing agents would grudge 7J per cent, remuneration as we find that at least one company has voluntarily accepted that figure. If that is so, Sir, then our suggestion—that it should be reduced to 8 per cent, should not be considered, as I said, unfair and I should like to repeat again that hon. Members should realize that for the vast number of managing agents what we are doing is increasing their remuneration, not reducing it. For the smaller people it may be a good thing because the smaller people will have some more money. If we were in favour of smaller people from that point of view it may be said that it is a good thing. But we are giving them more than they would be getting otherwise.

Now, Sir, I come to my amendment which is about a special resolution which, I said, should be required if the Government were to allow directors or managing directors or managers or secretaries and treasurers anything in excess of the minimum remuneration of Rs. 50,000.

Now why I sent in that amendment was this. Under clause 352, if it is a case of managing agent, if he is to be ! paid more than 10 per cent, or a remuneration more than Rs. 50,009 then he is to have it by a special resolution. The proviso to clause 198 does not affect the managing agent because in clause 352 provision has been made for the managing agent. The proviso to clause 198 affects only managing 'directors, whole-time directors and managers. Now the proviso to clause 198 does not say how this remuneration will be increased in the sense as to what the companies will have to do if they want that this remuneration should be increased. It only says: Provided certain things happen, "Provided***the Central Government is satisfied that for the efficient conduct of the business of the company, the minimum remuneration of fifty thousand rupees per annum is or will be insufficient, the Central Government may, by order, sanction an increase***". But I presume that the Central Government would have to be approached by the company concerned; otherwise they would not be apprised of the situation. Of course, it is not stated there, but that is certainly the implication.

Now the next question arises, if the company concerned is to approach the Central Government, in what way will it approach the central Government. Will a Board resolution be sufficient or will there be the necessity of a resolution of the company or will there be the necessity of a special resolution? Now no mention of that is made in the proviso whereas I find that in regard to the managing agents there is a strict provision that a special resolution would be necessary if any increase over the minimum is to be given to the managing agents, and if a request has to be made to the Central Government for such increase, I thought that it stood to reason that the same condition should apply, at least to the managing directors. They should not be considered on a footing very much different from the managing agents. In many companies the managing directors exercise as much power and have as much control over

the company as the managing agents have, and both have practised abuses which probably are comparable. Therefore, if a special resolution should be necessary in the case of the managing agents, I do not see any reason why the same condition should not be applied in the case of a managing director. I do not know if it is the intention of the Government to provide that in the. rules, that is, whether it is the intention of the Government to provide rules as to how the companies, should approach Government with a request for paying to the managing directors or whole-time directors or managers a remuneration over and above Rs. 50,000 per annum. If it is the intention of the Government that they will provide that by rules and if Government say that these rules will include a condition that preferably a special resolution or at least a general resolution of the company will be required and that they will consider the request only on an application made by the Board of Directors, I shall be prepared to withdraw my amendment, but otherwise I do not think that I should withdraw my amendment because it stands to reason at least to me and I think the House also will agree that there should be at least a resolution by the company before a request is made to the Government for increasing the remuneration because the members of the company should know the conditions under which the increase in the remuneration of the management *over* Rs. 50,000 is desired.

Now that is all that I Have to say.

SHRI S. N. MAZUMDAR: Mr. Deputy Chairman, now this question has been discussed in several aspects. Mr. Parikh gave certain figures to us and my friend Mr. Ghose has quite ably, I think, answered some of the arguments advanced by Mr. Parikh. Now Mr. Parikh tries to show that the problem narrows down by citing the number of managing agencies which manage different concerns. But the problem is narrowed down in quite the opposite sense to what was implied by Mr. Parikh.

Sir, I have always said that statistical analysis can be used to hide . realities and also it can be used to point out glaring realities. The hon.; Finance Minister yesterday treated us with a statistical analysis of the concerns managed by managing agencies and asked the question: Where is the concentration of power and concentration of wealth? But Mr. Parikh and. the hon. the Finance Minister both of them forgot certain other things. la India out of a total of nearly 30,000 concerns, less than 400 control more than 60 per cent, or nearly 70 per cent, of the total paid-up capital. Managing agencies, they control a large number of important concerns. For looking into the question of concentration we need not diffuse our attention all over the industrial field or all over the field where there are small minute concerns at one end and where there are giant concerns at the other end. We should look at the giant concerns controlling the vital sectors of the industry and we should look for con-centration of wealth there. Mr. Parikh has given us many figures and he has shown how many companies pay remuneration of a total of Rs 4 crores. I do not like to repeat those figures again, but I like to point out to him that even those figures which he has given should be viewed in relation to certain other matters in a country where the *per capita* annual income is a little over Rs. 250 and that also is the overall average.

If we analyse the income of the lower income groups it will become very much less. These figures are not very modest. When the expenditure per head on necessities of life comes to three annas per month, I think, as estimated by the framers of the draft proposals for the second Five Year Plan, these figures are not very modest figures. While considering the remuneration of the managing agents we should consider also what they have amassed in the past and how they have got it. The evidence which was tendered before the Joint Select Committee by the representatives of a trade union organisation, I mean the I.N.T.U.C, pointed out how in

[Shri S. N. Mazumdar.] Ahmedabad in the textile industry in the last five years the managing agents got by way of commission etc. an amount which is equal to the total paid-up capital of that industry. These facts we have to bear in mind. Moreover when discussing this question of the remuneration of managing agents, we should not forget the Directive Principles of the Constitution, namely, the prevention of concentration of wealth and reduction of inequality of income. It was from that point of view that the I.N.T.U.C. suggested even in 1948 before the profit Sharing Committee—as I find from a minute of dissent of the present Labour Minister—a commission of 71 per cent. Now, in 1955, when things have changed, when objectives have come to be denned in a changed manner, it is necessary that this percentage should be fixed at a lower rate. And these managing agents, managers, secretaries and treasurers are not going to be losers if the percentage is lowered. Mr. Ghose has pointed out that in the case of the bigger companies, though the percentage may look reduced, still the amount will be considerable. As regards the smaller companies, there is no question. For them the only question will be the question of minimum remuneration. Only in case of certain medium concerns, the remuneration of the managing agents and those other gentlemen will be increased. We should look at that question of increase, as I have said, from the point of view of our objectives, namely, the prevention of concentration of wealth in few hands and the reduction of inequality of income. From that point of view, the remuneration will have to be further reduced. I should also like to point out that the labour representatives held the view— and I am including among these labour representatives, representatives of the I.N.T.U.C. also—that the reserves should be considered not only as the contribution made by capital but as the contribution made by the labour. I am not going to discuss that question at this stage; that will be discussed later on. But if we take seriously the professions which fall from the lips of the spokesmen of the Government regarding the share of the labour in industry, their partnership, their contribution, their place in industry and all these things, then I think we should consider the question seriously whether this percentage should not be further reduced.

Then there is another aspect to this question; not exactly remuneration. The income of the gentlemen who function as managing agents, secretaries, treasurers and the like, is not confined only to remuneration earned in those capacities. There are other sources of income. They will have return on the capital which they contribute to the companies; they will have income accruing to them as dividends paid on the shares which are held by them and we know how these are inflated. That question also was, to some extent, discussed yesterday, though not very elaborately, while discussing the question of the bonus shares. Considering all these facts, I think, Sir, that the percentage proposed by Mr. Bhupesh Gupta, that is, six per cent as regard maximum remuneration, is a very reasonable one. As regards the minimum also, the reduction which has been suggested by him from Rs. 50,000 to Rs. 35,000 is also very reasonable.

Now, in the course of his speech Mr. Parikh said that some of the technical staff in some concerns would be drawing more than Rs. 20,000. Well, that question also should be gone into, because when we are considering the question of reducing inequalities of remuneration, this ratio between the maximum and the minimum salary should also be looked into.

Then there is another aspect. Some of the people who actually manage the concerns bear a greater share of responsibility in the management—I mean the technically qualified people —and in the development of the concerns than the managing agents, secretaries, treasurers and the like. From the point of view of their contribution in that way to the pros-

perity oi the concern, If they happen to draw remuneration which is greater than that payable to the managing *mgents,* secretaries or managers, I think that should not be grudged. With these words, Sir, I support his amendment.

Swo H. C. DASAPPA: May I ask just one thing of Mr. Mazumdar? What would be his attitude to clause 352 where the Government is empowered to give higher remuneration?

SHRI B. C. GHOSE: They have opposed that.

SHRI H. C. DASAPPA: Rs. 25,000 should be the maximum?

SHRI B. C. GHOSE: Yes; they are whole-hoggers.

SHRI H. P. SAKSENA: Sir, I rise to speak on clause 198 which deals with managerial remuneration. As I understand it, the minimum remuneration is fixed at Rs. 50,000 and I also take it that it is Rs. 50,000 per company. If I happen to be managing 10 companies my remuneration in a particular year will come to Rs. 5 lakhs. That fact has got to be taken into consideration when we are considering the amount of remuneration. My hon. friend, Mr. Parikh spoke of the benevolence and the charitable disposition of the industrialists and stated very many cases of charity being given by industrialists like Tatas and others. All honour to them and all glory to them in this world as well as in the next. So far as the amount of Rs. 50,000 per year is concerned, ha said and rightly complained that it was ridiculous and impracticable. I concede that it is both ridiculous and impracticable. I would go a step further and state categorically that it is beneath the dignity of any managing agent to accept this sum of Rs. 50,000 per year as his remuneration. The first thing and the best thing for him would be to work in an honorary capacity. I suggested the other day that the best thing for these friends after having rendered such meritorious service would be to work in an honorary capacity in future. I am sorry, Sir, that here this managerial remuneration is always considered in terms of money; it has not been considered in terms of service.

Now, we all appreciate the merit, the talent, the skill, the self-sacrificing spirit and the nobility of heart that these friends possess. It has not up till now been of any service to us. The country is crying aloud and requesting them to render these services now, subsequently, and in future for the uplift of the country. We all wish them a long life. We wish them spiritual enlightenment. We wish them contentment and request them with all the humility at our command to render us in future the skill, the talent and the experience that they possess in managing the industrial concerns for the rest of their life. That will be the greatest contribution that they can make and all this talk about the fixation of the managerial remuneration, this percentage and all that will come to an end. And there will be no talk of eleven per cent, fixing or six per cent. Now, we are between two extremes. The Bill allows eleven per cent, at the utmost. My friend, Mr. Bhupesh Gupta, suggests six per cent. So, there will be no dispute, no quarrel about any percentage whatsoever, the moment my appeal is responded to and the services are rendered, are offered to the country which we all hold dear, without any remuneration.

SHRI V. K. DHAGE: Are you not hoping against hope?

SHRI RAJENDRA PRATAP SINHA: Mr. Deputy Chairman, we are on this clause of remuneration which I consider is one of the most important clauses in this Bill. We are fixing eleven per cent, as the maximum remuneration.....

KAZI KARIMUDDIN: Minimum.

SHRI RAJENDRA PRATAP SINHA: Not minimum, but maximum that will

[Shri Rajendra Prata'p Sinha.] be permitted to be given to the managers or managing agents or whoever it may be. Now, I would like to give you the background of my arguments. Of late, the industrial production in this country has been rising. The sales have been rising and the profits have also been rising. And the profits in the year 1954 would be probably one of the biggest in India. It would reach the level reached in 1951 which was the year when the biggest profits were recorded in the industrial sector. Now, I find that a journal run by the big business has made a very interesting study of this question of profits and production in India. This is a very powerful journal supported by the Birla group and it says in their latest quarterly report as follows: "It seems that profit margins have tended to decline in the sales of jute and coal industries, but not in cement, cotton textiles, tea, sugar, paper, iron and steel. On the other hand, profits as a whole have not shown any tendency to decline over the 1954 figures and they might be said to have been higher than in any year since 1951, which recorded an all time peak after Independence." Sir, what I find is this, that after we have adopted this idea of the socialistic pattern of society, the profits in the industrial sector are the highest ever since the introduction of joint stock companies in this country. It has even surpassed the profits that were available during the' British regime. With this background I would like you to appreciate this clause fixing eleven per cent. We are saying that eleven per cent, would be the maximum. Now, when the quantum of profits is higher, this eleven per cent, would be equivalent to 13 per cent, or 14 per cent, of yesterday, because the total profit in the industry is highest today in the country. The quantum of commission at eleven per cent, that would be available today, would be more or equivalent to the commission calculated*12 or 13 per cent., say, a few years t)ack.

Now, Sir, I should also like to examine the other points which were made by the Finance Minister. He claimed that a great thing has been achieved with the introduction of this- , clause. The claim was that they had been able to bring down the profit margin or the commission of the managing agent from 27 per cent, to 11 per cent. I say this is a fallacy. Here are the figures given by the Taxation Enquiry Commission, after examining" the balance sheets of 492 companies covering a capital of Rs. 252 crores. They have given the commission earn ed or the remuneration earned by the managing agents for the years 1946-51. I will give the average for the years 1946-51. They have given several industries like cotton textiles, jute textiles, other textiles, iron and steel,, engineering, sugar, chemicals, paper, tea and other things like coal and shipping. The average of all these for these five years comes to 13-7 per cent. So, I should say that this is very authentic. The Taxation Enquiry Commission Report says that the average by way of remuneration to managing agents was 13-7 per cent. Therefore, we are not reducing it from 27 per cent, to eleven per cent, I should like the House to appreciate it. We are merely reducing it from 13 • 7 per cent, to 11 per cent. That is number one .....

SHRI LALCHAND HIRACHAND DOSHI: Let the hon. Member make up his mind whether he thinks that it is 27 per cent, or 13 per cent. There seems to be shifting of ground by the other side. One is that the managing agents are making very huge profits to the extent of 27 per cent.; the other one is that it is only 13 per cent.

SHRI RAJENDRA PRATAP SINHA: Well, I leave it to his friend who will explain to him. I am merely quoting' what the Finance Minister has pointed out. I have also said that there were a group of factories where 70 per cent, of the profits were taken away by the managing agents. I have not worked out the figures, but the Shareholders' Association has worked out the figures which I explained in the consideration stage of the Bill. What

I am pointing out here is this. The claim of the Finance Minister that he is* reducing the managing agents' remuneration from 27 per cent, to 11 per cent, is not very correct. He is reducing it from 13-7 per cent, to 11 per cent.

SHRI LALCHAND HIRACHAND DOSHI: He is reducing it from 70 per cent, to 11 per cent. You must take the maximum. That is the comparison you must make.

SHRI RAJENDRA PRATAP SINHA: My friend forgets conveniently that what I am quoting is the average. I am not talking of the maximum. I am talking of the average. The Finance Minister maintained that the average is 27. I say that from the Government's figures the average is 13 per cent.

SHRI B. P. AGARWAL (West Bengal): Has he assumed eleven per cent, as the average?

AN HON. MEMBER: That is the maximum?

MR. DEPUTY CHAIRMAN: Order, order. Let him go on.

SHRI RAJENDRA PRATAP SINHA: I will talk on that point also.

SHRI LALCHAND HIRACHAND DOSHI: That 13 per cent, refers to 400 and odd companies while the 27 per cent .....

MR. DEPUTY CHAIRMAN: You will have your chance.

SHRI LALCHAND HIRACHAND DOSHI: ..... to 1,700 companies.

SHRI RAJENDRA PRATAP SINHA: If you will refer to the speech of the hon. the Finance Minister, you will find that he has also said that the average may be that. Nobody can guess this because these are all average calculations. But I am talking of the Taxation Enquiry Commission— 13-7 per cent, to 11 per cent.—and I have already explained to you previously that there hae been a rise in the quantum of profits available for distribution among the managing agents even at 11 per cent. Say a year back it was 100 and it is now 125. Therefore, the 11 per cent, will be equivalent to 13:7 per cent, of yesterday'. So far as the total money available to the managing agents is not being affected at all, because there has been a rise in the profits available with the companies. This point I would like to emphasise. What I find is that there has been going on a jugglery of words between the protagonists of capital and the Finance Minister and in this battle of wits, I would like to congratulate the friends on the other side, that they have won and their profits on the whole are intact in spite of this Bill that is before us. Their commission will not be affected.

Now, we have also to consider another very important point. What is the social cost which the country is today asked to bear for the management in the private sector? You will find that the society is called upon to pay a very much higher cost for managing the industries under private sector as compared with the industries in the public sector. You will find from the speech of the Finance Minister—it is very interesting—that the cost of management of the Smdri Fertilisers is only 1 per cent. Now we are asked to pay 11 per cent, as the managerial cost in the private sector. The only claim of the private sector is that they can manage the industries more efficiently than the public sector. There are various tests of efficiency and one of them is the 'cost'. How does the private sector face when we apply the test of cost? The social cost of management under the private sector is much higher, as compared to the public sector. I know my friend will rise and say that there are many abuses, that the public sector is not being run efficiently and that there is so much of wastage. I would like to point out here: just compare the working of the two. In the public

[Shri Rajendra Pratap Sinha.] sector, there is the Auditor General to audit the accounts and to place them on the Table of this House. We do not know what is going on in the private sector. So, if they permit, as a sample checking, the Auditor General to examine the working of a few of the companies, then we can find what are the abuses and defects. I do not hold out any brief for the abuses or for the inefficiency that is in existence in the public sector. We all want that the abuses should be removed and that efficiency should be improved. What I would like to say to my friend is this. Wealth is now assuming more and more a social conception. Wealth belongs to the society; it does not belong to the individual. That is the modern conception of wealth that is coming up. If they want to manage the wealth of the country, the indus tries of the country, then they can continue to do so only if they prove efficient. The only test and the best test which the country—the society—will put is, as to what cost the society has to bear in permitting the private industrialists to manage the social wealth, and what cost the society is expected to bear when it is managed under the State. So, if they want to continue—I am talking as a friend in their interest .....

SHRI LALCHAND HIRACHAND DOSHI: Thank you.

SHRI RAJENDRA PRATAP SINHA: They can continue only if they prove that the overall cost of management will be less than in the public sector. Unless they prove that and unless they satisfy the society on this point, they cannot continue. Therefore, in their interests, I would advise them to accept this figure.

I will tell you what is the cost of management in other countries. Never, it is 11 per cent. I may tell you that the overall cost of management in foreign countries varies between less than 1 to 3-5 per cent, depending upon the company.

SHRI LALCHAND HIRACHAND DOSHI: Upon what?

SHRI RAJENDRA PRATAP SINHA: Upon profits. Therefore, we have to judge everything on world standards. We cannot have a national standard. Now it is a well known fact that our management is not efficient. There are very many managing agents in this House, and I presume they are efficient managers. I wish the others to emulate them. Majority of them are inefficient. They have got to improve their managerial capacity and if they improve that, naturally cost of management will also come down. Therefore, we have to judge them by the world standard and if in the countries of the world the overall managerial remuneration is less than

I per cent, to 3-5 per cent., I see there is no justification in our giving this

II per cent, to them.

Now, my friend just said that 11 per cent, is the maximum. Now, the Fin- • ance Minister has estimated that the average that will work out will be probably 8 per cent. That is what he said. That is also his conjecture. Nobody can be sure because we have not got all the figures. But he considers that probably the average payment will work out at 8 per cent. If that is so, there is no point in having this maximum of 11 per cent. I would submit, therefore, that this 11 per cent, should be brought down to 8 per cent, so that the average will further go down.

MR. DEPUTY CHAIRMAN: That is all?

SHRI RAJENDRA PRATAP SINHA: One word. I would like to say in this connection in support of my argument that the national income per head per year in India comes to Rs. 265. Now in the United Kingdom it comes to Rs. 3,500, that is to say, 12 to 13 times more than the individual income of an Indian. If you take the United States figure, it is forty times i.e. Rs. 10,000 per head per year. The cost of management here is very much higher. We are paying 11 per cent, whereas

the maximum there is only 3-« per cent. Now there must be parity in this also, if my friends claim that in America they are having a very high remuneration. Granted. But you should not forget that the minimum there is also Rs. 10,000 for every individual. Every person will have Rs. 10,000 first and then the maximum will come. In England, the minimum is Rs. 3,500 whereas in India our minimum is Rs. 265. The maximum profit in India also must be brought at par, in equal proportion to these things. Therefore, I submit that this 11 per cent, is a very high figure. I thought that they would have moved an amendment themselves to bring down the remuneration cost.

SHHI LALCHAND HIRACHAND DOSHI: Sir, I have been hearing attentively to the speeches of some hon. Members on the other side, who have been pressing that the maximum remuneration provided under this Bill, namely of 11 per cent, of the net profits, should be brought down to, say, 8 per cent, or, as somebody said, to 6 per cent, and like that. There has been also a suggestion that the minimum, that has been provided, namely Rs. 50,000 should be reduced to 1 per cent, of the paid-up capital, according to the amendment of Shri Kishen Chandji. There seems *to* be a misconception on the part of these Members. As has already been pointed out, 11 per cent, is the maximum provided. Formerly, the managing agent, as the Finance Minister, pointed out, got an average of 25 per cent. My friend, Mr. Bhupesh Gupta thinks, no, no, it was 25 per cent., or the average was 13 per cent, or some other set of figures. Whatever it may be, all the same it shows that the maximum the managing agents were earning was much more than 11 per cent, that this Bill provides. As my friend said yesterday, if it was 50 per cent., the drop from 50 per cent, to 11 per cent, is certainly very big. Even if it was not 50 per cent., it was only 25 per cent, maximum, that brought the average to 13 per cent. Well even then the 11 per cent, which is the maximum in this ewe is a fairly big drop. But the whole thing is—according to the position as it seems to bo— that they are considering that 11 por cent, is going to be the average in all cases, which is not true. As has been pointed out by Mr. Ghosh himself, some of the companies are already taking 7> per cent, or even less whenever the occasion demands it. I know of several cases who have satisfied themselves with a certain percentage of 10 or 11 of the profits without taking any commissions on sales or purchases. I can definitely say that there has been a common practice in many places not to charge any kind of commission on sales or purchases, not to charge office allowance. There are cases where they have not charged even the minimum. So it is not that everybody is going to charge what is provided as the maximum in this case or everybody is not going to claim the minimum of Rs. 50,000. It is going to be according to the nature of each company and the risk involved or the effort that is involved in running the company. Is the management going to be run by one man, two men or three men or how many men are likely to be required for running the concern. That will determine to a large extent all remuneration that will be drawn.

Sir, a big point was being made by the last speaker that though the percentage has remained the same, yet the total remuneration of the managing agent has gone up, because the total profits of the concern have gone up. Well, where is the point of grouse in that case? The total shareholders' income has gone up and along with them the income of the managing agents has gone up. Why should he grudge in that case when they have managed the company better to bring the overall profit higher for the shareholders? I think the shareholder would be much more happy in getting a total higher overall profit and from that overall profit he will be happy to pass a certain percentage to tna managing agent. But, Sir, yesterday the Finance Minister made it clear

[Shri Lalchand Hirachand Doshi.J that when the profits are very high *io* the managing agent, he would certainly provide a certain graded scale which he does not want to lay down 1 in the Bill because he thinks it .impracticable. Well, it he is going to provide it is ,all right. . That should satisfy at Least some of the criticism of the Members on the other side.

SHRI RAJENDRA PRATAP SINHA: Is the hpn. Member agreeable to that extent? Does he consider also that the total remuneration that will be available to the managing agents under this Bill will not be affected? They will continue to get what they were getting yesterday?

SHRI LALCHAND HIRACHAND DOSHI: I was coming to that point. I do not agree because who is the better judge? It is not the authorities who is the better judge, as to what the management should get in a company. The man who is investing money in his company is the better judge to see whether the manager should get 10 per cent., 5 per cent, or 15 per cent. Yes, Sir, I agree that there have been certain abuses during the war period. The legislature is here to prevent the malpractices that have cropped up in those managements during this period. But whether a manager should get Rs. 1,000, Rs. 2,000, Rs. 5,000 or Rs. 10,000 entirely depends on the nature of the service rendered and the capacity of the manager to bring ultimate results to the concern in which the shareholder is primarily interested.

Sir, let us take the case of a manager who takes only Rs. 5,000 as remuneration, but shows only, say, Rs. 50,000 as profit. • There is another manager who, with his efficiency, with his hard work and other qualities, brings a profit of Rs. 5 lakhs and demands Rs. 1 lakh as his remuneration. Sir, I am quite certain, as a practical thing, the shareholders will prefer to pay Rs. 1 lakh instead of Rs. 5,000 to another manager and earn a profit of Rs. 5 lakhs instead of earning leaser profit. Therefore, he is the man who is primarily concerned for fixing the remuneration of the manager—in manager I include the managing agent because he is in charge of management. That man is the shareholder who fixes this remuneration, not at an ordinary meeting but at a special meeting to be called for that purpose where 75 per cent, of the voting will be for that particular thing. Therefore,. Sir, whether it is a big man or a small man that is involved in this company, he will be amply protected in deciding as to what remuneration that particular manager should get.

5 P.M.

SHRI RAJENDRA PRATAP SINHA: Does my friend think that society has no concern over that?

SHRI LALCHAND HIRACHAND DOSHI: Society certainly has concern, so far as the total profits are concerned, because that is where the consumer, as society, comes in.

SHRI AKBAR ALI KHAN (Hyderabad) : Production of wealth.

SHRI LALCHAND HIRACHAND DOSHI: Society ought to encourage that man who is able to produce, with limited means of production, more and more wealth. But instead of grudging better incentive for the production of more wealth with limited resources, if they give him better incentive, I think they will be doing a greater service to society rather than grudging a little remuneration here and there.

Sir, 1 am now coming to the question of Rs. 50,000 which is a minimum limit. It has been suggested and argued that even a one-lakh-rupees concern will go on asking for a minimum of Rs. 50.000. That is not so. That has not been our experience. Even when there was no restriction with regard to the minimum laid down by any Act or Bill, the managing agents did not say that in all cases they would insist on a minimum of Rs. 50,000. I know of several com-paniea which were content with even Rs. 5,000, and there were certain con-

cern* which did not lay down any minimum at all. Sir, it is' a contract between the . shareholder and tho management. .If the shareholder feels that the managing agent, looking to the nature of the business, -ought to get something at the end of -the year, because he has rendered service during that year, and for the reasons beyond his control, he has not been able to make reasonable profits, he might be offered a certain minimum which might be Rs. 10,000, Rs. 5,000 or Rs. 50,000 which is the maximum that is provided by this measure. So, it is wrong to assume that everybody is going to claim Rs. 50,000 and is going to get Rs. 50,000. No, Sir. It is entirely a different thing. The shareholder will have to see as to what the management is going to claim out of the profits or out of the remuneration in the form of salary, and what is the minimum that he has to give in case there are no profits, and after considering all that he decides as to whether he should invest in that particular organisation or not. There is no compulsion of any kind on that shareholder that he must invest Rs. 5,000 or Rs. 1,000, or even Rs. 100, just as happens in a Government organisation, where out of public funds a company has been formed, and the person is given certain salary, irrespective of the fact whether he makes profits or not. But here the shareholder has complete freedom to make his selection as to whether he will inyest his money, invest his fortunes, in that particular organisation or not. And if he is satisfied that instead of -fixing a particular salary, his interest would be better served by giving a percentage of the total profits, he has perfect freedom to do so. To avoid bad practices, the Government comes forward and lays down certain minima and certain maxima; in that way, some of the malpractices that had cropped up during the war years could be avoided, and the working of the joint stock companies could be more smooth. Sir, this is the whole gist of this thing, and I am afraid, Sir, that the Members who have pass-fid this criticism that everybody is going to get all the 11 per cent, are totally wrong. That criticism is completely ill-conceived. I therefore feel, Sir, that this provision is very reasonable, and there should be no fear in the mind of any person that everybody is going to claim all that has been provided as the minimum or the maximum. But there will always be that much which a reasonable and a practical businessman would expect from any good going concerns.

SHRI C. P. PARIKH: Sir, I would like to quote from the Finance Minister's speech in the other House.

MR. DEPUTY CHAIRMAN: You can pass it on to the hon. Minister.

SHRI C. P. PARIKH: The House must know it. Sir, the Finance Minister has stated as follows:

•

"In the clause that was originally brought before the Joint Committee, there was a reference to salaries being excluded, that is to say, it was intended to cover only commission, not directors' fees or salaries. Then it was felt that if salaries were excluded, there might be circumvention of this limit of 11 per cent, and it would be better to include salaries. At that time it was not realised that this might cause difficulties in certain circumstances."

SHRI M. C. SHAH: Sir, he said that because he thought that relatives would be appointed as managers.

SHRI C. P. PARIKH: And then, Sir, in another speech the Finance Minis ter has said .....

MR. DEPUTY CHAIRMAN: You ean pass it on to him. We cannot go on at this rate.

SHRI C. P. PARIKH: Only one sentence, Sir. He has stated as follows:

"And we say that unless it is shown that this is the top management which is in charge substantively of the affairs of the company we shall not consider any case."

MR. DEPUTY CHAIRMAN: Mr. Shah.

Saw M. C. SHAH: Mr. Deputy Chairman, first of all, I would like to deal with the amendment moved by ray friend, Mr. Ghose. He wants some words to be added after the words 'or more of them'. Now, Sir, the position is this. There seems to be some misconception. At first, clause 198 was not there in the Bill that was introduced by the Finance Minister in the Joint Select Committee. Then we just discussed this matter in the Joint Select Committee. And we thought that when we provide for the managing agents' remuneration at 10 per cent, the managing directors' remuneration at 5 per cent., and the managers' remuneration also at 5 percent., perhaps there might be paid managing directors or paid managers. And we also thought that if their remuneration is cut down, they might try to get more by way of commission over and above the commission that was laid down for the managing agents, which might come to about 20 per cent, or about 15 per cent. So the purpose was to reduce the commission taken by these managing agents and their associates or their own men, because they might circumvent the limit and just get more by way of commission. So we thought that there must be some overall remuneration to be paid for the management of the company. Therefore the original clause 197 was brought before the Joint Select Committee and they approved of that clause. In the beginning there was a proviso that the salaries of managers and others were excluded. The matter was discussed by the Joint Select Committee and they felt that if that proviso was there, then there might be circumvention. They might appoint one of them as manager or managing director and they might get by way of salaries what they cannot legitimately get under the clauses of the Bill. Therefore that provision was dropped and the Joint Select Committee sent this original clause 197 which is now clause 198. After the report of the Committee was presented to the Lok Sabha, there were many representations from the business associations to the Finance Minister. It was represented to him that if the clause stood as it was in the Joint Select Committee report, there would be many difficulties e.(7, there may be new concerns and new. concerns involving; huge capital and for that it may be necessary to have some people to manage them and it may be that more salaries may have to be paid and perhaps instead of one, two may be necessary or even in big existing companies, there may be two managing directors to manage those concerns and they may have to be paid rather big salaries like Rs. 4,000. In such cases, in new industries as well as in big industries if we exclude the salaries of these persons and these salaries also were to come out of the 11 per cent, or out of the minimum of Rs. 50,000, it may not be possible to pay these salaries and there might be difficulties in running these industries smoothly. We realized that there was justification for the apprehensions or for the difficulties that were placed before us and so we thought that instead of having the provision which was previously placed before the Joint Select Committee, the Central Government should take powers that in those cases the Central Government may consider and if that Rs. '50,000 is not sufficient to meet the salary bill of that director, managing director or directors or the manager or managers, then the Government, if they were satisfied, may allow a higher sum than Rs. 50,000 which was provided for in proviso to clause 198, when there was no adequate profit or when there were no profits. Now that proviso only applies to the salaries of the managing director or managing directors or manager or managers. It does not apply to secretary and treasurer. It does not apply to managing agents. Only when such hard cases are brought to the notice of the Government, the Government will exercise the powers after full enquiry as to whether there is any justification for allowing this salary to be paid to

these people and that is the only I meaning of that proviso.

MH. DEPUTY CHAIRMAN: But how is the Government to be moved?

SHFI M. C. SHAH: I am coming to that.

SHKI B. C. GHOSE: I did not object to that.

SHM M. C. SHAH: He wants that there must be a special resolution. I say that there should not be that rigidity. This is a question about the salary. It may not be at the end of the year. It may be at the beginning of the year. We visualise that there will be some applications just after the Bill is passed to allow the salaries to be paid to those persons. They cannot wait till the end of the year to find out whether there are adequate profits to meet the salaries' bill of these persons or whether the profits are inadequate. They will have to be just examined quite separately because for example, take the Tatas. They have directors and managing directors. Now if they are paying Rs. 5,000 each to Directors and if there are managing directors too, then that means it comes to Rs. 1,20,000 a year. In case there are no profits or in case there are inadequate profits, we cannot tell those people that they will not be paid or they will be paid after the results of the working of the company are known, at the end of the year; if there a*re inadequate profits, then they will get Rs. 50,000. Rs. 50,000 will not be sufficient. Suppose tomorrow there is going to be a new industry involving a capital of Rs. 3 or Rs. 4 crores and they want to have a manager or managers who will have to be paid high salaries of about Rs. 4,000 a month, then about Rs. 1,20,000 will be required. Now there will be no profits in the new concerns. We all know that it is very difficult to have profits in 4he first few years. Do we want to just stop the running of these new industries? What is our intention? Our intention is not to hamper or hinder the progress of these industries. Therefore the Government have taken powers and there the resolution is not necessary. If it is found that the Government finds when they examine the question that a resolution is necessary, then there is no prohibition for the Government.....

SHRI B. C. GHOSE: May I speak for a minute? Probably the hon. Minister has really a good answer to the point that I raised but we have not caught it as yet. My point was simple that if a higher remuneration is to be given the company must approach the Government. How will the Government know? The company will certainly have to approach the Government. It is not a question of the profits not being adequate and at the end of the year finding it that they cannot pay their wage bill or the remunerations bill. That is not the point at issue at all. The company will have to approach and my amendment was that before the company approached the Government with such a request, they should have a general or special resolution. If the Government does not agree, at least the general resolution should be passed before such a request is passed to the Government. That is a simple request.

SHRI M. C. SHAH: It is not remuneration to managing agents, not a | remuneration to secretary or I treasurer. It is remuneration only to these people. Then, *as* I said, if while just examining this question the Government finds that a resolution is necessary, there is nothing prohibiting the Government to ask those people to pa'ss a resolution and send it but by making that rigidity I think we come in the way of the ! good working of these companies. |

SHRI B. C. GHOSE: The hon. Minis-j ter realises that it is the company's money that is to be paid and the shareholders should have a say in that. It is the company's money that will be paid and before the company comes to the Government for increasing the minimum remuneration, the shareholders should say whether they

[Shri B. C. Ghose.] agree that this should be paid. It is not as if the managing director himself should be the sole judge of whether he should be paid more or not. The shareholders should have a say. That is my only point.

SHRI V. K. DHAGE: May I also raise one question? Is it the case of the Government that before the financial year is out, they will be able to determine whether that company is making a profit or loss or whether the profits - are inadequate, the company may make a request to the Government that they do sanction the wage aniount or remuneration fixed? Is that the case of the Government? Is that the contention of the hon. Minister?

SHRI M. C. SHAH: Suppose the company has to pay, for example two managing directors Rs. 4,000 each, that means Rs. 8,000; and in case it turns out at the end that the company has made no profit or that it has made inadequate profit, then this payment to these people cannot be held up, it cannot wait till the end of the financial year. Therefore, Government will consider when such a matter is brought before the Government, whether this salary was paid to these men during the last one or two years, whether it was necessary, whether they should be employed by the company at that remuneration. And then, if the Government is satisfied that for the work of the company, for the smooth working of the company their employment was necessary, then Government will allow that remuneration.

MR. DEPUTY CHAIRMAN: But that is not the point in dispute. Mr. Ghose's question is.....

SHRI M. C. SHAH: I am replying to /Hr, Dhage's question.

ME. DEPUTY CHAIRMAN: What Mr. Ghose wants to know is, who is to bring this matter to the notice of Government?

SHRI M. C. SHAH: The company. j

MR. DEPUTY CHAIRMAN: How?

SHRI M. C. SHAH: Suppose there is a managing agent, he will bring it to notice, or there will be the managing director or manager or a whole-time director. There is nothing to preclude the managing agent from.....

SHRI B. C. GHOSE: He is precluded.

SHRI M. C. SHAH: There will be companies where there are the managing agents, the managing directors, managers, all the three can be there. It is not as if because there are managing agents, there will not be a managing director or a paid director or paid manager. Therefore, sufficient safeguards are there for the smooth working of these companies. There are safeguards also for the smooth working of new companies which will be formed. We have taken all these neeessary powers. Therefore, a resolution to that effect is not necessary.

SHRI BHUPESH GUPTA: Can't we help in smooth understanding also?

SHRI M. C. SHAH: My hon. friend does not understand? Well, I don't think he will ever understand.

SHRI J. S. BISHT: May I just point out that this point is .....

SHRI M. C. SHAH: There are four cases which are contemplated.

(Interruption)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI J. S. BISHT: I am trying to help the Minister, Sir.

SHRI M. C. SHAH: Should I go on? Let them hear me first and whatever questions they may have, may be put later.

SHRI J. S. BISHT: The point that Mr. Ghose has raised is how the matter will be brought to the notice of the Government. I think he has only

read the proviso to sub-clause (4) and not the sub-clause itself which clearly says it down:

> " .....the company may pay to any director or directors including managing or whole-time directors, if any, its managing agent or secretaries and treasurers, if any, and its manager, if any, or if there are two or more of them holding office in the company, lb" all of them together, by way of minimum remuneration such sum not exceeding fifty thousand rupees per annum ate it considers reasonable."

And then follows the proviso. So it is the company that does it. And it is not necessary to repeat it in the proviso.

SHRI B. C. GHOSE: If that is so, it will be a general resolution and I am prepared to withdraw my amendment. Does the hon. Minister accept the interpretation of Mr. Bisht?

SHRI M. C. SHAH: No, I do not.

Sir, as I said, there are four types of cases. Shall I explain all these four types of cases?

SHRI BHUPESH GUPTA: Yes, please do.

SHRI M. C. SHAH: One type is that of a company which came to our notice lately, where a new company of an important character had to be started. It was thought that a managing director might have to be brought, perhaps from abroad, with the requisite technical and administrative qualifications. In such a case it was felt that it would not be in the interest of the company to say that under our law the limit is to be only Rs. 50,000 in a year in which there is no profit, because it was realised that in order to build up some of these industries, especially the heavy industries, the company might have to incur losses in the earlier years. That is a kind of necessary concomitant when you build up your heavy industries. Well, that is one type of cases, the type of big industries where it will be necessary to have highly qualified technicians who may have to be-appointed. '

Another type is.....

SHRI B. C. GHOSE: But these are not points in dispute.

:

SHRI M. C. SHAH: Another class of companies comprises companies that exist where a large number of people exist, may be as managers or managing directors or may be others, who are in receipt of salaries which are in excess of Rs. 50,000. What is to be done in such a case in a year in which such a company incurs losses? That is the second type.

The third type is a very interesting one. It is the case of a managing agency company itself where it is a public company. This clause would also apply to the managing agency which is a public limited company. It might be that in a particular year, this managing agent has a certain number of companies which can only pay a maximum of Rs. 50,000 because the limit is there. The managing director or the managing agent can be paid only Rs. 50,000. But there may be ten companies with ten separate managing directors. Take the case of the tea companies. In 1952, in the tea industry there were losses and nobody knew whether there would be losses or not. There are certain cases where the company has been paying for a length of time, for a certain number of years in the past, salaries more than Rs. 50,000 and if it is a genuine case, then we cannot ask the compan.v to wait till the end of the financial year to find out whether that company has incurred a loss or has made inadequate profits. Therefore, we have taken these powers advisedly.

As regards the apprehensions of my hon. friend Mr. Ghose, I say there is nothing to prohibit the Government coming to the conclusion that a special resolution or an ordinary resolution is necessary and then they will ask the company to pass a special or ordinary

[Shri M. C. Shah.]

resolution as might be the case. Therefore it is not necessary that.....

MR. DEPUTY CHAIRMAN: That means to say, any managing director or director, whoever is in charge can come straightaway to the Central Government?

SHRI M. C. SHAH: No, the particular company can come.

MR. DEPUTY CHAIRMAN: But somebody has to move the Government. The company is a corporate body and so, on behalf of the company who will move the Government?

SHRI M. C. SHAH: If there is a managing agent, the managing agent will do it. If there is only the managing director, then the managing director comes, or if it is the manager, then the manager will do it.

MR. DEPUTY CHAIRMAN: So, any person who is in charge of the company, the managing director, the director or manager, he comes to the Government?

SHRI M. C. SHAH: Yes.

SHRI B. C. GHOSE: Will he come and say, "A higher remuneration should be paid to me?" Will that be sufficient?

SHRI M. C. SHAH: I say, if there is a managing agent or if there is a .....

MR. DEPUTY CHAIRMAN: If you please, I have got some doubts. Ordinarily, according to the ordinary law that you lay down in clause 198, nobody can get more than Rs. 50,000 as remuneration.

SHRI M. C. SHAH: No, if there are losses or if there are inadequate profits, then we have prescribed the maximum limit as Rs. 50,000. It should not exceed Rs. 50,000. That does not mean that a company should have an article or a resolution that Rs. 50,000 shall be paid. Rs. 50,000 is the maximum. As a matter of fact, a company may have a provision in its. Articles of Association or may have a resolution passed that in ease of inadequate profits or losses, the managing agent, the managing director or the manager will be paid a sum not exceeding Rs. 50,000. It may be Rs. 10,000 or Rs. 20,000 or whatever it is according to the capacity of the company. That may be decided by the Board of Directors or by the shareholders. There is no need to have a resolution,

MR. DEPUTY CHAIRMAN: That is exactly what he wants to know. Is a resolution necessary?

SHRI M. C. SHAH: Government have taken powers to sanction sums exceeding this figure.

MB. DEPUTY CHAIRMAN: He wants to know whether the managing director or the managing agent can come to the Government without a resolution, special or ordinary, to enhance his remuneration.

SHHI M. C. SHAH: Under this proviso he can.

SHRI V. K. DHAGE: Without a resolution?

SHRI M. C. SHAH: Yes, without a resolution. They can come without a resolution but Government will have to satisfy itself that it is necessary.

SHRI B. C. GHOSE: So far as the managing agent is concerned, he cannot come because under 352 there must be a special resolution.

SHRI M. C. SHAH: I know but that is for the managing agency commission. We have to distinguish between the two. The proviso applies only so far as the paid manager and paid directors are concerned. Supposing Rs. 50,000 is the minimum or maximum or whatever it is. If the manager were there as also the managing agent and if the manager were to take this away, the managing agent will not get a pie; he will go without a pie. Clause 352 is a separate thing

altogether and it deals with the managing agency commission. There might be certain cases. Under clause 198, it is not the intention of Government to pay anything to the managing agent or secretaries and treasurers or directors or managing directors if they are not paid servants.

SHRI B. C. GHOSE: That does not say so.

SHRI M. C. SHAH: When we have provided a limit of 10 per cent, under clause 348 for the managing agents, it may be that there are certain industries which may be very peculiar industries which require to be developed. In these cases it may be necessary for us to agree to a higher figure than 10 per cent, and in that case clause 198 will not apply to clause 352 at all.

SHRI B. C. GHOSE: I must seek your protection, Sir. If you look at clause 352, you will find that it deals with excess of remuneration to be paid beyond the limits prescribed in clauses 198 and 348.

MR. DEPUTY'CHAIRMAN: Clause 352 does not apply here. Clause 352 deals with additional remuneration but this is only ordinary remuneration.

SHRI B. C. GHOSE: So far as the managing agents are concerned, clause 352 should apply. It refers to clause 198 also which has two parts. One deals with commission and the other is about minimum remuneration. If the managing agents were to ask for remuneration in excess of Rs. 50,000, then clause 352 comes into operation.

SHRI M. C. SHAH: It will not apply. They cannot come and ask for more than Rs. 50,000. In that Rs. 50,000 they will have to provide for managing directors, directors, managers, etc.

MR. DEPUTY CHAIRMAN: Clause 352 comes into operation, if I understand correctly.

SHRI M. C. SHAH: The companies are always managed by somebody. If there is no managing agent, there will be the Board of Directors. Naturally, the Board of Directors will appoint the managing director. The Board of Directors will certainly pass a resolution and send it to the Government for increasing the remuneration of the managing director. I grant, for the sake of argument, that there is no managing agent but then there will be the Board of Directors. There are the secretaries and treasurers and if they are not there, the Board of Directors is there.

SHRI B. C. GHOSE: I want to put a simple question to the hon. Minister. Under the proviso to clause 198, Government will consider the case for increasing the limit, but my point is, who is to approach the Government? If there is no managing agent, there will be the managing director. Will he represent to Government that the managing director's remuneration should be increased? Will that be sufficient? Will a resolution of the Board be necessary? Will a resolution of the shareholders be necessary?

SHRI V. K. DHAGE: Who is the sanctioning authority?

SHRI M. C. SHAH: As I said earlier, if there is no managing agent, there will be the Board of Directors. There will be no company without a Board of Directors. This Board will appoint the managing agent or the managing director. In such a case, the manag- • ing agent or the managing director, with the approval of the Board of Directors, will apply; if there is no managing agent but only secretaries and treasurers, then the secretaries and treasurers will apply; even if this set-up is not there, the Board of Directors will pass a resolution and then apply to the Government for increasing the remuneration for the managing director or the manager.

SHRI V. K. DHAGE: Nothing is clear to us.

SHRI M. C. SHAH: I do not think further clarification is at all necessary.

SHRI V. K. DHAGE: The point is, whatever be the amount of remuneration payable, which is the sanctioning authority? -Is it the company or the Board of Directors? If y"u say it is the company, then natural y you must have a resolution; if you say it is the Board of Directors, then there should be a resolution passed by the Board of Directors. It is only on the basis of that that the ravaging agent or thtr managing directoi ~>*r* the meager o* the secretaries and treasurer* T wbiv-ever is the person wu> "·« ii* r-iarge of the business will proceed td approach the Government but the point is, which is the sanctioning authority?

SHRI M. C. SHAH: May be the Board of Directors or the shareholders gathered together at a meeting or may be the managing agent himself, in anticipation of the sanction of the Board of Directors.

MR. DEPUTY CHAIRMAN: He means, any of them can do it.

SHRI BHUPESH GUPTA: Are we clear now?

SHRI M. C. SHAH: I am very clear.

SHRI B. C. GHOSE: I give up, Sir.

SHRI H. C. DASAPPA: The resolution may be implied.

SHRI BHUPESH GUPTA: Do not make confusion worse confounded.

SHRI M. C. SHAH: I do not think it is necessary at all to introduce what Mr. Ghose wants introduced. If Government comes to the conclusion that a resolution of the Board of Directors or of the shareholders is required, it will call for it. I think there is no doubt about it now.

SHRI V. K. DHAGE: Could we have Mr. Leuva's views in this matter?

SHRI H. P. SAKSENA: No doubts have yet been cleared.

SHRI P. T. LEUVA (Bombay): I only want to ask one question. The question of approaching the Central Government would .arise only if the remuneration is to be increased beyond Rs. 50,000 Rs. 50,000 is also only in case where the profits are not adequate or if there are losses. Up to Rs. 50,000, there is no question of going to Government because it is-laid down in the Memorandum and Articles of Association. It may be Rs. 5,000 or Rs. 6,000 but in no case can it be more than 11 per cent. This question of minimum remunera tion would not arise unless and until there is loss or inadequate profits made. If there is profit, then the question is not governed by this clause but by the limit of 11 per cent. In case of inadequacy of profit or of loss, if the company wants to increase the amount beyond Rs. 50,000 then only has it to come to the Govern ment. It is also laid down that the company has to ask the Government for the increase. The company is a corporate body acting through its officers or the Board of Directors. The Board of Directors are acting on behalf of the company and naturally, therefore, the Board of Directors will apply to the Government. In ease Government says that it will not sanc tion this increased remuneration unless and until certain conditions are satisfied.....

SHRI M. C. SHAH: That is what *I* am saying.

SHRI P. T. LEUVA (Bombay): I am only asking the Minister whether he agrees with my explanation.

SHRI B. C. GHOSE: Is this *ex post facto* sanction?

SHRI M. C. SHAH: I do not want to have any misunderstanding on this question.

SHRI B. C. GHOSE: It is still more confused, Sir.

SHRI M. C. SHAH: We have provided that at the beginning of a financial year, not knowing what the

results later will be, it the managing director or the director or the manager is to be paid higher rates, which will give higher than Rs. 50,000. Government will consider that position and Government will sanction the payment of those salaries to those persons without waiting for the results of the company. If the results of the company show that within 11 per cent, those things can come in, then certainly those things will come in, those salaries that were paid. If the salary comes within Rs. 50,000, suppose there is only one manager and if within that Rs. 50,000 the salaries are included, then the question will not arise. But the Government do not propose, if there is an application from the company, to wait till the results of the financial year are known. That is the intention of the Government and that intention should be clearly understood.

SHRI B. C. GHOSE: Is it not ex post *facto* sanction?

MR. DEPUTY CHAIRMAN: I have got a doubt. The whole clause 198 is framed on the presumption that the company makes some profits, but here you say, in the initial stages, when there are no profits, the company can come. That means you presume that the company starts without the idea of making profits. Then why don't you clearly state it so in the clause that in the initial stages when the company is unable to make profits, etc?

SHRI M. C. SHAH: It is not neces sary because .....

MR. DEPUTY CHAIRMAN: You also gave another instance. You gave the instance of a tea estate which was making profits in the previous years but in the next year they may not make any profit. When will they come to know that they are not mak ing profits? It is only when the balance-sheet is prepared.....

SHRI M. C. SHAH: There is a distinction between the managing agents' commission or the secretaries and treasurers' commission and the salaries to be paid to the managers or the managing directors. As a mat ter of fact, if there are no profits, then these managing directors will not be entitled to get anything; the secre taries will not be entitled to get any thing. Whatever is to be paid to the managers or managing directors will come out of the Rs. 50,000. Suppose now that the sum of Rs. 50,000 is inadequate to meet the salary of that managing director or managing direc tors or the manager or managers, then we say that we will allow a higher amount. Now today suppose in a company there are two managing directors who are getting Rs. 4,000 each, it comes to Rs. 8,000. Now the company may not know the results in the beginning. Now it may be that in the end there may be losses or there may be inadequate profits not enough to meet even the charges of the two managing directors which means Rs. 8,000 per month. Now that company cannot dispense with the services of the managing direc tors, cannot withhold payment to them till the final results are known. Therefore we say that when there are salaried people, manager or managers, managing director or managing direc tors, if Government are satisfied that those persons are absolutely necessary for the conduct of the business of that company and that company also is such which can maintain salaried ser vants to the extent of Rs. 4,000 each for the efficient conduct of their busi ness, then we say that we need to have the power to agree to that salary. That is the only thing. It is not a question of managing agents' commis sion or any such thing and the word ing is very clear: "Provided that where a monthly payment is being made or is proposed to be made" we have included both "is being made or is proposed to be made", "is pro posed to be made" because it is a new concern, "is being made" in the case of an existing concern.....

SHRI B. C. GHOSE: May I make a suggestion? Probably this may be all right, but if you would agree with me, we may leave over voting of this

[Shri B. C. Ghose.] particular thing for tomorrow. I do not want to waste the time of the House over this. It can be done; it may be all right, but I want to be satisfied before passing it.

SHRI RAJENDRA PRATAP SINHA: We may take up other clauses.

MR. DEPUTY CHAIRMAN: So far as your question is concerned, the managing director or the Board of Directors or the manager, if there is one, can approach the Government with a proposition that extra remuneration be sanctioned.

SHRI B. C. GHOSE: It may also be *PX post facto* sanction. Already over Rs. 50,000 will have been spent. The company might not know that there would be inadequacy of profits and after it has paid more than Rs. 50,000 then it may approach the Government, is that the position?

MR. DEPUTY CHAIRMAN: Does it apply to ex post *facto* sanction?

SHRI M. C. FHAH: It is not a question of *ex post facto* sanction. As I said—I made it clear—such cases will come up even in the beginning of the financial year, in the beginning. Ex post *facto* sanction will only come in after they have paid—they cannot pay.

MR. DEPUTY CHAIRMAN: In the case of new companies I can understand your position, but in the old companies, suppose last year one company made huge profits; it has paid all the salaries; there is no question of any increased salary being paid, but during the current year it goes on working. When will you come to know whether it has made profit or not? It is only at the end of the year when the balance-sheet is struck and that becomes *ex post facto* sanction as Mr. Ghose mentioned.

SHRI M. C. SHAH: Therefore I say that such companies where the salary bill goes beyond Rs. 50,000.....

MR. DEPUTY CHAIRMAN: How do you come to know that?

SHRI M. C. SHAH: Why? The Board of Directors, the company.....

MR. DEPUTY CHAIRMAN: Till last year it has made profits; it is a going concern; you do not know, you cannot say till the official year is over.....

SHRI M. C. SHAH: I will respectfully submit that there is again confusion of thought. I made the position very clear. I say that there is the provision of Rs. 60 thousand, "not exceeding fifty thousand rupees", there is that provision already. Now there may be companies, as I said, having two managing directors and the salary of each is Rs. 4,000 per month. So the salary of both will come to Rs. 96,000 per annum which they have to pay at the rate of Rs. 8,000 every month and have they to wait till the end of the year to find that there are losses or there are not adequate profits? They cannot wait till then and therefore they will have to come in the beginning of the financial year. Otherwise, they cannot pay or they may have to keep in abeyance the salary bill of these people.

MR. DEPUTY CHAIRMAN: You know, Mr. Shah, that a company may be suffering losses for all the eleven months but in the last month they may make huge profits. Until the balance-sheet is struck.....

SHRI M. C. SHAH: If profits are made, then within that eleven per cent, it comes in, and the question does not arise at all. The question only arises when there are losses or where there are inadequate profits. Then and then only the question arises. Now as you say, if there are profits and this Rs. 4,000 each has been paid, they have taken the sanction as a matter of caution really speaking. As a matter of caution they will take the permission of the Government.

SHRI P. T. LEUVA: Provisional sanction can be obtained.

MR. DEPUTY CHAIRMAN: The proviso refers only to 'increase'.

SHRI M. C. SHAH: Only salaries. The provision is: "Provided that where a monthly payment is being made or is proposed to be made to any managing or whole-time director or directors and the manager or to any one or more of them and the Central Government is satisfied that for the efficient conduct of the business of the company, the minimum remuneration of fifty thousand rupees per annum is or will be insufficient"—'is' means, suppose the monthly payment is Rs. 8,000 it is very clear, the wording is very clear—"is being made or is proposed to be made" and "is sufficient" "or will be insufficient." That Rs. 50,000 will be insufficient automatically in case there are losses or inadequate profits. Therefore those companies will have to come to the Government to get sanction beforehand that they may pay and if the Government are satisfied that there are sufficient reasons, looking to the nature of the business, the size of the company and those things, they will sanction that. I feel that everything is very clear.

SHRI V. K. DHAGE: May I say a word. I think the proviso here uses the word 'sanction'. It says that the Central Government may by order sanction an increase in the remuneration etc. The proviso seems to contemplate that it is the Government alone who will be entitled to sanction and not the general body by a general resolution or by a special resolution.

SHRI H. C. DASAPPA: That is obvious.

SHRI M. C. SHAH: After all, the Board of Directors is a responsible body. They are elected by the shareholders to manage the affairs of the company. If the Board of Directors feels that the managing director should be paid so much, then they must have that confidence that the body of share holders will approve of their action. After all they are responsible for the management of the company and I do not think the shareholder.....

(Inierruptiong.)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI M. C. SHAH: Sir, this ha» taken much time.

SHRI H. C. DASAPPA: The resolution of the Board of Directors ii obviously implied in the scheme pf thingsi.

MR. DEPUTY CHAIRMAN: Yes; he has said that.

SHRI M. C. SHAH: Now, Sir, I will take the amendments of Mr. Parikh. He had tried to have the definition of 'manager' expanded and I have not agreed to that. Here also the purpose of the amendment is to exclude the salary of the manager. I do not think we can allow that.

MR. DEPUTY CHAIRMAN: He does not press amendment No. 40.

SHRI M. C. SHAH: Yes; he does not press for the deduction of the directors' remuneration. So I won't take any time over that.

MR. DEPUTY CHAIRMAN: But he presses amendment No. 41.

SHRI M. C. SHAH: I am sorry that we cannot accept that amendment because our intention is that all managerial cost should not exceed more than 11 per cent. If there are managers and others, naturally, they muit be contained within that 11 per cent. If the managing agent has to take lets, he has to take less. Secretaries, treasurers and others will have 7J per cent, and then there will be 34 per cent, for the directors and others. So

[Shri M. C. Shah.] that way we feel that we cannot accept the amendment of Mr. Parikn.

Now comes Mr. Bhupesh Gupta's amendment. The same arguments have been advanced here. If we accept his amendment, I think we will be coming in the way of the healthy development of industries. As a matter of fact, there must be sufficient remuneration for the managerial setup. If we go down to six per cent, or eight per cent., I am afraid that will affect the working of the industries.

SHRI BHUPESH GUPTA: How?

SHRI M. C. SHAH: Because the managing agent is there; the manager is there; the managing director comes in; the directors come in. All these are there. Today they are getting about 27'5 per cent, or according to the other set of figures, it may be 14 per cent.

SHRI BHUPESH GUPTA: Which set?

SHRI M. C. SHAH: Your set. Sir, we have substantially reduced the managing agents' commission. The Bhabha Committee suggested 12J per cent.; instead of that we have brought it down to 10 per cent, and perhaps in effect it may come to about 8 per cent. At the same time we have already plugged many loopholes whereby the managing agents used to get money by way of commission as buying agents, as selling agents, by associates etc. We have stopped such things and as far as we can see we are not allowing the managing agents to get anything except this remuneration. We have not allowed them the office allowance also. Really speaking we have very substantially cut down their remuneration. In over-all management we have only added one per cent, for the manager, managing director, directors and all those people combined. If they are there, it will be only one per tent, more, because the manager is fncluded dlso with them. There are efforts from our friends that manager should be dropped from there or the clause must be worded in such a way that the manager does not come in. We are not agreeing to those amendments. So this 11 per cent, for overall management is very fair and reasonable. The suggestion of s ix per cent, or eight per cent, is attractive no doubt. Everybody would like if the cost can be brought down; everybody would be happy but at the same time we have to be realistic. We have to be practical. We cannot go on ideologies. We have to see that production does not suffer. We have to see that the targets we have set in the second Five Year Plan do not suffer. We should not introduce anything which might hamper that objective of having more and more of industrialisation and industrial production. We have already gone rather far enough. We have cut down very considerably their remuneration and I think we must wait and see how this scheme works. Therefore though it is attractive—and it is just trying to be popular by suggesting eight or six per cent.—as I said, we must be realistic. Considering the amounts that these managing agents used to get, we have brought down that figure very, very low. And this 11 per cent, is for over-all management; that also we must not forget. Therefore, Sir I am afraid that if I reply to all the arguments raised by Mr. Bhupesh Gupta, it would take more time unnecessarily and I do not want to take more time of the Tlouse. All these arguments were advanced during the general discussion, and they have all been already replied to. Even if I go on for two or three hours, I dc not think I can satisfy my friends over there—Mr. Bhupesh Gupta and his friends. I have no quarrel with them. If we cannot accept their views, they should not make a grievance of it. There are very reasonable and potent grounds as I said.

SHRI RAJENDRA PRATAP SINHA: W« want to hear those reasonable and potent grounds.

SHRI M. C. SHAH: It is all very well to say that in U.K. or U.S.A. the managerial cost is only one or two per cent.

MR. DEPUTY CHAIRMAN: '/ou can continue tomorrow, Mr. Shah. In the meantime you may kindly examine the proviso.

The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at six of the clock till eleven ~~aftem~~ of the clock iiH-elev&B' 24th September 1955.