

THE COMPANIES BILL, 1955  
—contd.

MR. CHAIRMAN: Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA (West Bengal): Sir, I could not finish on Saturday when the House adjourned and I was suggesting an amendment to clause 237. My amendment was that the grounds for ordering investigation into the company's affairs should include cases where there is an intent to defraud, or evade any obligation towards, any of its employees. That is to say, I want that the scope of this provision, namely clause 237, should be widened so that a large number of cases are covered. In that connection, I also mentioned, in particular, that, when the company is being run in a manner oppressive of its employees or with an intent to defraud, or evade any obligation towards, any of its employees apart from its shareholders, such cases should also be brought within the purview of this measure. I gave the instance of Messrs. Bennett Coleman & Co. which was running a number of newspapers in Calcutta. The 'Satyayug' and the 'Times of India' were also brought out there. The company was running the papers in a highly oppressive manner. I did not go into that case because the matter was referred to the Tribunal and even to-day the award of the Tribunal, in some respects, has not been given effect to. Now, as you know, suddenly and without proper notice, the papers were closed down. A number of employees including a good number of journalists of course, were thrown on the streets and they were not given even compensation in lieu of notice. Such is the case. We came to know of these things before. Because for months preceding the actual closure, the company was behaving in a manner highly detrimental to the interests of the shareholders and, of course, most detrimental to the interests of the journalists. Representations were made to labour officers and

to Government authorities there, and, of course, also to the chief bosses. Nothing was done. I can give you many more examples. I will just give another example.

MR. CHAIRMAN: One will do.

SHRI BHUPESH GUPTA: That is the example of the Bharat.....

MR. CHAIRMAN: One will do.

SHRI BHUPESH GUPTA: This example I will have to give. This is most important. Kindly permit me because I will not speak on others. I am very well conversant with the Bharat Fire and General Insurance Co. Limited.

As you know, this concern was suddenly closed down. And even before it was closed down, the Bharat Fire Insurance Employees' Union submitted a memorandum to Members of Parliament which, I believe, is now in the possession of the Government. It is pointed out in the memorandum:

"Similarly the money loaned to the relations also becomes bad debt in due course."

"Similar procedure is now being adopted in the case of Messrs. BHARAT FIRE & GENERAL INSURANCE LIMITED. Out of its capital, already huge sums amounting to several lacs have been invested in many DALMIA CONCERNS and losses to the tune of SEVEN to EIGHT LACS have been caused to the Company through such investments. A latest list of the Company's major investments, as also the major losses suffered by it so far, is given in Schedule (I) attached to this memorandum. The Company has already been split into Registered and Control Office and the Directors, after the closure of the Insurance business, and thereby, of the Control Office and its

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Branches have decided to create an investment concern with the capital of the Company, to satisfy the lust of the DALMIA GROUP in throttling yet another public concern and swindling its capital for their own benefits."

Towards the end, we find again:

"The main facilities by the above gentlemen expected from this Company were to get maximum percentage of illegal commission over and above the legal commission allowed by the Insurance Act, and to get huge amounts through creating bogus claims in which they succeeded for some years....."

"It will be of interest to mention that photostat copies of some of the signed correspondence exchanged between the SAHU BROTHERS and the ex-General Manager of the Company, Mr. P. P. Gupta, wherein they had clearly asked for the increase in rebate from 30 to 40%, if the business was to be continued with BHARAT FIRE were submitted to various officials of Finance Ministry including the Controller of Insurance for their information and necessary action against such malpractices, a clear breach of provisions of the Insurance Act, committed by two big persons, SETH SHANTI PRASAD JAIN, the millionaire, ex-President of Indian Chamber of Commerce and Industry and SETH SHRIYANS PRASAD JAIN."

An hon. Member of this House—I will mention him.

".....We regret that because of the high positions enjoyed by these persons, the matter was shelved by the Authorities.

"At this stage SHRI CHIRANJILAL GOENKA again appeared on the scene in the year 1952 and offered to pay 40 to 45 per cent. com-

mission to SETH JAIDYAL DALMIA on his business, whereas he was getting only about 30 per cent. commission from Bharat Fire. He decided to implement his plans in collaboration of the said gentlemen.

"From all the above it will be seen that the management of the Company is in no way justified in taking the decision for closure which is pregnant with the black motive of mis-appropriation of public money and also threatens more than one hundred families with unemployment in these critical days. The Insurance Act does not allow for voluntary closure of an Insurance Company on grounds as are advocated by the management and it is also against the Company's Act to wind up a limited concern without any proper reason or sanction of the authorities concerned."

Then, there are many figures and other things are also given. The Union demanded the appointment of an investigation commission to enquire into the affairs of the company particularly the investment and illegal rebating and malpractices, and demanded that the decision to close the Insurance business should be quashed.

This was the memorandum circulated to Members of Parliament to which many Members did not pay due attention. To-day, after the arrest of one of the most important magnates in the business world, we can say that the stand of the employees has been vindicated.

MR. CHAIRMAN: Mr. Bhupesh Gupta, let us proceed with the amendment.

SHRI BHUPESH GUPTA: I will come to it. We wish all good luck to the small shareholders, policy holders, and to the employees of this concern. But for them, it would not have been possible to apprehend a particular person and hold him on a charge of

embezzlement of public funds to the tune of over two crores of rupees.

Sir, when I mention such things in this House, some hon. Members feel that we make allegations out of our head and that we are not justified in it. To-day at least, we stand vindicated. This document has been in our possession for some time. This is how one of the biggest concerns is being run to the detriment simultaneously of the shareholders, the policyholders and the employees. Hon. Members on that side of the House.....

MR. CHAIRMAN: Please proceed to the amendment.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): On a point of order, Sir, I am much constrained to rise. Can a Member move an amendment and speak on it, though that amendment is already covered by the original clause in the Bill? You may please refer to clause 237, Part (i) of sub-clause (b) which says "may do so if, in the opinion of the Central Government, there are circumstances suggesting—

"(i) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons."

I draw your attention to the words "or any other persons," and then, "or otherwise for a fraudulent or unlawful purpose". Mr. Bhupesh Gupta's amendment suggests that after the words "unlawful purpose", the words "or with intent to defraud, or evade any obligation towards, any of its employees," be inserted.

Now, employees are obviously covered by "any other person", and this interest is also covered by the words, "or otherwise for a fraudulent or unlawful purpose". Mr. Bhupesh Gupta's amendment does not say anything which is not even now contained in this clause. On the other hand, it may restrict its application.

THE MINISTER FOR FINANCE (SHRI C. D. DESHMUKH): I have read the amendment. The first point is correct. That is to say, if we are dealing with "defraud", then certainly "other persons" include employees. Now the amendment goes on to say "with intent to evade any obligation towards". That is not contained in any part of the clause, and Mr. Bhupesh Gupta may say that this further thing may be provided in the clause. Sir, I am not agreeing with the amendment. I shall look into it at the proper time but certainly that is a new matter.

SHRI JASPAT ROY KAPOOR: It is for you to consider finally whether it is not covered by "or otherwise for a fraudulent or unlawful purpose".

MR. CHAIRMAN: It is more specific, and therefore not out of order.

SHRI BHUPESH GUPTA: I am very thankful to the Finance Minister for the forthright interpretation of this amendment, but for the life of me, I can never make sense to Shri Jaspal Roy Kapoor. Why, I do not know. I should have thought that if he had carefully read it, he would have found that my amendment is something more than what he says. I hope he has listened to the Finance Minister.

Now, Sir, naturally I am not concerned whether immediately the Finance Minister would accept it. I am advancing my arguments in favour of it. I have given you one important case. I would not make any comment on that case because it may be *sub-judice*, but all that I want to say is that certain things had appeared before and the Government had enacted the laws much later and certain things are still in the process. Sir, I do say that "obligation towards any of its employees" is most important, and I think the hon. the Finance Minister has got me right if he does not disagree with me. I say that we should so arrange in these companies' affairs that the employers are put

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under certain obligations with regard to their employees. Declaration of lockout and closure of companies suddenly result in the denial of certain very elementary rights and amenities that the workers should enjoy. For running a joint stock company, all these things are very important, especially when it is an industrial concern. But the Companies Bill does not make any such provision. So, all that I ask is that if there is a reasonable complaint that certain things are not being done or that certain wrong things are being done, there should be investigation, especially when we find that the elementary and the very fundamental obligations towards the employees are not being fulfilled.

Here again, I request the Finance Minister—I know it does not relate to his department, but since we are dealing with the provision whether the investigation should be instituted, I think I am relevant as far as my suggestions go.

In "Swadhinata", there is a photograph of an employee of New Cinema in Asansol, who had been beaten for doing certain things. Applications were made and complaints were lodged with the local labour authorities. Nobody intervened. Such things do take place in very many industrial undertakings of our country. Here are the photographs of Biren Phuken and Mohammad Siddiq. The first is an employee of Shimola Colliery owned by the British. There was an adjudication in regard to a trade dispute between the employees and the employers of the colliery and the bosses resorted to victimization—dismissal, suspension, charge-sheeting and all that. Not content with that, they engaged their goonda gangs to beat up workers. The other is the photo of a worker who had been injured by the hirelings of the employers. Now this Bengal Coal Co., which made a profit of Rs. 1,39,75,000 in 1954, would not accede to any of the legitimate

demands of the workers. This is how things go on in a number of concerns. I don't say that such barbarities take place in every concern but you will always find some concerns, especially where the trade union organisation is not strong enough, that the employer resorts to medieval methods of oppression. When allegations of such oppression are made, I think it is fit and proper to immediately institute an enquiry.

MR. CHAIRMAN: You have already taken 15 minutes.

SHRI BHUPESH GUPTA: As you know, Sir, our labour laws are not very complete. Therefore, a large number of our concerns are guilty of such things and I hope that the Government should accept this amendment. I do not see why the Finance Minister should not accept this amendment. Sir, it is a very reasonable amendment. It fits into his line of thought in regard to this matter. I do not think it is his contention here, that if a concern indulges in this kind of oppression or evasion,—the elementary obligations under law towards its employees—it should be exempted from enquiry and investigation. I think that is the least he can do in the interest of the people, the employees and the workers, who are subjected to all kinds of tyrannies at the hands of their bosses.

SHRI C. D. DESHMUKH: Sir, I understand the reasons which have impelled the hon. Member to suggest the amendments. His quick sympathy with labour is something which is bound to find a response in our hearts. Nevertheless, I feel, Sir, the remedy is not what he suggests. He gave the instance of a worker who was beaten and the police did not take any action. I should say that, in that case, there is something wrong either with the police or with the allegation. Anyway, it is not an incident that can be dealt with under the Company Law. You have to do some-

thing about the police, about their methods of investigation.

SHRI BHUPESH GUPTA: For the goondas maintained by the employers?

SHRI C. D. DESHMUKH: Oppression is such a general term which certainly includes beating, but beating must be dealt with not under the Company Law but under the Indian Penal Code.

Similarly when he says "defraud" as I pointed out, in the case of an intention to defraud the employee, they are fully protected; it is common ground, and Shri Bhupesh Gupta will accept that "other persons" must include "employees". And if there is a complaint from the employees of an attempt to defraud, then certainly under the clause, as it stands an investigation can be made. When he goes on to say that whether there is intention to evade an obligation, it leads you to the question of what is "obligation". Is it a kind of general moral obligation?

SHRI BHUPESH GUPTA: Even under law.

SHRI C. D. DESHMUKH: Therefore, one must make a distinction between general moral obligation to keep a concern going so as not to rob the employees of their livelihood and a legal obligation. That is not an obligation which has been adjudicated in a court of law. If it is not, then it could only be a case which could be dealt with under some specific law deciding what the obligations are.

Now, as I had occasion to point out the other day in some connection, the Industrial Disputes Act, or any other Act bearing on labour relations, takes care of these matters. In other words if it is a dispute as to what the obligations towards employees are, it can be defined in legal terms. If there is no agreement, the dispute

goes to the adjudicator and it is only then that we know what the obligations are. Now, once a court or a tribunal or any other body is seized of this matter, the law which provides for the appointment of these tribunals and which provides for the implementation of the awards takes care of these matters. Therefore, we shall never find—unless all that part of the law has operated—whether there is any intention to evade any obligation, because the obligation must be such as is established by the process of law. That is why I feel that merely by inserting these words here, you will not be able to arrive at what is the obligation which is sought to be evaded.

Is it a moral obligation? If so, it is very indefinite. If it is not a moral obligation, and if it is a legal obligation, then, it must have been decided under some other process not laid down by this law. Therefore, either it will be a duplication of remedies or it will be importing something which is not capable of being dealt with in a statutory way. That is my reason for not being able to accept the amendments.

SHRI BHUPESH GUPTA: Sir, I am not seeking here any remedy on behalf of a particular aggrieved worker. But when such oppression takes place, legal or moral, I think that should be a valid ground for investigation.

MR. CHAIRMAN: The question is:

204. "That at page 125, line 23, after the words 'unlawful purpose', the words 'or with intent to defraud, or evade any obligation towards, any of its employees' be inserted."

The motion was negatived.

MR. CHAIRMAN: The question is:

"That clause 237 stand part of the Bill."

The motion was adopted.

Clause 237 was added to the Bill.

Clauses 238 to 241 were added to the Bill.

MR. CHAIRMAN: Then, we come to clause 242. There is one amendment, No. 66 in List No. 1. But Kazi Karimuddin is not here.

Clause 242 was added to the Bill.

Clauses 243 to 251 were added to the Bill.

Clause 252 (*Minimum number of directors*)

SHRI C. P. PARIKH (Bombay): Sir, I move:

127. "That at page 135,—

(i) at the end of line 22, after the word 'directors', the words 'one of whom shall be a technician possessing a diploma or a degree if the company is a manufacturing company and has a paid up capital of over four lakhs and fifty thousand rupees' be inserted; and

(ii) after line 26, the following Explanation be inserted, namely:—

*Explanation.*—For the purposes of sub-section (1), a manufacturing company is a company to which the Factories Act, 1948 applies."

SHRI JASPAT ROY KAPOOR: Sir, I move:

259. "That at page 135, at the end of line 22, after the word 'directors' the words 'in addition to at least one director elected in the prescribed manner by the permanent employees of the company, including labourers, from amongst themselves be inserted."

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

[MR. DEPUTY CHAIRMAN in the Chair.]

SHRI C. P. PARIKH: Sir, I have moved many amendments to this Bill, and I consider that this amendment is the most important of all the amendments that I have moved. And I will now try to explain to the House the necessity of considering it and accepting it.

Sir, I say that the managing agency system has got to be improved to the best possible extent, and the number of abuses has got to be minimised in order that the system should be respected in the country.....

SHRI JASPAT ROY KAPOOR: What is that amendment?

SHRI C. P. PARIKH: No. 127.

SHRI JASPAT ROY KAPOOR: May I, Sir, in this connection make a submission? Formerly, we used to get consolidated lists of amendments which we could easily refer to, but now we are not getting any consolidated list.

SHRI B. C. GHOSE (West Bengal): They are coming late in the evening. What can the office do?

SHRI BHUPESH GUPTA: They are supplying these things regularly. And it is really a hard job for them. I do not think we should ask for a consolidated list.

SHRI C. P. PARIKH: Then, Sir, so many loopholes have been plugged already, and I consider that the system will be respected in the country if this clause, as proposed to be amended by my amendment, is considered by the Finance Minister.

Now, Sir, the purport of my amendment is this. In every public limited company there should be one director who is a technician, possessing a diploma or a degree, if the company is a manufacturing company and has a

fifty thousand rupees.

SHRI KISHEN CHAND (Hyderabad) On a point of order, Sir. This clause relates to the minimum number of directors. I, therefore, think that this amendment, if at all to be paid-up capital of over four lakhs and moved, should have been moved to clause 255, and not to clause 252, as this amendment deals with the qualifications of directors. Clause 252 relates only to the minimum number of directors.

SHRI C. P. PARIKH. Sir, the hon. Member very well understands it. In this minimum number there should be a minimum, and I have suggested in my amendment that one of them should be a technician. One of the three directors should be a technician.

Now, Sir, I want to point out that the manufacturing companies are run with the help of finance, technical knowledge and managerial ability, as also organisational power. As far as finance is concerned, Sir, most of the directors are representing finance, and as far as managerial and organisational ability is concerned, there are other directors who represent that. But as regards the proper running of the concern, technical knowledge is very important. I can well understand, Sir, that all manufacturing concerns employ technicians, but they are only employees. And as employees they have got no status as a director has. By this amendment, I want to give some status to the technicians. I do not mind, Sir, if that technician is a relative of the managing agents themselves, or he is a relative of the director, or he is an outsider, or a member of the secretaries and treasurers' firm. He may be from any realm of this category, but he should be a technician, possessing a diploma or a degree. Let there be no confusion with regard to a diploma or a degree, because rules should be prescribed for each industry.

Now, Sir, the problem is narrowed down to a few companies in India. There are 12,000 public limited companies, and out of them, this clause will apply to only 1,350 companies, because only 1,350 companies, which are public limited companies, have a paid-up capital of over Rs. 4½ lakhs. And what are they? They are, cotton textiles 330, jute 72, iron and steel 3, engineering 150, sugar 98, chemicals 73, paper 26, vegetable oil 40, cement 50, tea plantations 110, electricity 79, shipping 20, and sundries 336. Now, out of these 1,352 public limited companies, with a paid-up capital of Rs. 5 lakhs and over, I say, Sir, about 300 have technicians on their boards. Therefore, the problem is narrowed down, and there are only 1,000 companies in India which are not having, in my opinion, any technical persons on the boards. I think, Sir, that especially in the case of engineering, chemical and electricity companies, such a representation is absolutely essential, because the activities of such a company cannot be carried on in a most efficient and productive manner, and to the benefit of all concerned—the shareholders as well as the employees—unless such representation is there. What is the position of a technician at present in such companies where there are no directors on the boards? These persons are under the control of the managing directors or the managing agents. And, therefore, they have to plead with them in regard to the difficulties in the progress of the industry, and how it can be achieved. And it is up to them to accept his advice or not to accept it. But when he is on the board of directors, his advice is discussed in the board, and various opinions are expressed. Therefore, I say, Sir, that if my amendment is accepted, the concerns which are not efficiently managed, will be improved to a considerable extent.

MR DEPUTY CHAIRMAN: That will do, Mr. Parikh. I think the Finance Minister has fully understood the import of your amendment.

**SHRI C. P. PARIKH:** Sir, I want the Finance Minister as well as the Members of this House to understand it. I have taken only five minutes, and I want at least fifteen minutes further, because I consider this amendment as the most important amendment, because it goes at the very root of the managing agency system. I am not going to be irrelevant.

**MR. DEPUTY CHAIRMAN:** Please try to finish it in five minutes.

**SHRI C. P. PARIKH:** Sir, I want this amendment to be discussed threadbare in the House. And I will try to be very brief. The whole point is that the Finance Minister is very well aware of this, and I hope he will consider it very sympathetically. I think, Sir technicians can very well discharge their duties when they are on the board of directors. With that idea, Sir, I have moved this amendment.

The importance of the amendment will be realised when I say that in every industry that I have mentioned, only 10 per cent. to 15 per cent. of the units are efficient and the rest, 85 per cent. of the units are inefficient. If you examine the profit-making capacity of each industry, you will find that only 15 per cent. of the companies are efficient or are making profits, are treating their labour well, and sufficiently remunerating their shareholders; in the rest 85 per cent, a lot of improvement is necessary and this amendment is one of the ways of effecting that improvement. The question will be raised about shareholding qualifications. I think the qualifications clause will be coming up subsequently. In another clause, clause 198, we have fixed the rate of remuneration of the directors. If the principle of my present amendment is accepted, then, we must say that for purposes of clause 198 a technician should not be considered as a director. If you accept the principle, then

there is no difficulty in having this amendment in the way in which I have put it; if any changes are considered necessary in it, I am quite willing to accept them. Sir, as I said, there are varying degrees of earning capacity. Out of 30 thousand companies in India, only 9,900 are assessed for income-tax. The rest of the companies are not assessed. The 10,000 companies that are assessed for income-tax, pay income-tax and super-tax to the extent of Rs. 210 crores. Out of these 10,000 companies, which pay income-tax and super-tax on about Rs. 210 crores. 775 companies pay income-tax and super-tax on Rs. 175 crores; that is to say, 80 per cent. of the tax is paid by 775 companies out of 10,000 companies. From these figures, the efficiency of the rest can be realised. Even out of these 775 companies, 62 companies earn Rs. 45 crores; that is to say, the 62 companies earn nearly one-fourth. Out of these 62 companies, 31 companies are managed by foreigners. Why? It is because they alone have got the technical know-how. We are grateful to these foreign companies for promoting the industrial progress of this country, but we cannot expect that this foreign technical know-how will be forthcoming in all the future years. Therefore, we have to train enough technicians to cover all the requirements of our country in order that the industrial progress, promotion and growth of this country may go on smoothly. For this purpose it is necessary that we must establish post-graduate courses in many of the technical subjects, and these technical people should also know that they would be given positions of respect in the industrial organisation of the country. This is the only guarantee to see that these people get sufficiently enthusiastic about such training. At present the training is not up to the degree that is desired, and so for post-graduate courses, our students go abroad. At present these people know that there is no equality for them in the industrial set up. I will be moving another



amendment subsequently that the managing agents will have to pay 12 per cent of their commission to these technicians. The companies should not collect merely the financiers. Companies are managed by financiers as well as by technicians. We must take the lead in this respect and place these people on a footing of equality in the management. We are often comparing our industrial progress with that of foreign countries. The hon. Minister for Commerce and Industry said that he would like this country to attain the industrial development of Germany or Japan in another seven years. I fully agree with him, but to achieve this aim, there must be some equality between financiers and technicians. If we accept this amendment, a proper atmosphere will be created in the country and technicians will know that they have some future in the country; and that ability will be recognised. At present, this is not recognised, because the technicians are not so well organised as the other employees, as the workers or even as the financiers, because they have a sense of self-respect and they do not want to go into all sorts of arguments and to beg of others. Now, if the managing agent's sons, brothers, etc., are appointed as technicians, there will be no need to appoint a technician on the board. But at least there must be one person on the board with technical knowledge. Many of the financiers today are sending their sons out of India for technical training. We are often comparing us with the U. S. A., or the U. K. That comparison is wrong, because in those countries technical knowledge is far advanced. At least 50 per cent. of the financiers in those countries possess technical knowledge and, therefore, on the board, there are financiers as well as technical people present. We cannot compare our country with them. In our country, there is either finance or technical knowledge. The two do not go together, and that is why, Sir, I move this amendment. We must have

post-graduate training courses in mechanical engineering, chemical engineering, mining engineering, marine engineering, etc. Such training facilities are not available in India at present, and therefore, we have to send our students abroad. We should see that these technicians have adequate remuneration and security of tenure. For this, my amendment is necessary. They say that the industrialists will do it voluntarily. Sir, the industrialists and the financiers are not going to do the things which we desire them to do of their own accord. Otherwise, this Bill would not have come before this House. We have had to put so many obligations and restrictions on them, because their associations have not exercised proper control. So many representations were made to the Finance Minister as regards this Bill, that this Bill will operate harshly and to the prejudice of the industrial progress of this country, but wherever there were loopholes in the bill, they did not say anything about them. For example, the definition of the word "associate" was there, and it was practically very loose but no association and no financier had said that this definition should be tightened in the interest of the country, because they knew that this might bring indirect benefits to their relatives, etc. We discussed this clause previously. What we require and what the Finance Minister has been fighting for is a new type of managing agency system, which will be something very different from what has been so far. If we find that this changed system has worked well, there is nothing to prevent us from continuing it beyond 1960. Unless we have a different system, we may not be able to progress to the extent that we desire.

But we must see and devise measures so that we are gradually going forward according to the industrial policy laid down. It is the responsibility of the Government to control the private sector in the larger interests of industrial and economic

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development. The *laissez faire* policy must be changed. Therefore this amendment is very important. Just as the Indian Administrative Service is there, so there must be an Indian Industrial Service so that every technician, who has knowledge, will find employment and when such provisions are there, he is assured of employment in the future and also assured of dignity.

I will come to some of the arguments which may be advanced against this. The technicians, if they are employed in a concern, will change, and if the man is changed, he remains a director for two years. This may be the argument, but it does not hold good. There is the rotation. The technicians are people having so much of self-respect and knowledge that they will not quarrel on small issues and they may not be re-elected after two years, but every time the board should be so constituted that one technician is there on the board with the requisite knowledge. It may be argued that we are unnecessarily putting some restrictions on the management. When we are putting restrictions on their buying and selling agency commission, on their investments, on the employment of the relatives, on their contracts and all the rest, I think this restriction is vital. If you consider dispassionately the other restrictions, you will find that I have expressly mentioned that as regards technicians, the 'associate' of a managing agent should not be considered a director in clause 111, and if the managing agents or the financiers themselves bring in their own relatives or friends as directors also and if he is a technician, there should not be another technician. So I want one single man on the board out of 10 or 15, or whatever may be the constitution. Therefore, I think this amendment, although it is coming in a form which may not upset the present structure of the Companies Bill. I consider it, as very vital and may be accepted.

MR. DEPUTY CHAIRMAN: Mr. Kapoor, that point about representation of employees has been argued and replied to in the general debate. So any speech is unnecessary. I will ask the Finance Minister to reply.

SHRI JASPAT ROY KAPOOR: Only one or two words about it. It is because of the reply given by the hon. Finance Minister that I have been encouraged to table this amendment.

MR. DEPUTY CHAIRMAN: One or two sentences only.

SHRI JASPAT ROY KAPOOR: Sir, I have been encouraged to table this amendment because of the hon. Minister's reply and the assurance given to us that so far as the question of representation of labour on the board of directors is concerned, there is almost an agreement—so far as the principle is concerned. So far as the details as to how their interests should be safeguarded is concerned, the Planning Commission is also looking into this question; but since the principle is accepted, what I suggest in this amendment is, that we might amend clause 252 in the manner that I have suggested making it essential that there should be at least one director on the board of directors elected by the permanent employees, temporary ones not having a place there, and labourers may be included in the definition of employees and the director should be from among themselves, so that no stranger may interfere in the management of the company, and lastly, the election should be in the prescribed manner. That is a very general term so that the Planning Commission and the Government will have ample opportunity at leisure to find out ways and means of securing the election of a director in a reasonable and proper manner. That is all that I have to submit in view of the acceptance of the principle by the hon. Minister. I hope, I will be given credit for being very brief this time.

SHRI C. D. DESHMUKH: Mr. Deputy Chairman, the hon. Member who spoke last must be under some misapprehension. I have not accepted any principle in regard to representation of workers on the board of directors. What I said was that some form of participation seemed acceptable to all the different parties who had contributed to the discussion in the Planning Commission. I expect that the Planning Commission will, in due course, be able to make a recommendation which, then, Government will have to consider. Now, it is not clear, if it will take the form of representation, no matter how it might be made, of workers on the board of directors. Indeed, I went to the length of saying that another machinery was suggested in the course of those discussions—some kind of a council of management and so on—and therefore, when Mr. Kapoor says that he well understands what I said and therefore, he suggests this amendment, it seems to me that he is very inconsistent. In any case, that does not flow from what I said the other day and the position still remains open as you suggested some time ago and I am not able to accept this specific amendment in that respect.

SHRI B. C. GHOSE: May I know if it means also that it may be by the participation in the board of directors or may not be?

SHRI C. D. DESHMUKH: It might be—and the Planning Commission has finally to arrive at its own conclusions, and then, after their recommendations are received by the Government, then the Cabinet has to make up its mind. That is why nothing is barred at the moment and generally I gave out that I gathered the impression that everybody was agreed that the time has come when some form of participation should be given to labour. This is my own personal impression. I am not in a position to express anything on behalf of Government, because I was present at

that meeting when this discussion took place.

As regards the first amendment....

SHRI JASPAT ROY KAPOOR: Will the Minister be pleased to refer this suggestion also to the Planning Commission for its consideration?

MR. DEPUTY CHAIRMAN: It is already before them.

SHRI C. D. DESHMUKH: I do not know that there is anything so revolutionary in this suggestion. It is only a method by which this particular object is suggested to be reached. But there have been other alternative suggestions—not perhaps in this House but elsewhere—about the representation of workers on the board of directors. Therefore, I have no doubt that this will be a sort of thing that will be considered among other things.

As regards the first amendment, I was frankly surprised at the unsuspected idealism on the part of the Member who has moved this amendment. He has mixed up so many arguments that I am not quite sure whether it is idealism or whether it is the beginning of a trade unionism on the part of technicians, because he seems to have spoiled what might have been a good case by arguing everything on behalf of the technicians. Technicians are a class who serve in the industry as well as elsewhere at various levels—in research institutes, as professors, lecturers, readers and even as self-employed persons. Why is it necessary therefore, to proceed to the argument that because technicians should be encouraged, that they must be made directors of companies? It seems to me that it is equivalent to saying that every Ministry in this country must also contain a technician. I really don't see any difference between that kind of a proposition and this kind of proposition. After all, the board of directors is a managerial body, shall we say, for managing a certain enterprise; we also, the Ministries also,

[Shri C. D. Deshmukh.] manage in another sphere. Here, we have been able to dissociate the sphere of experts from the sphere of administrators and the policy-makers. In other words, the objects which the hon. Member has, could be secured in a better way than they have been in the past if everybody concentrates attention on the advantage that one could get from the advice of technicians. But it does not follow necessarily, therefore, that they must be on the board of directors. In any case, as he has admitted, this is a new gospel that he is preaching. It was not mentioned before, in the previous discussions and so on and in matters like this, I think there is advantage in some kind of public opinion forming itself on the subject.

It is quite true that we are free to do what we like and we can introduce any revolutionary principle in this Bill. But when we see that this Bill has been before the public for the last nine years and that it has been thoroughly discussed by every one, we are taking it for granted that most of the important issues that are coming before us today have been discussed at various levels; whereas to my knowledge, a matter like this has not been discussed. I do not know, for instance, to what extent already, technicians' advice is considered at the meetings of board of directors. For aught I know, in all relevant matters, the technicians' advice may already be accepted, even though they are not on the board. Therefore, it is a matter which will have to be looked into in the fullness of time. The hon. Member has put forward his ideas and I have no doubt that they will be discussed when the necessity of the situation warrants. And there will be a time when people will have to come to this conclusion. But at the moment, it looks like some kind of touching faith in a degree or diploma. After all, there may be a man who may not have the necessary qualifications and yet may have a proper business sense to know what the worth of a technician's advice is.

Secondly, an elaborate manufacturing concern does not require only one kind of technicians. They require all kinds of technicians and if we are to concede the principle that a technician should be on the board, I would say that instead of a person who knows how a particular thing is to be produced, perhaps I would want a quality control expert or a production engineer or an expert who has studied time and motion procedures and so on. In other words, it is not easy to define, even for a given industry, what kind of a technician you want. In a manufacturing concern, with a capital over this figure that he has given, may require dozens of technicians and it would be very difficult to know which one of them will be the kind of technician who would be able to direct the company. Therefore, I think, we are really running ahead of the times a bit. This is no doubt an important issue. I am equally sure that technicians' services will finally sell themselves; in other words the logic of events will speak in their favour and if a manufacturing concern find that, as they cannot get on without a financier, or they cannot get on without a business man, so also, they cannot get on without proper technicians either, I have no doubt that the shareholders will ensure that technicians are taken on the board. But I do not think the time has come for making such a provision compulsory at this stage. That is my reason for not accepting this amendment.

MR. DEPUTY CHAIRMAN: Does Mr. Parikh press his amendment?

SHRI C. P. PARIKH: No, Sir. I request leave of the House to withdraw it.

Amendment<sup>\*</sup> No. 127 was, by leave, withdrawn.

SHRI JASPAT ROY KAPOOR: I also request leave of the House to withdraw my amendment.

Amendment<sup>\*</sup> No. 259 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 252 stand part of the Bill."

The motion was adopted.

Clause 252 was added to the Bill.

(Clause 253 (*Only individuals to be directors.*))

SHRI BHUPESH GUPTA: Sir. I move:

206. "That at page 135, lines 27-29, the existing clause 253 be re-numbered as sub-clause (1) of that clause, and after line 29, the following be inserted, namely:—

'(2) No foreign national unless the person is a Pakistani or of Indian origin shall be so appointed.

(3) No member of the former Indian Civil Service or of the All India Services shall be so appointed after his retirement without satisfying the Central Government that the retired officer concerned had no financial or other interest in the company while in service:

Provided that the Central Government shall not give permission to any such former official being appointed as director if there is any ground for suspicion that during service he had been, for personal reasons, interested in the company.'

(The amendment also stood in the name of Shri S. N. Mazumdar.)

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

SHRI BHUPESH GUPTA: Sir, with regard to the first portion of the amendment, which seeks to debar foreign nationals other than Pakistanis

or nationals of Indian origin from the board of directors,.....

MR. DEPUTY CHAIRMAN: You have already spoken at length on this.....

SHRI BHUPESH GUPTA: Sir, I have only just started speaking and you say I have already spoken.....

MR. DEPUTY CHAIRMAN: I mean on the previous amendment.

SHRI BHUPESH GUPTA: Sir, I will speak at length. I am only starting. I was reading my amendment. Sir, we know and we are familiar with *debates in the various parliaments of the world*. We are not absolutely ignorant of procedures and all these things.

MR. DEPUTY CHAIRMAN: This is a question on which you have spoken several times.

SHRI BHUPESH GUPTA: I do not know, if necessary, I shall speak more. You may ask me not to speak, and if that is your order, I will not speak. But as far as I am concerned, I will be guided by my judgment and discretion on this question.

MR. DEPUTY CHAIRMAN: Please be brief.

SHRI BHUPESH GUPTA: I am just reading my amendment. It says:

"No foreign national unless the person is a Pakistani or of Indian origin shall be so appointed."

Here I am dealing with the board of directors. I raised this point in connection with the shareholders, in connection with voting rights. There, I was not discussing the matter in respect of the board of directors, because the subject never arose in that connection.

MR. DEPUTY CHAIRMAN: But the principle is the same.

\*For text of amendments, vide col. 4571 supra.

**SHRI BHUPESH GUPTA.** You may say the principle is the same. So I will not go into what I have already said. But, nevertheless, here the subject of board of directors is the most important one and the board of directors is in a most important position in joint stock concerns. They decide the policy. A shareholder does not decide policies. A collection of shareholders may decide policies, but a shareholder does not decide a policy. Government have not, of course, accepted the amendments that I gave here. But here, as we are dealing with board of directors, I do not understand why we must place such foreigners on the board of directors. If it is a sterling company, you cannot legislate for such a company because its head office is not here but in Britain. But if it is a rupee company started here in this country, why must we have foreigners, particularly, the British on the board of directors, I cannot see; because I take it that the direction of policies of the concern must be entirely in the hands of Indians. I am not making any discrimination between Indians. All I am saying is that you should entrust to Indian hands the direction of policies.

You may remember, Sir, when the Standard Vacuum Oil Company came to this Country, they would not agree to give us even ordinary shares. They would only stipulate that Indians should have preference shares and that too to the extent of 25 per cent. and even then, Indians were not to get any voting rights. They said, when they started their concern in this country, that Indians were not to be given much financial stake in it and whatever was to be given to them would not carry any voting right. That is why the company entered into an agreement under which Indians were debarred by reason of their being preference shareholders, from any voting rights. And so the policy direction is entirely left in their own hands. Of course, Government might legislate with regard to certain matters within the territorial jurisdiction of India. Because of that, the Com-

pany Law had to be amended. The directions are now from abroad, or shall we say from Wall Street, in this case? If they do such things, why should we not here have a provision like this? We feel, and experience tells us, that foreign directors, the British directors in industrial concerns—and they are too many—are directing the concerns—our own concerns—to the detriment of our national interests.

I have been trying to impress this point on the hon. the Finance Minister, but somehow or other, he seems to think that the acceptance of such ideas would mean the ending of foreign investments in this country and that sort of thing. I cannot quite see the logic of it. If they can think of denying us the right to vote, even to the Indian shareholders, when they invest their money in our country, why must we think that if we take away their right to be on the board of directors, everything would go to rack and ruin in our country's economy? One should not take up that position. I think, the board of directors should be completely Indianised.

I may inform the hon. Finance Minister that a hoax is being perpetrated. A number of officials from the various British concerns in Calcutta are being put on the board of directors in order to create the impression that all these boards of directors are being Indianised. This is only a hoax. The British are resorting to this practice to deceive the public and bamboozle the Government. Therefore, one should not attach much importance to that kind of gesture on their part which is conceived in mischief and executed in filth.

That is the way they are doing it.

My next point is:

"No member of the former Indian Civil Service or of the All-India Services shall be so appointed after his retirement without

satisfying the Central Government that the retired officer concerned had no financial or other interest in the company while in service:

Provided that the Central Government shall not give permission to any such former official being appointed as director if there is any ground for suspicion that during service he had been, for personal reasons, interested in the company."

1 P. M.

Now, the Finance Minister might feel that I am being a little harsh towards the services. It is not my intention at all. I make it quite clear. I do not say that all the members of the services are bad or corrupt. That is not at all my point here. There are some against whom Government have to take action and we know that, but it is not my contention here that they are all bad. I do not tar them with the same brush at all. I shall say why I have moved these amendments. I have to advance some reasons why I have moved them. The Finance Minister will realise, I am sure, that it is not good for the highly placed officers to go and join the industrial concerns as directors after their retirement. That raises a lot of complications. I am prepared to consider this point from various angles. After his retirement, the officer is at a sufficiently advanced age, when it is not expected that he would be in a position to direct industrial concerns. From the financial angle, officers of the Indian Civil Service or the All India Services, when they retire, I take it, they retire with some good savings; they are also assured of a pension. Therefore, from the financial point of view also, they need not do it. I must take into account their own personal considerations also, but I have given notice of this amendment for this reason. During the British days, the I.C.S. officers developed a sort of unholy relation with a number of industrial undertakings in our country, and they

practised lot of favouritism in respect of those industries. Later on, after retirement, many of them were given very high posts in such industrial concerns. Although they did not have any experience of running industrial undertakings, they were immediately placed on the board of directors; some of them were even made chairmen of the board of directors. Such things had happened in the past. Naturally, this is a matter which has been criticised not merely from our side but also from the Congress circles, and, time and again, we have come across such criticisms in the Press, which generally supports the Congress. This practice demoralises public life. It has been found, also from experience, that the connections of those high officers are utilised by the big business bosses to influence the Government departments. However good a Finance Minister may be, he cannot be a guarantee for everyone under him. It may be that one of them goes out of service, after retirement, and takes up a private job; naturally, he leaves a lot of connections behind him. In cities like Calcutta and Bombay, he may get into an industrial undertaking and use the connections that he has left behind in the Government departments. Such things have happened. Therefore, these people should not be allowed to be taken on the board of directors, until and unless Government is satisfied. I am not asking the Government to satisfy me; I am only asking, in this instance, the Finance Minister to satisfy himself that appointment of such persons would not be prejudicial to the interests of the public and the shareholders and to the efficient and good running of the concerns. The Finance Minister should convince himself first. In case, there is any suspicion with regard to any officer—I have got lots of it but I am not going into them as they will be irrelevant now; irrelevant not because of facts, but because of the want of time—and if I were in the Finance Minister's position, I would certainly see that such officers are not taken into

[Shri Bhupesh Gupta.] these industrial concerns. So, I am prepared to leave the powers with the Finance Minister to see that this thing is done in the public interest. A kind of bond has been established between the permanent servants at the top and the permanent bosses in the business field. This has to be snapped and some efforts should be taken in that direction. This unholy bond should be snapped. I have never accused the Finance Minister of corruption or anything of that sort. He would understand my point. He did a lot of other things; he came down, hammer and tongs, on the bank employees, but I have never accused him of taking bribes or anything of that sort. Therefore, in the interests of the Service itself, he should see that these practices are put an end to. I know of some officers, belonging to his Service, the great, august Indian Civil Service, who played a lot of tricks during the War along with the businessmen. After their retirement, the workers suddenly found them to be the company bosses; they had seen them in the form of a District Magistrate, a Commissioner or a Secretary, but suddenly, they put on the mantle of company directors or chairmen of boards of directors. We know how these things happen. I know of cases where these people go and get big contracts for their companies from Government. These people get fat salaries from the companies and that is the only consideration. On this, they wangle contracts from the various departments. This is the real subversive element in the administration and it should be removed. I hope my amendments will be accepted by the hon. Finance Minister.

MR. DEPUTY CHAIRMAN: The Finance Minister.

SHRI KISHEN CHAND: I want to say a few words, Sir.

MR. DEPUTY CHAIRMAN: Only the mover and the Minister.

SHRI BHUPESH GUPTA: Why should it be like that, Sir?

MR. DEPUTY CHAIRMAN: We have yet to cover 400 and odd clauses.

SHRI KISHEN CHAND: This is an important matter, Sir.

SHRI B. C. GHOSE: I quite appreciate that one should not repeat the old points; I am not saying anything against it, but if somebody has a new point, he should be allowed to explain it.

MR. DEPUTY CHAIRMAN: He has made it perfectly clear and that has been debated over and over again.

SHRI B. C. GHOSE: We are happy the Communist Party has given a clean bill to the Finance Minister.

SHRI BHUPESH GUPTA: I want to make a submission, Sir. The Chair is rightly concerned about the time; and so are we. We met the Chairman and have formulated some idea as to how to proceed. I have given notice of 400 odd amendments. We can control the situation. After all, we have decided to finish this Bill by Wednesday.

MR. DEPUTY CHAIRMAN: Most of them are your amendments.

SHRI B. C. GHOSE: We shall finish by Wednesday.

SHRI KISHEN CHAND: Mr. Deputy Chairman, I am sure, the Finance Minister, when he replies, will say that the service rules debar a person from taking up any employment within a period of two years from the date of retirement. After two years, if a retired person likes, he can take up appointment. In the case of the income-tax department, or some such department as is intimately connected with the industrial development of the country, if the officers have a chance later on of getting employment—I do not here say that there will be cases of dishonesty or anything like that—they are likely to have a certain feeling of sympathy for such concerns as they are



likely to serve later on. The big industrial concerns take up these officers in their service and, in the interests of the cleanliness of our Services, it is very essential that there should be no hope—it is not a question of actual appointment, but even a lurking hope or some sort of agreement—that when they retire, after two or three years, they may seek employment or be appointed. That danger must be guarded against

There is one more point about the foreign directors. We are not dealing with the foreigners who are ordinarily resident in India; we are concerned only with the foreigners who are not ordinarily residents in India. If such persons are appointed as directors, they will not be able to visualise the difficulties of our industries, and they will not be able to give proper guidance. In their cases, at least, the Finance Minister should put some bar.

SHRI C. D. DESHMUKH: Mr. Deputy Chairman, I need say very little in regard to the first part of the amendment. To me it seems that he who pays the piper should be allowed to call the tune. In other words, if a person has investments, then he should be allowed to take someone of his choice in order to run the business of the company. You cannot in the same breath say that we want foreigners to invest here—I am not talking of rupee companies—and yet not allow anyone except a national of this country to be elected to the board of directors.

SHRI S. N. MAZUMDAR (West Bengal): They are playing their tunes all right even if they are not on the board of directors.

SHRI C. D. DESHMUKH: I do not know; that situation may be dealt with differently. But what I am saying is, we allow in certain cases, as I pointed out the other day also, after scrutiny, foreign concerns to be established here; we give them permission.

There is the Capital Issue Control. We have special agreements that we will take up or the nationals will take up 20 or 25 per cent. There have been cases where what is offered here is not equity capital but is preference capital. But leaving that apart, even if it is equity capital, I cannot see how one can at the same time make a rule that even if you put in 60 or 65 per cent of the capital, none of the directors will be non-Indian and yet expect that investment will be put in here. And there is no sufficient proof that the existence of directors who are elected by these people is prejudicial to the interests of the company; that is to say, it is not proved that the affairs of the company are not being carried on in an efficient way, and therefore, I cannot see any reason why we should accept this discriminatory provision. Now, as regards the second point, sometimes Shri Bhupesh Gupta is violently moderate and this is one of the occasions on which he is moderate.

SHRI BHUPESH GUPTA: That only proves that I am a very reasonable person.

SHRI C. D. DESHMUKH: In other words, I have a great deal to say for the point of view that he has urged. I think anyone will be disturbed at the thought that a public servant who have had something to do with a company during the course of his service should afterwards find himself in a responsible position, as for instance now, on the board of directors of that company. He is probably right in asserting that too many bad instances of this kind have happened in the past. But I doubt whether the amendment that he is suggesting here is either complete or will meet the situation entirely. He has only picked out some. Now, I have no particular thing to urge on behalf of the Service to which I belonged before 1941—I resigned about 14 years ago—and I do not feel that my loyalties are still binding on me. Therefore, what I say is without pre-

[Shri C. D. Deshmukh.]  
 judge. In any case, it is not only the Indian Civil Service. He is also taking all the All India Services. Now, it is our experience that officials come into contact with businessmen at all levels, even a clerk who draws up a list of Import Control, and probably there are many cases in which a clerk has done very much more than an official; sometimes, it is at a lower level that the effective thing is done. Therefore, it is incomplete in itself.

SHRI BHUPESH GUPTA: "personal interests", I have said.

SHRI C. D. DESHMUKH: I do not know what a personal interest is. For instance, if a member of a Service holds some shares in a company, I do not know whether you would say that he has had financial or personal interests in the company or not. I should say that a man who has a share in a company has a personal interest. Does it therefore mean that members of the I.C.S. or the All India Services should not have any shares in any company? If so, we should have made an amendment in some different clause or clauses of this Bill. Therefore, I think this is a misconceived kind of amendment although the spirit behind it is good.

SHRI BHUPESH GUPTA: Then why don't you change it? You modify it just as you like.

SHRI C. D. DESHMUKH: It is not possible to make a change like that at short notice but I am going to add something, that is what Shri Kishen Chand said. The Government of India have issued an order dealing with the payment of pensions and in that they have ruled that failure to take Central Government's permission for re-employment within two years of retirement would be construed as misconduct warranting the withholding of this payment, and this kind of withholding has, the House will

be interested to know, actually been done in the case of an officer belonging to the Indian Police Service in one of the States in India. Therefore, not only is the Central Government seized of this problem but has taken certain steps which, according to our experience, are effective. But if we find by experience that they are not fully effective, it is possible to take further action in the way of rectifying the situation in the same way and I suggest, Sir, that that is a more effective way of dealing with it than putting this kind of imperfect provision in the company law.

SHRI H. C. DASAPPA (Mysore): Does it apply to State Service officers also?

SHRI C. D. DESHMUKH: That will, but this does not, and what I am saying is, at all levels there are officers.

MR. DEPUTY CHAIRMAN: The question is:

206. "That at page 135, lines 27-29, the existing clause 253 be re-numbered as sub-clause (1) of that clause, and after line 29, the following be inserted, namely:—

'(2) No foreign national, unless the person is a Pakistani or of Indian origin, shall be so appointed.

(3) No member of the former Indian Civil Service or of the All India Services shall be so appointed after his retirement without satisfying the Central Government that the retired officer concerned had no financial or other interest in the company while in service:

Provided that the Central Government shall not give permission to any such former official being appointed as director, if there is any ground for suspicion that during service, he had been, for personal reasons, interested in the company.'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 253 stand part of the Bill."

The motion was adopted.

Clause 253 was added to the Bill.

Clause 254 was added to the Bill.

*Clause 255 (Appointment of directors and proportion of those who are to retire by rotation)*

MR. DEPUTY CHAIRMAN: There are the amendments Nos. 67 and 68. Mr. Dhage is not here. Are you moving, Mr. Kishen Chand?

THE MINISTER FOR REVENUE AND CIVIL EXPENDITURE (SHRI M. C. SHAH): Before he moves them, I would like to say, Sir, that amendment No. 68 is barred in view of the verdict of the House on Shri Jaspat Roy Kapoor's amendment.

MR. DEPUTY CHAIRMAN: Yes, 68 is barred.

SHRI KISHEN CHAND: May I make a submission? It related to another clause and this amendment is to a different clause.

MR. DEPUTY CHAIRMAN: The principle is the same whether it is clause 252 or clause 255. The principle is the same and the principle has been rejected by the House.

SHRI KISHEN CHAND: Really so far as that clause was concerned, the amendment did not relate to that clause at all. How can it be debarred?

MR. DEPUTY CHAIRMAN: It does not matter, whether it is 252 or 255.

SHRI KISHEN CHAND: Several hon. Members would have spoken and supported and given arguments at that moment. They could not give the

arguments and could not make speeches in support of it because that was irrelevant there, and simply because an irrelevant.....

MR. DEPUTY CHAIRMAN: Anyhow, that question has been discussed and the House has rejected the proposition.

SHRI H. P. SAKSENA (Uttar Pradesh): May I submit that we should be told at least the number of the amendment and the number of the List?

MR. DEPUTY CHAIRMAN: Everything is being told, Mr. Saksena, only you did not hear.

SHRI H. P. SAKSENA: I do not think there is any defect in my power of hearing.

SHRI KISHEN CHAND: My principal amendment was really No. 68 and I wanted to put forward arguments in support of it. Inasmuch as it is barred, as you say, I move No. 67:

67. "That at page 135, line 36, for the word 'two-thirds', the word 'three-fourths' be substituted."

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

This is just a small minor amendment. The underlying idea behind it is that the largest number of directors should be elected and should retire by rotation. There is nothing sacrosanct about two-thirds or three-fourths; or any ratio could have been fixed. If hon. Members accept the principle that the largest number of directors should be retired and they should be re-elected, then I suppose, three-fourths being a larger number than two-thirds, it should be accepted. What we want is to cut down the number of directors who are representatives of the managing agents.

SHRI M. C. SHAH: Which amendment you are referring to?

SHRI KISHEN CHAND: 67. The clause says that not less than "two-thirds" of the total number of directors of a public company shall retire by rotation. I want three-fourths of them to be retired every year. As I said, the whole idea is that the managing agents should appoint a small number of directors, not more than one director on the board of directors, and then, I wanted one representative of the labour, but that has been ruled out now. So at least three-fourths of the directors now, should retire and be re-elected. I move my amendment.

SHRI M. C. SHAH: I cannot accept the amendment. He wants to increase the number thereby and, as he said, he wants to reduce the number of managing agents' directors. So I cannot accept. And the other has been already disposed of.

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

67. "That at page 135, line 36, for the word, 'two-thirds', the word 'three-fourths' be substituted."

The motion was negatived.

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

"That clause 255 stand part of the Bill."

The motion was adopted.

Clause 255 was added to the Bill.

Clauses 256 to 258 were added to the Bill.

Clause 259 (Increase in number of directors to require Government sanction)

SHRI BHUPESH GUPTA: Sir, I move:

207. "That at page 137, lines 10 to 12 be deleted."

208. "That at page 137, line 15, for the words 'that date', the words 'commencement of this Act' be substituted."

(The amendments stood also in the name of S. N. Mazumdar.)

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): The clause and the amendments are open for discussion.

SHRI BHUPESH GUPTA: Sir, my amendment relates to the increase in the number of directors to require Government sanction. Here, as you will see, an exception is made: "except in the case of a company which was in existence on the 21st day of July 1951, an increase which was within the permissible maximum under its articles as in force on that date." This category of companies would be exempted from the operation of this provision. I have demanded that this should be deleted. I do not want exemptions to be given to such companies; they should also come within the operation of the law.

As far as the second amendment is concerned, it may be my mistake. I find, it ought to be line 14. Maybe, I mistakenly wrote 15. I should say generally these amendments are put down here very well. Anyway, what I want to say is this. I want to say in the case of a company which came or may come into existence after the commencement of this Act, but then the word 'came' does not fit in here. So I do not want to press this amendment for technical reasons. But I hope that the deletion which I have suggested in my other amendment will be accepted by the Government, because I do not see any reason why these categories of concerns should be left outside the provisions of this particular clause. The Government should have power even in respect of them.

SHRI M. C. SHAH: Under the Indian Companies Act, 1951, this power was given and we do not think that we

should take it away. There is no justification in their case to get the approval of the Government.

About the second point, there seems to be a misconception.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): He has already said that. The hon. Member cannot withdraw amendment No. 208, because Mr. Mazumdar is not here. So I will put them to the House.

The question is:

207. "That at page 137, lines 10 to 12 be deleted."

The motion was negatived.

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

208. "That at page 137, line 15, for the words 'that date' the words 'the commencement of this Act' be substituted."

The motion was negatived.

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

"That clause 259 stand part of the Bill."

The motion was adopted.

Clause 259 was added to the Bill.

Clause 260 (Additional directors)

SHRI BHUPESH GUPTA: Sir, I move:

209. "That at page 137, after line 26, the following further proviso be inserted, namely:—

'Provided also that on the application of any member or employee, the Central Government may enquire into the grounds of such appointment and if satisfied that such appointment has been made unnecessarily and not in the

interest of the company, the Central Government may annul such appointment and on such decision the additional director will cease to be such director.'

(The amendment also stood in the name of Shri S. N. Mazumdar.)

SHRI BHUPESH GUPTA: Sir, this clause relates to the appointment of additional directors and here I want another proviso to be added. I want to give a little more power to the Government. It appears that when I try to give power to them in the interests of the public and the employees, they would not even take those powers. Why I want them to have this power is because it sometimes happens that wrong types of people are brought on the board of directors for very many reasons. Sometimes, there is sought to be an internal arrangement between two firms and a person who knows nothing comes on the board and bungles the whole thing. Sometimes, the company is not in a good financial position and some speculator is brought into it and he then runs amuck in the concern. Sometimes, it happens that a sort of a bad director is brought in with a view to pursuing an anti-labour policy or for organising profiteering and black-marketing. In such cases, if the Government gets a complaint either from the employees or any member of the concern, I think the Government should have the right to annul such appointment. When I make this suggestion. I do not mean to say that *ipso facto* the appointment would be annulled. It would be for the Government to consider the matter and see whether the appointment has been made in the interests of the company which should include the interests of the workers, the public and the shareholders. If the Government is satisfied, it can retain the appointment; but if it is not satisfied, it should be in a position to annul the appointment. That is why I want to keep the Government in a position to act in such contingencies.

**SHRI M. C. SHAH:** I am thankful to my hon. friend, Shri Bhupesh Gupta, for suggesting an amendment whereby we can get more powers, but we do not think that these powers are necessary at all. We do not want to interfere in the internal administration of the company, when under the articles, the board has been given these powers. The board can exercise these powers and there is the general body also to take care of them.

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

209. "That at page 137, after line 26, the following further proviso be inserted, namely:—

'Provided also that on the application of any member or employee, the Central Government may enquire into the grounds of such appointment and if satisfied that such appointment has been made unnecessarily and not in the interest of the company the Central Government may annul such appointment and on such decision the additional director will cease to be such director.' "

The motion was negatived.

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

"That clause 260 stand part of the Bill."

The motion was adopted.

Clause 260 was added to the Bill.

**Clause 261** (*Certain persons not to be appointed directors, except by special resolution*)

**SHRI BHUPESH GUPTA:** Sir, I move:

210. "That at page 137, at the end of line 34, after the word 'company', the words 'but subject to the approval of the Central Government' be inserted."

211. "That at page 138, at the end of line 26, after the word 'company', the words 'but not exceeding one-year from such commencement' be inserted."

The amendments stood also in the name of Shri S. N. Mazumdar.

**SHRI LALCHAND HIRACHAND DOSHI (Bombay):** Sir, I move:

129. "That at page 137, lines 30-31, for the words 'and such managing agent is authorised by the articles or by an agreement to appoint any director to the Board', the words 'and such managing agent, being so authorised by the articles, appoints any director to the Board' be substituted."

**THE VICE-CHAIRMAN (SHRI H. C. MATHUR):** The clause and the amendments are open for discussion.

**SHRI BHUPESH GUPTA:** (Seeing Shri Lalchand Hirachand Doshi also standing up to speak) All right; let us have your musketry.

**SHRI LALCHAND HIRACHAND DOSHI:** I am glad at least once the hon. Member on the opposite side has thought it wise to speak after I speak.

Sir, my amendment is a very simple and healthy one. The clause mentions that certain persons cannot be appointed as directors to the board if there is a provision in the articles for appointment of directors by the managing agent. Whether the managing agent appoints such directors or not, all those categories of persons are precluded from being appointed directors. My amendment says that as long as the managing agent does not exercise such a right, those persons who are precluded under this clause should not be precluded. I know, there will be some people who will say, 'No, no; how can this be done? Because if once such a director is appointed without the managing agent

exercising the right, probably afterwards, the managing agent may come forward and say that he wants to exercise his right.' But as long as the managing agent gives in writing that he does not want to exercise such a right, at least in that case, these clauses should not operate. Because the articles may provide and the articles remain there as long as the company exists, but the managing agents do not remain, or probably, they do not want to exercise in many cases such a right. And in such cases, it should not be desirable to preclude the cases that have been enumerated in this clause. This is exactly offering something which the clause really wants to offer to the company, but as provided in case the managing agent wants to exercise the right. As long as he does not want to exercise the right, I suppose, there should not be any necessity for precluding the categories of people as are mentioned in this clause from being appointed directors.....

SHRI B. C. GHOSE: I do not understand your point. What is your amendment, because if you change the words, what difference does it make?

SHRI LALCHAND HIRACHAND DOSHI: The difference is like this. A certain right has been given in the articles to the managing agent to appoint a director on the board of directors. Because of that right given to the managing agent, certain categories of persons are precluded from being appointed directors. My point is this. Though the articles give this right to the managing agent, if the managing agent, during the currency of his term, gives in writing to the company that he does not want to exercise this right, then, in such cases, this preclusion of the categories of persons should not be enforced. That is the only point.

SHRI B. C. GHOSE: What is the number of amendment? 129? It does not say anything about not being precluded.

SHRI M. C. SHAH: He wants to make some verbal improvement.

SHRI B. C. GHOSE: But those persons continue to be precluded under Mr. Doshi's amendment as well.

SHRI M. C. SHAH: Mr. Doshi wants to make some verbal improvement which we do not propose to accept.

SHRI B. C. GHOSE: His intention is that these persons should not be precluded. His amendment does not say that.

SHRI LALCHAND HIRACHAND DOSHI: It does say that.

SHRI M. C. SHAH: It does not. Why do you ask them to do that?

SHRI LALCHAND HIRACHAND DOSHI: My amendment reads: "and such managing agent, being so authorised by the articles, appoints any director to the board" be substituted.....

SHRI B. C. GHOSE: Then it comes to 'none of the following persons shall be appointed'.....

SHRI LALCHAND HIRACHAND DOSHI: That remains.

SHRI B. C. GHOSE: If you read that clause.....

SHRI LALCHAND HIRACHAND DOSHI: I have read the clause.....

SHRI BHUPESH GUPTA: I suggest, let the hon. Member make his speech, because in any case, he is going to withdraw the amendment.

SHRI LALCHAND HIRACHAND DOSHI: I really do not understand where my point does not come in. If the Government have made up their mind that they do not want to accept, that is a different matter. If my friend is determined to oppose everything, then, I cannot help it. But the point is this. What the clause offers is that in case such a right does not

[Shri Lalchand Hirachand Doshi.] exist to the managing agent by articles, then no preclusion is provided. But if the right is given to the managing agent, then, of course, certain categories of the people are precluded from being appointed. My little improvement in that is this. Even though the provision is there for this right to the managing agent, as long as he does not want to exercise that right, during the period of his managing agency, the preclusion should not be there, should not be effective. That is the improvement that I am suggesting, which is in conformity with the spirit of the clause and, therefore, should be acceptable to the Government.

SHRI BHUPESH GUPTA: With regard to my first amendment, all that I want to say is that in the event of certain persons being appointed as directors by special resolution, the provision should also be there for securing the approval of the Government. The first amendment relates to that, because I do not think that the special resolution is of sufficient guarantee in this matter.....

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): Again, more power to the Government.

SHRI BHUPESH GUPTA: The other amendment relates to the next page. There is a provision here in sub-clause (4) of clause 261 which reads:

"Nothing in this section shall be deemed to prevent any director holding any office immediately before the commencement of this Act from continuing to hold that office up to the next annual general meeting of the company."

I want to be definite on this matter. Therefore, I say that after the word "company", the words "but not exceeding one year from such commencement" be added. That is to say, I want to fix a time limit. I cannot leave it indefinitely for the general body meeting to decide, because there is no limitation. There

are other provisions with regard to general body meetings; but I do not see as to why a time limit should not be put there. If you so think, we can add the words "whichever is less". But a provision of this sort according to us should be there. Unless this is provided for, it may be that the purposes of this particular provision would be, to a great extent, frustrated, at least by some concerns in this country.

SHRI M. C. SHAH: As I said, my friend, Mr. Lalchand Hirachand Doshi wants to make some verbal improvement. We have considered it and we do not think it is necessary. So, we cannot accept the amendment. About Mr. Bhupesh Gupta's amendments.....

SHRI LALCHAND HIRACHAND DOSHI: What is the objection to that?

SHRI M. C. SHAH: We do not think that verbal improvement is necessary. That is the objection. Our drafting is better than the drafting suggested by my friend, Mr. Lalchand Hirachand Doshi. That is the main point.

Now, about Mr. Bhupesh Gupta's first amendment, No. 210, there the appointments are made by special resolution and, therefore, we do not think that the Central Government's approval should be necessary.

About his next amendment, he wants to add the words "but not exceeding one year from such commencement" after the words "the next annual general meeting of the company." It may be one year, it may be one year and three months. We do not propose to restrict that. Therefore, we cannot accept that.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): Mr. Doshi, do you want to press your amendment?

SHRI LALCHAND HIRACHAND DOSHI: As my hon. friend had anticipated it in deference to his wishes, I am withdrawing it....

SHRI M. C. SHAH: It has been examined.



Amendment No. 129 was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): Amendments Nos. 210 and 211.

SHRI BHUPESH GUPTA: I think, in this matter, I follow suit.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): For both the amendments?

SHRI BHUPESH GUPTA: Yes.

\*Amendments Nos. 210 and 211 were, by leave, withdrawn.

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

"That clause 261 stand part of the Bill."

The motion was adopted.

Clause 261 was added to the Bill.

Clause 262 was added to the Bill.

*Clause 263 (Appointment of directors to be voted on individually)*

SHRI KISHEN CHAND: Sir, I move:

69. "That at pages 138-139, for the existing clause 263, the following be substituted, namely:—

'263. *Election of directors.*—At a general meeting of a public company or of a private company which is a subsidiary of a public company, the election of directors from among the retiring directors as offer themselves for re-election and other persons who have been duly proposed shall be by means of proportional representation'."

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

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

\*For text of amendments vide cols. 4603—4604 *supra*.

SHRI KISHEN CHAND: Mr. Vice-Chairman, if you read clause 263—appointment of directors to be voted on individually, that is the heading—the process is that "a motion shall not be made for the appointment of two or more persons as directors of the company by a single resolution, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it". Well, in fact, what will happen is that one-third of the directors retire every year. Supposing nine directors are on the retiring list, that means one-third of nine directors or three directors will be retiring every year, and in the case of those three directors, every director will be voted on separately. The result will be that, with the present voting system, if a poll is demanded on the passing of a special resolution, 51 per cent. of the votes, whether they are held by one, two or more persons, will carry the day, and pass the resolution appointing a director; that is the same 51 per cent. vote-holders will make all the appointments. The remaining 49 per cent. vote-holders may cast their votes—it will be ineffective—and they will not secure the appointment of a single director. In Clause 265, it is stated, "Option to company to adopt proportional representation for the appointment of directors." It means that the Government feels and realises that there is a great hardship on minority vote-holders and they are not able to send any of their representatives on the board of directors. So, in order to safeguard that, the Government has put in clause 265—that is an optional clause—and the result of an optional clause will be that hardly any company will adopt it. Any person who has got a large number of shares, and who has got directly or indirectly supreme control of the concern, will not like to relax his control of the company. It will lead to oppression and it will lead to Government interference in the matter. Therefore, we, Members of this House, find that Government has permitted election to take place

[Shri Kishen Chand.]

on the basis of proportional representation, and I think it is a very good principle. My amendment is:

*"Election of Directors.—At a general meeting of a public company or of a private company which is a subsidiary of a public company, the election of directors from among the retiring directors as offer themselves for election and other persons who have been duly proposed shall be by means of proportional representation."*

So, my suggestion is that, from the list of persons who have retired that year and of other new names which are proposed, the election of directors will take place by means of proportional representation. Suppose, there are about five or six names out of which three have to be elected. If re-election is made on the basis of a separate resolution, as I have already pointed out and explained, only 51 per cent. of the people will get their representatives as directors. But if there is proportional representation and if there are three vacancies, then, any person who has got one-fourth of the votes of persons present at the meeting, either in person or in the shape of proxies, will be elected. Really, we want to give representation to every shade of opinion. I know that several hon. Members who are against this idea will immediately get up and say, "We do not want to make a board meeting an arena of fighting." Well, I cannot understand this mental attitude. You see, there is a share qualification for a director. After all everybody wants the prosperity of the company. No shareholder who has got any shares in the company and least of all a director who has got at least shares worth five thousand rupees in the company will like that it should not prosper. In such a case, to assume that the moment a director comes as a representative of persons who own 49 per cent. of the voting power, ~~Re-~~ comes for a tussle and the board meeting will become a warring arena,

is not correct. If you get any man as a director with a different view, he may be able to suggest new lines of thought to the board. After all, one man with a slight difference of opinion cannot create a warfare at the meeting of the board of directors. He will be able to suggest a new line of thought, make new suggestions, and help in the improvement of the working of the company. If, by giving representation to certain viewpoints about the management of a company, you are helping towards the improvement of it, I do not see any reason why you want absolute unanimity. Actually, what happens is this. The board meeting sits for about ten or fifteen minutes. After that, there is a second meeting. That also sits for ten or fifteen minutes. The directors spend about an hour or so and attend nearly eight or ten meetings. The managing agents carry on the work as they like. That is the usual practice. There is always a fear that if any director raises a question against the managing agent, he is threatened: "Look here, if you raise that question, when your turn comes for re-election, you will be rejected as a director." It was a well-known practice in England, when some directors used to be called the "Guinea Directors." In former times, big persons, with titles, were elected directors of companies. They were paid one guinea as their sitting fee. They had absolutely no interest in the management of the companies. They just used to attend the meetings for ten minutes, pocket their guinea and go away. Sir, this is the usual practice in our companies also. In half a dozen companies, it may be slightly different. In the normal course, a meeting is held for a few minutes and things are discussed. Therefore, it is very essential that we adopt the principle of proportional representation. In France, they say, "The Ministries come and go." But there is a permanent Civil Service which is carrying on. Here also there is a managing agency and it carries on the work. After all, if some new suggestions are

proposed in a board meeting, they should be welcomed. I submit that this proportional representation method is very good and I commend this.

SHRI B. C. GHOSE: Sir, clause 265 deals with proportional representation. I should like to make it clear that if this is rejected, the plea should not be put forward later on that this has been decided. Let us take up both the clauses together and discuss them. This should not be precluded. That is a more important clause. It might be said that, since we have rejected it, we cannot take up clause 265. If you think that we should put it to vote, please do not shut out discussion on clause 265.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): Clause 265 will be discussed. That is the main clause.

SHRI C. P. PARIKH: The same principle is involved.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): We can keep it pending and take the two clauses together. That will be appropriate. We first take clause 264 and later on take both these clauses (263 and 265) for discussion.

Clause 264 was added to the Bill.

*Clause 265 (Option to company to adopt proportional representation for the appointment of directors)*

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): Clause 265. There are a few amendments. The amendments may be moved.

SHRI JASPAT ROY KAPOOR: Sir, I move:

130. "That at page 139, line 13, for the word 'may', the word 'shall' be substituted."

131. "That at page 139, after line 20, the following proviso be inserted, namely:—

'Provided that the Central Government may, if on the application of not less than 200 members

of the company or of members of the company holding not less than one-tenth of the total voting power therein it is satisfied, after such enquiry as it deems fit to make, that it is necessary to do so in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any member of the company or in a manner which is prejudicial to the interests of the company, direct that the aforesaid provision in the articles of the company be deleted or held in suspense for such period as it may prescribe.' "

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

212. "That at page 139, lines 11—20, the existing clause 265 shall be re-numbered as sub-clause (a) of that clause, and after line 20, the following be inserted, namely:—

'(b) Notwithstanding anything contained in this Act, the articles of a private company shall provide for the appointment of directors according to the principle of proportional representation, whether by a single transferable vote or by a system of cumulative voting or otherwise, the appointments being made once in every two years.' "

214. "That at page 139, line 13, for the word 'company', the words 'public company' be substituted."

216. "That at page 139, lines 15-16 the words 'or of a private company which is a subsidiary of a public company' be deleted."

SHRI S. N. MAZUMDAR: Sir, I move:

213. "That at page 139, lines 12-13, the words 'Notwithstanding anything contained in this Act' be deleted."

(The amendment also stood in the name of Shri Bhupesh Gupta.)

SHRI B. C. GHOSE: Sir, I move:

215. "That at page 139, line 13, for the word 'may', the words 'shall, unless exempted by the Central Government on an application made by the company' be substituted."

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): All the amendments and the clauses are open for discussion. We are now discussing both clauses 263 and 265.

SHRI JASPAT ROY KAPOOR: My first amendment, i.e., No. 130, suggests that in clause 265 for the word "may" the word "shall" be substituted, meaning thereby that the articles of association of every company, be it private or limited, shall provide for the appointment of not less than two-thirds of the total number of directors by the method of single transferable vote.

My next amendment, i.e., No. 131 reads as follows:—

"That at page 139, after line 20, the following proviso be inserted, namely:—

'Provided that the Central Government may, if on the application of not less than 200 members of the company or of members of the company holding not less than one-tenth of the total voting power therein it is satisfied, after such inquiry as it deems fit to make, that it is necessary to do so in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any member of the company or in a manner which is prejudicial to the interests of the company, direct that the aforesaid provision in the articles of the company be deleted or held in suspense for such period as it may prescribe.'"

While we are dealing with the clause and my amendment to it, it would be well to cast a glance over clause 408 also, because in that clause, a reference has been made to clause

265 also, and my amendment, especially No. 131, is in a pretty good measure a reproduction of certain portion of clause 408. So if these two amendments of mine are accepted, they will naturally lead me on to propose deletion of the proviso in clause 408. So, these two clauses virtually go together, one being dependent on the other. In one word, my amendment suggests that we should have invariably the system of proportional representation which is provided for in clause 408, only under certain conditions; that is to say, if a representation is made to the Central Government by 200 members of the company or by such number of members who hold one-tenth of the voting power, then the Central Government shall direct the company to adopt the system of proportional representation. Now, Sir, I suggest that rather than the Government waiting to make such a direction when a representation is made by 200 members or members with one-tenth of voting power, such a provision must be made in the articles of association of the company from the very beginning. It is just only the other way about, but I have provided a safeguard also in order to prevent any disruptive tendencies growing in a company by virtue of my amendment being accepted, by also suggesting a proviso to the effect that if at any stage 200 members make a representation, or members holding one-tenth of the voting power make a representation, to the Central Government that some inconvenience is caused thereby, or some mischief is growing up in the company, which adversely affects the interests of the company or the interests of certain section of shareholders, the Central Government, then, shall direct that the original clause in the articles of association to this effect may not be operative, either at all thereafter, or may be held in suspense for some time.

Sir, I need not dilate at length on the purpose of my amendment for it has been pretty well debated upon during the general discussion on the

Bill. The object, Sir, in one word, if I may repeat, is to safeguard the interest of a small number of shareholders who may not be in the good books of the managing agents or the managing directors. It has been throughout the general experience of all of us that the board of directors is almost invariably a packed body. Hardly any person, who is not in the good books of the managing agent or the managing director, can ever get a seat on the board of directors. Now, Sir, the question is how to protect their interest? I wonder why this question should be asked, because it is only too well known that a small number of shareholders, if they are not in the good books of the managing agents, are absolutely ignored.

As a matter of fact, the general meetings of the companies are not attended by many shareholders, for the simple reason that they know it too well that it is no use attending a meeting of the shareholders, where election of director is to be held or any other important subject is to be discussed, because their words will not count at all. Whatever the board of directors or the managing agents have already decided has to be taken for granted as being something which will be adopted by the general meeting. So they hardly ever come to attend that meeting.

May I, Sir, in this connection, give a particular instance of which I have personal experience. Once, long ago—about 15 or 20 years ago—I happened to purchase a few shares in a very important company which had just then been floated by a very prominent firm of managing agents. I would not, for obvious reasons, mention the name either of the company, or of the firm of the managing agents. When a general meeting of that company was being held in Delhi, I happened to be here in connection with some other business. Because I was not here to attend that meeting, I had not much financial stake therein. I went to attend that meeting. The company had a share capital of near about a

crore of rupees. I found that there were only five or six shareholders present.

SHRI RAJENDRA PRATAP SINHA (Bihar): Sir, the hon. Minister is missing from his seat.

AN HON. MEMBER: The Law Minister, Shri Pataskar, is there.

THE MINISTER FOR LEGAL AFFAIRS (SHRI H. V. PATASKAR): I was just collecting some more information.

SHRI JASPAT ROY KAPOOR: I don't mind if the Ministers are not in their seats, because I know even when they are absent from the House, they can hear us; they are omnipresent. If not in body, in spirit they are here.

So, I was quoting a personal experience. There were only five or six persons. All of them were directors. I was a stranger there. When I went there, the managing director or the managing agent wondered at me and probably thought that I had gone there to do some mischief. Those were the days when the name of Shamdasani used to appear very prominently in the papers; we have not forgotten that name still. He thought, I was there to do some mischief. That was none of my object. I was, of course, surprised at that. The managing agent was at pains to convince me that if I had gone there to do some mischief I will be able to do nothing. He at once took out a huge file and told me that they had got the proxy of 75 per cent of the shareholders. All the time before the meeting began he was trying to impress on me that he held overwhelming number of proxies, i.e., he was holding the proxy of about 75 per cent shareholders. That is very much the position with regard to every company. That is why the shareholders do not care to go there. Therefore, in order to protect the interest of those who do not want to appoint the managing directors as their proxy-holders, it is necessary that they should have the right of electing shareholders in proportion to the

[Shri Jaspat Roy Kapoor.]

number of shares they hold. It is in the interest of the company and also in the wider interest. It may not be in the interest of the managing agent or the managing director, but if you have this clause, a general meeting would be more widely attended, because the shareholders would know that if they go there they can have an effective voice. I therefore, submit that it is necessary that my amendment should be accepted. The principle of it has already been accepted by the Government, by the Select Committee and by the Lok Sabha. And I further find, Sir, by casting a glance at the other amendments that have been tabled by my hon. friends, Mr. Parikh and Mr. Ghose, that they have virtually accepted the substance of my amendment, and particularly, the amendment of Mr. Ghose is on the same lines as mine, though in different words. And so far as Mr. Parikh's amendment is concerned, that also accepts the principle and the utility of my amendment, though he confines his amendment to only private limited companies. He says that the system of proportional representation must be made obligatory only in the case of private limited companies, and so far as public limited companies are concerned, they may be left to their own fate under the existing clause. Now, Sir, this is something very significant. I can quite appreciate why he is anxious that this system should be extended in an obligatory manner to private limited companies, because he well realises, as I do, as also, I am sure, my friend, Mr. Ghose, does, that every section of the shareholders must be properly represented. Now, in the case of a private limited company, only a few shareholders may have a pretty good stake, and therefore, it is certainly necessary that they must also be represented on the board of directors, according to the system that I have suggested. But then, I see no reason why, if this is necessary in the case of

private limited companies, it should not be considered necessary in the case of public limited companies also, and why should the interests of the public companies be considered as of lesser importance than the interests of the shareholders in the private limited companies? The rights of shareholders in both kinds of companies, private and public should be equally safeguarded.

Now, Sir, under clause 465, as it stands, it is only made permissible for a company to adopt such a procedure for the election of board of directors. But this hardly gives any protection to the minority shareholders, because can we possibly conceive that any company, when it is being floated by the managing agents or the managing directors, will ever incorporate such a clause in its Articles of Association from the very beginning? Human nature as it is, you cannot expect them to make a provision inviting trouble on their head from the very start of the companies. It is not in their interest to do so. Everybody wants to have power to himself, as much as possible, to shut out interference from everybody else. So, while theoretically, you are conferring this power to a new concern which may be floated, in actual practice, this provision will never be availed of by the floaters of the company, and in that event, protection will be afforded to them only when things have gone pretty wrong, when 200 members, a very big number, or one-tenth of the members holding a voting right make a representation to the Government. Why make the work of the Central Government still more burdensome? Let this provision be there from the very start, and if any trouble brews up later on members may make a representation. I hope, Sir, this is an amendment, the principle of which has already been accepted, and the substance of which seems to have the support of all sections of this House. The capitalist section, I hope, will not feel offended, if I may say

so, because I do not attach any stigma to the word 'capitalist', by this amendment, and I hope it is supported by my friends of the P. S. P., and probably it may be supported by the Communist Party also, for at least once, we may be in the same company. Therefore, Sir, I see no reason why it should not be accepted. That is all that I have to submit, Sir.

SHRI C. P. PARIKH: Sir, clause 265 is a very controversial clause, and various views have been expressed with regard to that clause. I would like, Sir, to make my amendment applicable only to private limited companies. And as regards public limited companies, it may be optional.....

SHRI BHUPESH GUPTA: Why?

SHRI C. P. PARIKH: I will, Sir, give my reasons, and Mr. Bhupesh Gupta should listen to them, if he says 'Why?' He should be able to understand the working of the private and public limited companies. If he reads carefully this clause—clause 261—he will find, in item (f) of the proviso, the words "any associate, or officer or employee, of the managing agent". That means that no associate, or officer or employee, of the managing agent shall be elected, unless by special resolution. Therefore, in all public limited companies, the associates of managing agents will be elected only by special resolution, not by an ordinary resolution, which is the system prevailing at present. Over and above that, there is another safeguard by which the Government can, on an application, ask a public limited company to adopt the system of proportional representation. Sir, it is very easy to say "adopt the system of proportional representation". But I should say that the number of shareholders in the public limited companies is very big in our country, and it is too early to adopt this system unless we see how it operates in the private limited companies. Other coun-

tries too have not yet adopted the system of proportional representation, and it is, therefore, too early to adopt this system. In the U.K. also, the system that has been adopted is other than the system of proportional representation. As regards the U.S.A., Sir, half the number of States have adopted the system of proportional representation and the others have not yet adopted it. Therefore, Sir, we can see that even in the most advanced countries, this system has not yet been adopted. Therefore, it will be too early for our country to do so, especially when there is a safeguard under clause 261. Sir, I think it is a very healthy provision which has been introduced, and I say that the Joint Select Committee had not introduced that provision. When I came to know about that, I immediately wrote to the Finance Minister that this is a lacuna which must be provided for. And I am thankful to the Finance Minister for his accepting this amendment even at a later stage in the Lok Sabha, although he did not move that amendment himself, which he should have moved, in my opinion, because there was a lacuna. When a special resolution is to be passed, it means 75 per cent. of the majority, and Mr. Kapoor will understand that 25 per cent. of the members are controlling some interests in not allowing that special resolution to be passed, and they can very well say, "You will have to approve one of our directors whom we nominate." In item (f) under the proviso, power has indirectly been given to the effect that if the shareholders do not approve of the special resolution, the managing agents will not be able to pack the directorate. They can say "We will not allow any special resolution to be passed, unless you accept two or one of our directors." Those who are holding about 26 per cent. of the shares will be able to assert themselves. This provision in item (f) is a very vital provision, although it has been incorporated later.

SHRI JASPAT ROY KAPOOR: Will he explain more as to how clause 261 serves our purpose?

**SHRI C. P. PARIKH:** It is different, because associates of managing agents were not there when it came out from the Joint Committee which report he has signed. I quite see that he is entitled to revise his opinion but it is a revision of opinion.

**SHRI JASPAT ROY KAPOOR:** The point is, how a minority of shareholders can avail of any right if we don't confer on them the right through a director?

**SHRI C. P. PARIKH:** I have already explained that a special resolution can be passed only by 75 per cent. and if certain shareholders control a certain majority, they will not allow a special resolution to be passed, especially, when they hold 26 per cent. of the shareholders and the whole directorate will be made in such a way that some persons who are approved by 26 per cent. of the shareholders will have to be elected, otherwise the managing agents will not be able to get their nominees elected. It is not a way in which you desired it to be completely.

**SHRI JASPAT ROY KAPOOR:** That means, unless these minority shareholders resort to obstructive tactics, they will have no voice?

**SHRI C. P. PARIKH:** Exactly—that is what I mean. The powers are given under clause 261(f) to ameliorate the situation in a way to the benefit of the shareholders who are 26 per cent.

**SHRI JASPAT ROY KAPOOR:** I quite understand your invitation to them to obstruct.

**SHRI C. P. PARIKH:** Shareholders have a right; when there is proportional representation, it is obstruction in an indirect way. There is no difference. When you say 'proportional representation', it is direct obstruction that 'we will not allow the nominees of the majority to be elected.' Therefore, the principle is very good but so many disabilities are attached.

As regards private limited companies, the number of shareholders are

not more than 50, and it is very easy to adopt the system of proportional representation. Especially in case of private limited companies, I say it is very necessary in order to see that certain persons may not gain the control by the death or retirement of some persons in a way that the majority is able to oppress the minority. It is also easy to work and why should the rights of shareholders in the private companies be denied on proportional representation? Therefore, when you have put down the system that it may be adopted, why not adopt that principle which is healthy and when that is healthy, you are leaving it to the voluntary will of the limited company and the shareholders. It is much better that this provision is made compulsory.

**SHRI B. C. GHOSE:** This provision was discussed at great length in the Select Committee and also in the other House and it is rather unfortunate that neither the Government nor the Select Committee were agreeable to accept this principle. The principle that is enunciated here is not at all new. I don't want to go elaborately into the history of this measure because it was related in great detail in the other House. In the 1936 amendment, it was the members of the Congress Party who suggested this amendment and the present Home Minister was the protagonist of an amendment on these lines.

**SHRI S. N. MAZUMDAR:** They have forgotten all that.

**SHRI B. C. GHOSE:** They might have forgotten. Not only that. The reasons given there, I believe, hold good even today. That is number one. Number two is that the Bombay Shareholders' Association, to which a well deserved tribute was given by the Finance Minister himself, as the body which understands the interests of the shareholders very well and presents points of view which are reasonable, that Shareholders' Association has also supported this principle. The Finance Minister had himself admitted in the other House that he had received from them a communication some time ago in support of this principle. Why is it that



we say that it would be good both for the company and the shareholders that there should be a system of proportional representation? The reason is the same which I believe the Government have also in their view—the protection of minority interests. That is the main principle and it is a patent fact that the Government themselves have introduced many provisions in this Bill for the protection of minority rights, e.g., under clauses 397 to 399 and also under clause 408. If a minority is oppressed, that minority has been given certain powers to redress its grievances by going through a certain procedure laid down in the Bill.

**SHRI H. P. SAKSENA:** Are those powers not illusory, I would like to know?

**SHRI B. C. GHOSE:** I cannot say that they are illusory. They would be very much relevant as we shall probably have occasion to find out in the future. Because now the power has been given to the minority in such a fashion that it should not be difficult in certain cases to take recourse to those powers—for example, one hundred shareholders may approach a court or one-tenth of the number of shareholders etc. That gives certain powers. If anybody says that no provision has been made in the Bill for the protection of minority interests, that would not be quite right. But I would like to say that it may also be dangerous from the point of view of the company. The danger is that a minority of shareholders—say 100 shareholders in a very large company—may, under the provisions of clauses 397 to 399, harass the company. There is that danger also and even from the point of view of the company, would it not be better to have a provision by which minority interests would be represented on the board of directors with the result that cases of harassment at least would be reduced, that no action would be taken under those clauses on frivolous grounds. It is on those grounds, basing my argument both on the interest of the company as also of

the shareholders, that I felt, that it would have been better if this principle were adopted. I might say here that I have carefully read the statement of the Finance Minister in this matter and what I find is that he himself is not very averse to the acceptance of this principle but what he is probably afraid of is the consequences. He himself says that he is in two minds on this principle. He says:

“I myself confess that I felt in two minds about this”,

but the danger that he pointed out was this. He said:

“but I could not ignore the fact that there were two equally likely possibilities, either important groups of shareholders might wage warfare within the precincts of the company, in which case the company would suffer, or a large majority holder might oppress the minority.”

Then, the Finance Minister went on to say that he did not know statistically which was going to happen, whether the first or the second one. That shows that the case for and against even in the mind of the Finance Minister is very equally balanced. But he went on to say that he would not like to introduce this principle but would await experience to be gathered so that he might later on come to a decision.

He said:

“After all, if a system has merit, then it should appeal to some people or the other”,

meaning thereby, that under the permissive provision of clause 365, certain companies would resort to this practice. But that, I submit, is a very specious argument. I do not think any management will on its own, accept this principle and introduce it in their articles of association, for the simple reason that a management is afraid of having any differing minority interest represented on the board. They certainly do not take count of this fact that in their true interests, probably

[Shri B. C. Ghose.]

ultimately, that might be a better procedure. They are afraid of the immediate prospects of conflict of opinions on the board and they probably do not consider for the moment, that these shareholders, though their number may not be very large, may yet do great damage to the company. As I said, they are not deterred by that ultimate consideration. They only look to the immediate prospect. Therefore, I do not think, this permissive provision will enable us to gain much experience on this matter. I am very pessimistic and I do not think many companies will adopt this principle on their own.

So far as foreign experience goes, Shri Parikh has referred to it. It has not been accepted in most of the countries, although in certain States of the United States of America, it has been accepted. But there is no information available to us that it is not working satisfactorily there. The actual issue before us is whether the acceptance of this principle will impair the smooth functioning of a company in its management and in its board of directors. That, I would submit, is a question of judgment. One can take different views. But what is likely to happen if a small minority, proportionate to its strength among the shareholders, were to be represented on the board of directors? There is no reason to feel that it would do impair the smooth functioning of the company. For one reason, the majority will still be in a majority. So the majority will not be interfered with and cannot be done away with, by the minority. Also, it is very likely that the minority itself, when on the board of directors, will take a more reasoned view of all matters connected with the company. The majority also would not try to over-ride the interests of the minority. Therefore, from all these points of view, it appears to me that the principle of what we have asked the Government to accept is a sound principle.

Shri Parikh has said that since we have no experience of it—that I think

was the substance of his arguments—we should make a beginning with only private companies, leaving out public limited companies for the moment. With reference to this, I would like to submit two points. There are many provisions in this Bill which are novel and which we have not been deterred from accepting, just because they are not prevalent elsewhere. We have accepted them because we feel that they would be good and in the interest of the company and of the shareholders. If those parts are deemed desirable and to be in the interest of the company and of the shareholders, there should be no reason against the acceptance of this principle that I have been advocating. Secondly, the case that my hon. friend argued here was very ably argued in the other House by an hon. Member who is very well versed in such matters and I remember the answer which the Finance Minister gave him was that we have not circumscribed the activities of the private companies in many matters; we have given them absolute freedom, and that circumscribing their powers in this small matter will not have the desired effect, and therefore, it would be of no use merely to introduce some limiting factors with regard to private companies in the matter of the election of the directors, leaving them absolutely free in all other matters. Therefore, I feel, Sir, that if this principle is to be accepted, it has to be adopted both by the private companies and by the public companies.

Finally, Sir, if I may be allowed to summarise my arguments, I would say this. Firstly, all those who are interested in company managements, particularly shareholders, have strongly advocated its adoption. Secondly, the experience of those places where it has been adopted is not against it. Thirdly, unless we give the thing a trial somewhere, we shall not have the experience to decide whether it will or will not be a desirable principle to adopt. Fourthly, on general grounds, it appears that it is a good system, good both

for the shareholders and for the company concerned, because, if the minority's interests are to be protected—and that is one of the main aims of this Bill—then, this is the best way of safeguarding the interests of the minority without injuring, in any way, the interests of the company. It will not affect the interests of the company in an unfair manner. There is the danger to which I referred, where a small number of shareholders might take recourse to action which might put the company to great difficulties. I referred in the course of the general discussion, to financial institutions like banks or, say, insurance companies. For a bank a hundred shareholders is nothing. But, suppose a hundred shareholders make up a case and go to a court of law. The case may ultimately be rejected, but in the meantime, a lot of harm would have been done to the banking company. Therefore, Sir, from all these points of view, although it appears as if the Government have made up their mind, I would request them to give serious consideration to this matter and to give at least an assurance that even though they may not accept it now, they will still go on considering it, and probably later on, they might think that it would be better to bring in an amending Bill to give effect to this principle.

SHRI BHUPESH GUPTA: Mr. Vice-Chairman, as far as this clause is concerned, we stand for proportional representation. I need not develop this idea, because it is well-known why we stand for such a principle to be adopted. You know, Sir, in these companies, it is not the minority or the majority that fight. It is money that does it. Those who have got control over the finances, they do the fighting with all the advantages on their side, against those who do not have the money and who are spread all over the country. Naturally, the moneyed people in this country are in a hopeless minority and that is reflected also in a company. Now, just as in the political field, we find them exerting

their undue influence, much more so in the economic field, we find these moneyed people exerting their undue influences, directing votes along the lines which they think would serve their interests. The absence of proportionate voting and all that, the absence of election on the basis of proportionate voting makes it for them to carry their machinations to the utmost limit. In most of these concerns, somehow or other, you will find in big concerns, there, the capital gets more or less concentrated in the hands of a very few people. And these very few people control the whole thing. They organise all votes by proxy and all that, and it is they who really manage or rather stage manage so to say, the meetings where the elections take place.

We should abandon this principle altogether. Government should have accepted the principle of proportional representation in the case of all companies. As long as they are shareholders, there should be proportional representation, no matter whether the companies are private limited companies or public limited companies. The procedure should also be laid down so that proportional representation may become effective and not a misnomer. It would appear from the past standpoint of the Congress Party that it also demanded such a thing. I have come across a point which shows what Shri Govind Ballabh Pant, the then Deputy Leader of the Congress Party in the Central Assembly, suggested. This is what he said in 1936:

“The election of a director shall be on the basis of the principle of proportional representation by means of the single transferable vote according to the rules framed for the purpose under sub-section (4) of section 151 of the Act”,

the Act that was under discussion at that time. The date was the 16th September, 1936 and the page No. 1200. This is what Shri Pant, at

[Shri Bhupesh Gupta.]

that time, stood for. I do not know why there has been a departure from that position to the one today, more especially when Shri Pant is in a position to implement what he had at one time preached himself.

We know as to who are opposed to this system of proportional representation. Just as the political plutocrats are opposed to the system of proportional representation in the field of voting and franchise, the financial plutocrats are opposed to proportional representation in the field of commerce and industry, because they are afraid of their own shareholders. When I advocate proportional representation, it does not mean that the outsiders are coming in. Only a handful of shareholders, compared to the vast number, would be forthcoming and they would not even allow that. Why? Because, they know that it is physically impossible for the majority of the shareholders to exert their influence on the running of the company, severally or collectively. For one thing, they are spread all over the country and, very often, it so happens that they do not come to know about the meetings until after the meetings had taken place. Now it is not as if the shareholders are waiting in a queue, so to say, for the notice of general body meetings. These people have their own vocations in the various fields of public and social activity. They are spread over in the villages and small towns from where they cannot come to the place of the meetings. The meetings are not held at a place convenient to these shareholders; these meetings are held at places convenient to the managing director. The meetings are held at the head office of the companies, which is, more often than not, very far from the place where the shareholders live. In such cases, it is absolutely impossible for them to bring their influence to bear upon a concern. Our managing agents, cunning as they are, take full advantage of this position. They would not like to stand for election on

the basis of proportional representation. What I say is this: What Pantji said some twenty years ago should be accepted. If it has fallen to us to recover from the dust—dust on that side of the House—some of the good ideas of the Congress Party, we have not hesitated to do so. I only hope that the Members on that side of the House will recall the utterances of those days as well as the position they had taken then and would bring themselves to support proportional representation in this case. We want the directors to reflect the shareholders and we also want them to remain under constant vigilance. This can be ensured only by introducing proportional representation which, after all, is a very small concession that the Government can give to the shareholders of the company.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): Yes, Mr. Doshi but please be brief.

SHRI LALCHAND HIRACHAND DOSHI: Yes, Sir, as brief as the others.

THE VICE-CHAIRMAN (SHRI H. C. MATHUR): Only those who have moved amendments have spoken but, as this is an important point, I do not want the discussion to be curtailed.

SHRI LALCHAND HIRACHAND DOSHI: I am going to reply to four amendments, and I will require half the time that each amendment took.

I oppose these three or four amendments that have been moved by hon. friends in this House.

SHRI M. C. SHAH: Including Mr. Chandulal Parikh's?

SHRI LALCHAND HIRACHAND DOSHI: Yes, including that of Mr. Chandulal Parikh.

My reason for opposing these amendments is this: By introducing this system of proportional representation, we are likely to introduce an unhealthy principle of creating groups in an organisation which should work,

not group-wise but in a homogeneous manner.

[MR. DEPUTY CHAIRMAN in the Chair]

The main reason why this has been suggested is, that people think that the minority is likely to be oppressed and the majority will take away all the benefits. But, the point is, which is the majority and which is the minority? This has not been defined. This is not like the political groups, like the Congress Party, the Praja Socialist Party, or the Communist Party. It is one whole group of business people and shareholders who are there to do a certain business. There is no principle or any special idea involved in this; it is meant for carrying on certain business. It is quite possible—and I do not dispute that—that certain people may have a different idea of carrying on business but that does not mean that this question should be allowed to be governed by voting. After all, in business, you can carry on with the administration of the company in a particular manner according to the ideas that one has, but if you say that certain things will be done according to one set of ideas and others according to another, this sort of thing will not work. It has not worked in business and it has not worked in Government even. We find that coalition, which represents both the majority and the minority parties, works only in very critical times. As soon as such a critical time.....

SHRI BHUPESH GUPTA: It seems to work in the managing agencies. That is why we have got Dalmia Jain.

SHRI LALCHAND KIRACHAND DOSHI: That is what I am coming to. If you want this coalition to work, it can work only at times of crises; if you want to retain this for all times, it will not work because the different groups with different ideas will be pulling in different directions. This will create a situation which will be very unhealthy for the management of the concern. This kind of a theory has not been adopted even in regard

to the management of the State; that being so, I do not see how it can be enforced in the case of the business concerns

It has been suggested by Shri Chandulal Parikh that this should be introduced in the private companies. After all, a private limited company is a small organisation and if we introduce this kind of groups, it will be very unhealthy. To protect the interests of the minority interests, Government have already provided—instead of creating group rivalries in an organisation, what they will do is this—the appointment of two disinterested persons who will take care of the interests of the minorities, if Government feel satisfied that the minorities are really being oppressed. If, however, Government do not find that the minorities are being really oppressed, they will appoint the two persons and the question will not arise. But, to force a few people to have these additional directors where the majority of the people may not necessarily be managing agents or secretaries and treasurers—yet, if we force certain directors who are recommended by a small minority, well, in that case it is not a very healthy democratic organisation and for that reason, Sir, I feel that this idea of proportional representation is not based on very sound lines, is not universally accepted though may be, at certain places, certain experiments are being done. Even in ordinary organisations, we go by a direct method and there, we manage things without any proportional representation and therefore, Sir, I feel that if this idea of proportional representation were to be a compulsory thing, it will not lead to happy management of business organisations. I therefore strongly oppose this idea.

MR. DEPUTY CHAIRMAN: Yes, Mr. Rajendra Pratap Sinha. Please be very brief. Take two or three minutes.

SHRI RAJENDRA PRATAP SINHA: Yes, Sir, I shall be very brief. I shall

[Shri Rajendra Pratap Sinha.]  
just put forward a few points without trying to develop them because of the limited time that you have allotted to me.

Sir, I do not think political analogies will hold good in the management of corporate bodies and to say that directorships, if composed of different sets of people representing different interests, will lead to all kinds of disruptions or will lead to hamper the promotion or the development of the company is not correct. All the directors, whoever will be there, will represent the interest of the ordinary shareholders and the minority shareholders have the same interest as the majority shareholder, because they are members of the same company. Therefore, proportional representation will not lead to mismanagement or disruption.

Secondly, I would say that by the present system, 51 per cent. is equivalent to 100 per cent. and 49 per cent. is reduced to nullity, zero. That is, Sir, a very unfair proposition. Now, the 49 per cent. shareholders have absolutely no say in the matter. Now, even with the introduction of proportional representation, the majority, the 51 per cent. will be able to control and manage the company in the way in which they like to do. What we say is that the 49 per cent. must get a chance to have their say in every important matter of policy, because though the board of directors more or less is an executive body, but they decide the course of policy of the company. There, minority interests must have a say in determining that policy.

Thirdly, Sir, what I have to say regarding this clause 265, which is a permissible clause giving option to the companies whether to have this system of proportional representation or not, is this. Now, the Finance Minister gave some very interesting figures in the other House in connection with the working of proportional representation in the U.S.A., and he has said that 17

States in the U.S.A. have got the optional provision whether to have cumulative voting or not. He has also given figures that in those 17 States, out of the total number of companies which are in existence, only a 11 per cent. of the companies have exercised this option of having a provision of cumulative voting.

Now, Sir, the results there have been very very unfavourable with regard to this fact that a permissible provision will be taken advantage of by most of the companies, and therefore, I think, that this permissible provision will remain a dead letter in India. This I say, because of the experience of the U.S.A. In the U.S.A., they have not been able to take advantage of this provision; nonetheless, they will be taken advantage of here. Therefore, Sir, we have submitted that we must have proportional representation compulsorily introduced and if we accept the amendment of Mr. Ghose, wherever the Government considers that the conditions are such that proportional representation should be taken away from the companies, it will be taken away and the Government will come to the rescue of those companies which are suffering under this system of proportional representation. Therefore, Sir, if this amendment is accepted, it will be a sound proposition.

SHRI M. C. SHAH: Sir, here the question is, whether there should be proportional representation compulsorily or whether it should be optional as we have provided in clause 265. In clause 263 also, my friend Mr. Kishen Chand wants to have compulsory proportional representation in the matter of the election of the board of directors. This matter was very thoroughly discussed in the Joint Select Committee. There were two points of view and after discussion, the Joint Select Committee came to the conclusion that it should be only optional for the companies wanting to have this proportional representation and this is with regard to clause 265. Now, I have

looked into the Report of the Select Committee. My friend, Mr. Ghose, was on the Select Committee and has contributed very well in the discussions of the Joint Select Committee. I have gone through his Minute of Dissent very carefully and I find that he has not raised this point at all. Of course, he is perfectly within his rights to change his views and to make this suggestion here, but, as we have already stated, it is very difficult for the Government to accept this point of view. As he has already quoted the Finance Minister, the Finance Minister has advanced arguments for and against, but on the whole, we find that it is no use trying that experiment making that compulsory. There is a fear lurking here that if there is no uniformity of opinion among the board of directors and that it can be done by the majority vote in the election of directors, there is going to be some trouble, and we should not encourage the trouble. But at the same time, we have said that there may be some oppression to the minority shareholders and therefore we have provided for it in clause 408—it was not there in the Select Committee but we have provided that—that if two hundred shareholders apply to the Government and the Government are satisfied that there is oppression of minority shareholders, then the Government may compel that company to have in its articles this proportional representation. So I think.....

SHRI B. C. GHOSE: Is that not an admission on your part that this will give relief to minority shareholders; you have accepted the principle.

SHRI M. C. SHAH: No, no. It was clause 408.

SHRI B. C. GHOSE: Yes, yes, for clause 408, you accepted an amendment in the other House.

SHRI M. C. SHAH: That is enough for the time being.

Now, my friend Mr. Parikh wants to have this compulsory proportional representation so far as the private companies are concerned. He feels that so far as the public limited companies are concerned, the provision that has been made is quite all right. But so far as the private limited companies are concerned, he wants to have this compulsory proportional representation. There are managing agents as members of the House and if one managing agent says that it is necessary in the private limited companies and if another managing agent says that it is not necessary, I think we are steering a very wise course in not making it compulsory for the private limited companies also. The private limited companies may have 50 members; still there also, there ought to be homogeneity in the board and there is no question of the oppression of minorities there, as there may be in the public limited companies.

SHRI M. GOVINDA REDDY (Mysore): If the Government appoints on the complaint of minority shareholders, will there be homogeneity?

SHRI M. C. SHAH: There is also clause 408. In order to safeguard the interests of the minority shareholders, if the Government are satisfied that the working of the company is oppressive to the shareholders, or is to the prejudice of the interests of the company, then the Government can appoint two directors. Over and above these two directors, the Government have taken powers that in such cases, the Government can compel the company to have in its articles compulsory proportional representation. So I cannot accept the amendment of my friend, Mr. Ghose also. What we have done is quite enough for the time being and we cannot embark on an experiment, the results of which are yet absolutely unpredictable and therefore, we have wisely adopted this method. I do not think, we will be in any way justified in accepting any one of the amendments.

MR. DEPUTY CHAIRMAN: The question is:

69. "That at pages 138-139, for the existing clause 263, the following be substituted, namely:—

"263. *Election of directors.*—At a general meeting of a public company or of a private company which is a subsidiary of a public company, the election of directors from among the retiring directors as offer themselves for re-election and other persons who have been duly proposed shall be by means of proportional representation'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The amendment is lost. The question is:

"That clause 263 stand part of the Bill."

The motion was adopted.

Clause 263 was added to the Bill.

MR. DEPUTY CHAIRMAN: We have already disposed of clause 264.

What about your amendments to clause 265, Mr. Kapoor?

SHRI JASPAT ROY KAPOOR: I would like to withdraw them, Sir.

\*Amendments Nos. 130 and 131 were, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

212. "That at page 139, lines 11-20 the existing clause 265 shall be re-numbered as sub-clause (a) of that clause, and after line 20, the following be inserted, namely:—

'(b) Notwithstanding anything contained in this Act, the articles of a private company shall provide for the appointment of directors according to the principle of

Proportional representation, whether by a single transferable vote or by a system of cumulative voting or otherwise, the appointments being made once in every two years'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: What about amendment No. 213?

SHRI BHUPESH GUPTA: Now, there is no point. I would withdraw.

\*Amendment No. 213 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

214. "That at page 139, line 13, for the word 'company' the words 'public company' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

215. "That at page 139, line 13, for the word 'may', the words 'shall, unless exempted by the Central Government on an application made by the company' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

216. "That at page 139, lines 15-16 the words 'or of a private company which is a subsidiary of a public company' be deleted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 265 stand part of the Bill."

The motion was adopted.

Clause 265 was added to the Bill.

Clause 266 was added to the Bill

\*For text of amendments *vide* col. 4613 *supra*.

\*For text of amendment, *vide* col. 4614 *supra*.



*Clause 267 (Certain persons not to be appointed managing directors)*

SHRI BHUPESH GUPTA: Sir, I move:

217. "That at page 140, after line 31, the following be inserted, namely:—

'(d) is, or has been found guilty of evading taxes of the Government and/or making false entries in a book or keeping false books'."

(The amendment stood also in the name of Shri S. N. Mazumdar.)

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

SHRI BHUPESH GUPTA: This relates to the provision about certain persons not being appointed managing directors. We want the Government to assume powers for excluding such people who have been found guilty of evading taxes or making false entries or keeping false books from appointment as managing directors. The clause enumerates certain grounds on which the Government may prevent a person from being appointed as managing director.

MR. DEPUTY CHAIRMAN: You want to have one more disqualification.

SHRI BHUPESH GUPTA: Apart from the question of evading taxes, there is the other question of making false entries in the book. I do not accept the argument of the Finance Minister that the case is here and then it goes somewhere and all that sort of thing. If the Government has got certain information with regard to a person that he has been evading payment of taxes, the Government should have such a power to prevent the person from being appointed as managing director. For that, one need not have to go to the Supreme Court and get a verdict of the court. The Government can certainly act in public

interest, on the basis of the information it has in its possession. The other thing, that is making false entries in a book or double book keeping, is one of the virtues that go with our managing agents and managing directors in this country. They are **pastmasters** in handling two books at a time; some of them I think handle even more than two books at a time. We come to know of things only when the company has been thoroughly bungled, as things are coming out now with regard to a particular insurance company. These gentlemen do not themselves go and write the books. They ask other people to write their accounts and the employees very often come to know the malpractices like the ones indulged in the Bharat Insurance. They come out and place the facts before the public. In such cases, we should not allow persons of that sort to continue as managing directors and such people should never be appointed to such posts. I do not see why the Government should not accept this amendment. It is for them to take a final decision on the basis of the information they may get. I am only asking them to arm themselves with this power because we want our joint stock companies to be gradually rid of those gentlemen who are believers in double book keeping, who perpetrate such tricks day in and day out, thereby deceiving the shareholders, deceiving the public and deceiving the exchequer. Therefore, I say that my amendment should be accepted.

SHRI M. C. SHAH: I am sorry I cannot accept the amendment. Already we have provided that those who are convicted will not be allowed to continue as managing directors. Naturally we cannot go on mere suspicion. They must be convicted of an offence involving moral turpitude. If my friend brings to my notice any case of false entries being made I am prepared to take action immediately.

MR. DEPUTY CHAIRMAN: The question is:

[Mr. Deputy Chairman.]

217. "That at page 140, after line 31, the following be inserted, namely:—

'(d) is, or has been found guilty of evading taxes of the Government and/or making false entries in a book or keeping false books'."

The motion was **negatived**.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 267 stand **part** of the Bill."

The motion was **adopted**.

Clause 267 was added to the **Bill**.

Clauses 268 and 269 were added to the Bill.

Clause 270 (*Time within which share qualification is to be obtained and maximum amount thereof*)

SHRI KISHEN CHAND: Sir, I move:

70. "That at page 141,

(i) in line 19 for the words 'five thousand rupees', the words 'two thousand rupees' be substituted; and

(ii) in line 20, for the words 'five thousand rupees', the words 'two thousand rupees' be substituted."

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

3 P.M.

SHRI KISHEN CHAND: Sir, for directorship, there is a minimum qualification of holding shares of nominal value of five thousand rupees, or holding one share where it exceeds five thousand rupees. I may point out to the hon. Finance Minister that formerly the qualification used to be as high as fifty thousand rupees or even one lakh of rupees. Gradually, the Government has lowered it. I

think even this figure of five thousand rupees is too high for an average shareholder, especially in companies where the total paid-up capital is two lakhs or three lakhs. So, in the case of companies with a capital of five lakhs, to have the qualification laid down as five thousand rupees is too high. Therefore, I have suggested the figure of two thousand rupees. It only means the lowering of the limit of share qualification.

MR. DEPUTY CHAIRMAN: Do you accept it, Mr. Shah?

SHRI M. C. SHAH: No, Sir. This is in accordance with the recommendations of the Company Law Committee which had examined so many persons and they deliberately came to the conclusion that this limit ought to be there. We do not think it should be changed.

MR. DEPUTY CHAIRMAN: Do you press it?

SHRI KISHEN CHAND: Yes, Sir.

MR. DEPUTY CHAIRMAN: The question is:

70. "That at page 141,—

(i) in line 19, for the words 'five thousand rupees', the words 'two thousand rupees' be substituted. and

(ii) in line 20, for the words 'five thousand rupees', the words 'two thousand rupees' be substituted."

The motion was **negatived**.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 270 stand **part** of the Bill."

The motion was **adopted**.

Clause 270 was added to the **Bill**.

Clauses 271 to 274 were added to the **Bill**.

**Clause 275** (No person to be a Director of more than twenty companies.)

MR. DEPUTY CHAIRMAN: There are three amendments.

SHRI KISHEN CHAND: Sir, I move:

71. "That at page 142, at the end of line 28, after the word 'companies' the words 'of which not more than five have a paid up capital in excess of fifty lakhs of rupees each or not more than two have a paid up capital of two crores of rupees each or in excess of it' be added."

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

SHRI BHUPESH GUPTA: Sir, I move:

218. "That at page 142, line 28, for the word 'twenty' the word 'five' be substituted"

219. "That at page 142, after line 28, the following be inserted namely:—

'Provided that if any person holds office at the same time as director of more than one company, the number of the companies shall be such that the block capital of all such companies shall not in the aggregate exceed ten crores of rupees.'

(The amendments also stood in the name of Shri S. N. Mazumdar.)

MR. DEPUTY CHAIRMAN: The clause and the amendments are open for discussion. Any speech?

SHRI BHUPESH GUPTA: Yes, Sir. A long speech, because this is perhaps one of the few chapters on which we have to speak. The rest we do not bother much, because the other things relate to the winding up and all that. Here, Sir, as you will see:

"After the commencement of this Act, no person shall, save as otherwise provided in section 276, hold office at the same time as director in more than twenty companies."

I tell them straightaway that we are opposed to this provision because the number is too high. We want that the maximum number should, in our view be five. That is number one. Point number two is, we also qualify this number by putting a provision as to the block capital that may be shared between the companies under such directorship.....

SHRI C. P. PARIKH: On a point of information, what is this block capital? Will he define block capital and paid-up capital, the difference between the two?

SHRI BHUPESH GUPTA: Now, let me start with my point number one.....

SHRI C. P. PARIKH: No explanation?

SHRI BHUPESH GUPTA: You may explain it.

SHRI C. P. PARIKH: But you don't know it?

SHRI BHUPESH GUPTA: I have got your book, I will have to read it out....

SHRI C. P. PARIKH: But you don't know what is block capital?

SHRI BHUPESH GUPTA: I include all capital.

SHRI C. P. PARIKH: All capital? Paid-up capital and all block capital?

SHRI BHUPESH GUPTA: But you should be knowing the definition better!

SHRI C. P. PARIKH: But you don't know it?

MR. DEPUTY CHAIRMAN: Order, order.

SHRI BHUPESH GUPTA: Here the matter has been debated at length in these various committees and also when the Company Law Committee discussed such matters. But we are not at all satisfied with the provision here, inasmuch as the number has

been settled ultimately at twenty. This is very high, as I have said. In this connection, I would like to draw your attention to what Shri C. P. Ramaswamy Ayyar said on the point:

"I am in favour of fixing the maximum number of companies on which any person can serve as a director at three or four at the most. In many commercial centres, directorships are the pre-requisite of a few monopolist groups of individuals who fleet about from meeting to meeting and earn sitting fees without concentration on the affairs of any particular concern. Such a state of thing furnishes opportunities for mismanagement by managing directors and managing agents or an official of the concern."

This is what a gentleman like Shri C. P. Ramaswamy Ayyar, who believes in capital and all that has had to say in regard to this matter. Now, in our country we want that the number of directorships in respect of an individual should be brought down to the minimum because this will be one of the ways by which you can eliminate, at least reduce, the concentration of wealth that is taking place and also concentration of financial power in the hands of a very few people that is taking place in the country.

Secondly, if one person has to be a director of twenty companies, how on earth would he manage all these companies? They are not supersonic personalities. We know what type of personalities they are. Certainly, they have got very great experience in financial matters and all that and it is our regret that that experience is utilised to the detriment of the country more often than not. Nevertheless, they have got some experience. Even granting that, it is not possible for a person to handle twenty companies at a time. I am not saying that meetings are held on the same day. But we take it that when one is on the board of directors, he should keep himself posted with at least the broad develop-

ments of the company and devote some of his time to find out what is what in the management of the company. Otherwise, he would not be in a position to apply his mind to questions of policy and administration when such matters are brought up before the meeting of the board of directors. In our country exactly the opposite thing has happened. Now, Shri C. P. Ramaswamy Ayyar has said how they fleet about in cars from one meeting to another. And we have been told in the course of the debate in the other House that some of them just rush into the board of directors' meeting, sit there and throw about their weight a little and then emerge out of the meeting without doing anything. The matter is left in the hands of the managing director or other person directly concerned with the day to day running of the management of the industry or financial undertakings. We want to put a stop to such things.

Now, Government has had an opportunity to reduce the number and I think in this House, they should change their mind and at least should see that the number is brought down to five. I am for four, as you know, but I have given one more. That is more than what Shri Ramaswamy Ayyar would give you. He gave four at the most. I give one plus. You take five, if you like, but bring it down to that number. Here, in our country, we do not have even the facts—the facts should have been supplied to us—as to who owns how many directorships. I am not concerned with the managing agency. I am concerned with individuals. I have found from a book that in 1949-50 there were:

H. C. Waters	50 directorships.
Purshothamdas Thakurdas	50 directorships
C. J. B. Palmer	30 directorships.
G. C. Bangur	36 directorships.
Mr. G. Morgan	26 directorships.
A. D. Vickers	25 directorships.
C. L. Jafia	24 directorships

T. L. Martin	23 directorships.
H. F. Benslay	22 directorships.
Ram Nivas Ruia	41 directorships.
Padampat Singhania	40 directorships.
Lakshmipat Singhania	30 directorships.
Ramkrishna Dalmia	38 directorships.
S. P. Jain	31 directorships.
D. M. Khatau	25 directorships.
K. P. Goenka	32 directorships.

So, this is the list.

SHRI SHRIYANS PRASAD JAIN  
(Bombay): No, no. He is totally wrong.

SHRI BHUPESH GUPTA: I can give you this book called "Combination movement in Indian Industry" by M. M. Mehta. I stand subject to correction.

SHRI SHRIYANS PRASAD JAIN:  
What is the period.

SHRI BHUPESH GUPTA: 1949-50.

SHRI SHRIYANS PRASAD JAIN: I do not remember.

SHRI BHUPESH GUPTA: But these are the latest figures that we have collected. We try from the Finance Ministry to get material facts and if we are not provided with these, our friends in the other House procure the material from their official friends. Therefore, I stand subject to correction. But this gives you a rough idea as to how the directorship is divided. Even the Finance Minister, in this book containing his speeches, had to admit that there are nine families who control and share among them 600 directorships. I am on very firm ground, even if the figures here may be wrong. We want to put a stop to such things. These people go on controlling the financial world, taking one company after another. Such a thing is taking place in our country. Since the beginning of the century, the process started, but immediately during

the second world war, the process was accelerated and it is going on completely unchecked, with the result that we find some of them controlling a large number of companies through such directorship. Tell me how can you expect justice and fairplay in the economic field, when a few people have so much control over so many companies? That is the question that I put before the House. Even if they were like Caesar's wife, I will have suspicions, because I feel that persons who are in a position to command so much finance in a class-ridden society are liable to fall into all kinds of malpractices and lapses. As far as these people are concerned, we know that a number of them had been hauled up for one thing or other. We know at one time, the residence of.....

MR. DEPUTY CHAIRMAN: Order, order. Do not mention names.

SHRI BHUPESH GUPTA: The great ones who live in 'Kamla Tower' in Kanpur were searched by the police. Similarly, the gentleman of Mansingh Road is in the soup. I do not know what will happen to him. But they are in such a position that they are able to find one crore of rupees and get away. If I had been there, I would have been put up in the Delhi jail, because I cannot furnish any security of even one thousand rupees. Even if I furnish, nobody will accept it. You will not accept it. That only shows the financial power of the bosses. He will be able to furnish a security of one crore of rupees. Imagine how much money he must be having. I know of other cases also, I need not go into them.

This financial concentration has taken place for a long time and this multiple directorship has been one of the devices whereby financial control has been brought to an extreme limit. We are up against it. Can we not find directors other than these people? Must we always appoint the same persons in the companies? It is possible for the shareholders to find directors

[Shri Bhupesh Gupta.]

from among themselves or from others. If it is not possible for the Finance Minister, the shareholders can do it. Why don't you find a director, he may ask me. It will have some plausibility in it. I say that we want to regulate this thing. To-day, you are passing a law you say, in order to set a new model, in order to remedy certain ills that exist in the affairs of our companies. So, make it obligatory for a person not to hold more than five directorships. That will be the real way of tackling the problem. That will inspire others also. The shareholders get an idea of what you stand for and see that wrong types of people are not chosen as directors. You will see that I have brought it down from 50 to 20. There has been a fall, I concede. I can imagine 20 companies controlling the financial world. Not only that. Suppose a company holds another company. What happens? That provision is not there. Through ramifications, they get at the apex and control the directorship of twenty companies covering the industrial and financial fields. This is absolutely wrong. I see no reason as to why we should maintain that position. I have a suspicion that Government have yielded to the pressure of big money in this matter, because there was a time when they were thinking of controlling these people. But pressure was brought on the Government even through financial journals. But I find that the Government's approach in this matter more or less is adjusted to what they are taking, but not to what we are demanding. This is the trouble with this Government.

Then take the capital side. There may be very small concerns with very little capital. Now, one may be a director of five of them, another may be a director of two of them. So, in order to protect the financially poor in the industrial and financial undertakings, it is necessary to put a ceiling on the total block capital with the companies under the directorship of an individual.

I have suggested here ten crores of rupees. I wanted to say five crores of rupees. That is my intention. I have not a doubt about it. I am a guilty person in this matter. The mistake must have emanated from me.

SHRI C. P. PARIKH: In his amendments, he has mentioned 'ten' in two places and 'five' in two places. Will he explain that?

SHRI BHUPESH GUPTA: You are quite right, hon. Mr. Parikh. I wanted to say 'five' in all places. Sometimes, we are also liable to commit mistakes. I stand subject to correction.

MR. DEPUTY CHAIRMAN: Mr. Gupta, you had 20 minutes.

SHRI BHUPESH GUPTA: Therefore, make it ten crores, if you insist. If the hon. Finance Minister is agreeable, I should say that I make it 'five'.

MR. DEPUTY CHAIRMAN: This amendment should be accepted.

SHRI BHUPESH GUPTA: All that I need say is that after yesterday's round-up of the gentleman of Mansingh Road, Government should wake up. There is time to reduce the number. I read out how many directorships are there, one particularly holding 41. He made a mess of it.

SHRI KISHEN CHAND (Hyderabad). The hon. Member who just preceded me has already given you certain figures and I have got only to add to it. During the last two or three years, the number of persons holding large directorships has gone up. But you must consider the amendment from the point of view of the objectives of this Bill. The hon. Finance Minister in his speech tried to make it quite clear that we do not want the hoarding up of economic power in one or a few hands.

But the hon. Finance Minister changes his position. First of all he has asserted very vigorously that the main objective of this Bill is to control

financial hold by a few people on the economic life of the country. When we find that a person is a director of twenty companies, and these companies are small, I have no objection. One person can be a director of twenty companies provided they are small. My amendment states clearly that out of these 20 companies, not more than 5 companies can have a paid-up capital in excess of 50 lakhs each, or not more than 2 companies can have a paid-up capital of 2 crores of rupees or over. The underlying idea is that if a person is a director of 20 companies of which 2 may have a paid up capital in excess of 2 crores each, the result will be that he will not have a great stranglehold on the economy of the country. The only object of this amendment is not to permit one man to have such a control.

Sir, I may point out that in the case of shareholders, I wanted to bring in an amendment where minority shareholders will have a right of electing directors. That was not accepted. The result will be that only a few people will always become directors of big companies and get control over its economy. The hon. Minister either should give power to the shareholders to elect other persons as directors or restrict it according to my suggestions. If both these things are not followed, there is no point in bringing in this Company's Bill, as the present type of control will continue in a few hands who will manipulate the company's economy to their benefit and not to the benefit of the country.

SHRI C P PARIKH Sir, first of all there are three amendments in respect of clause 275. Mr Bhupesh Gupta is unable to understand what is block capital. Then Mr Kishen Chand has stated 25 lakhs and 2 crores and all that. Both of them do not know what is paid up capital of certain companies even. The paid up capital of one single company, Tata Iron & Steel Co is 17 crores of rupees. The Associated Cement Co has a paid-up capital of 12.6 crores of rupees.

SHRI KISHEN CHAND I would like to know how it covers my point.

SHRI C P PARIKH I am answering, but before I answer, I want to point out what you do not know. The third is the Imperial Tobacco Co., which is now a public limited company. It has 15 crores of rupees as its paid-up capital. So in each of these companies these hon. Members mean that there should be one director.

SOME HON MEMBERS No No

SHRI B C GHOSE The amendment is that out of 20 companies only two can be with capital above 2 crores of rupees and in more than five above 50 lakhs of rupees.

SHRI C P PARIKH In one company, it is more than ten crores of rupees. He can be a director of only one company. I am reading two more amendments. Mr J R D Tata is a director of Tata Iron & Steel. He must resign his directorship from all his concerns.

AN HON MEMBER From the Indian Airlines

SHRI C P PARIKH From the Indian Airlines I think this is something talking in a way without understanding how industries should be carried on, or are being carried on.

SHRI LALCHAND HIRACHAND DOSHI Sir, I oppose these amendments. My main objection is that the fear expressed by my friend, Shri Bhupesh Gupta and also Shri Kishen Chand that holding of many directorships by certain individuals will lead to concentration of economic power is false. How that can happen I cannot understand.

SHRI KISHEN CHAND Ask the Finance Minister.

SHRI LALCHAND HIRACHAND DOSHI If a company has got ten or twelve directors, I am unable to understand how the economic power is so much concentrated because really, it is not one but so many directors.

[Shri Lalchand Hirachand Doshi.]

In Government, we find that one person controls the whole of the State, yet we do not object to that. We, in our democratic organisation, do not mind that the power of ruling, not only in economic affairs but in every day-to-day affairs, is being given in the hands of the Government. After all, who are this Government? It is the people chosen by the people of the country. In the same way, who are these directors in a company? They are not individuals who are there simply by their wealth or some such thing. These are people who because of their sincere services rendered to the society.....

PROF. G. RANGA (Andhra): Oh, yes!

SHRI LALCHAND HIRACHAND DOSHI:.....have acquired confidence in the mind of the investor. They are elected at the annual general meetings by the vote of the shareholder. They do not come there as nominees of X, Y, Z, but they come there, because certainly, they have acquired the confidence of the shareholders, and they are elected by the shareholders.

The main object in putting this restriction has been, not that there is economic control but, because when a man becomes director in too many concerns, it does happen that his attention is so much divided that he is unable to concentrate on the management of the company in the manner in which he should. That is the main objective in reducing the number from 50 to 20. 20 is the maximum that has been put here. Therefore, it is not so much the fear of economic control that is in the mind of the Government in putting this control, but it is mainly the efficient management of the company that is intended. This fear of economic control going into the hands of a few people is mere political eye-wash and, therefore, ought not to be given much credit to.

MR. DEPUTY CHAIRMAN: Mr. Shah.

SHRI KANHAIYALAL D. VAIDYA (Madhya Bharat): Sir, I want two minutes.

MR. DEPUTY CHAIRMAN: I have already called out his name.

SHRI KANHAIYALAL D. VAIDYA: It has become the monopoly of two or three on this side and two or three on the other side.

SHRI BHUPESH GUPTA: Why does he not join the monopolists? Sir, you can give him time.

SHRI M. C. SHAH: Sir, I cannot accept the amendments proposed by Mr. Kishen Chand or my friend Mr. Bhupesh Gupta. We consider as to how many directorships we allow to an individual. It happens that there are certain people in India—who are very well versed in industrial organisation and it may be that their help in matters—financial, administrative and organisational—be useful to the company concerned. But at the same time we do not want that very many directorships should be taken up by an individual and, therefore, we have just fixed 20. That number also is an arbitrary one. At least, we must have some number. Therefore, as we have already stated, managing agency for ten companies and directorship of 20 companies will be quite sufficient and will be reasonable. Therefore, we have just put the figure of 20 and, I think, this is a reasonable figure for the time being. If later on, we find that this number 20 is more than necessary, certainly we can come in again and amend the provision. For the time being, this is an arbitrary figure and we think that that figure is reasonable.

SHRI KISHEN CHAND: One question, Sir? He does not want to relate the number of 20 companies with the paid-up capital of the companies?

SHRI M. C. SHAH: We do not want to make it complex paid up capital, blocked capital and all these things.



We do not want to bring all these complexities in the Company Law; we want to have it as simple as possible.

MR. DEPUTY CHAIRMAN: The question is:

71. "That at page 142, at the end of line 28, after the word 'companies' the words 'of which not more than five have a paid-up capital in excess of fifty lakhs of rupees each or not more than two have a paid-up capital of two crores of rupees each or in excess of it' be added."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

218. "That at page 142, line 28, for the word 'twenty', the word 'five' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

219. "That at page 142, after line 28, the following be inserted, namely:—

'Provided that if any person holds office at the same time as director of more than one company, the number of the companies shall be such that the block capital of all such companies shall not in the aggregate exceed ten crores of rupees'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 275 stand part of the Bill."

The motion was adopted.

Clause 275 was added to the Bill.

Clause 276 was added to the Bill.

MR. DEPUTY CHAIRMAN: Then, we come to clause 277. The amendments are consequential amendments, and therefore, they are out of order.

Clause 277 was added to the Bill.

Clause 278 (Exclusion of certain directorships for the purposes of sections 275, 276 and 277)

SHRI KISHEN CHAND: Sir, I move:

72. "That at page 143, lines 35 to 37 be deleted."

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

132. "That at page 143, line 30; after the word 'which', the words 'has a paid-up capital of less than ten lakhs of rupees and' be inserted."

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

SHRI KISHEN CHAND: Mr. Deputy Chairman, my amendment is a very simple amendment. In this clause, it is stated in sub-clause (d) as follows:

"a company in which such person is only an alternate director, that is to say, a director who is only qualified to act as such during the absence or incapacity of some other director."

This clause is really meant for defining the number '20'. While counting the number '20', these companies will not be included, where he is an alternate director. That means that he can be an alternate director in another 50 companies, and in this indirect way, defeat the very purpose of this Bill. The purpose of the Bill is that the directorship should be restricted to 20. Now, he becomes a director of 20 companies, and then, he becomes an alternate director in 50 other companies. He has got one bogus person elected as a director there, and along with that bogus person, he has his own name put in as an alternate director. The result will be that he will be a regular director of 20 companies, and an alternate director of 50 other companies. He will really be the director of 70 companies. In order to avoid this loophole, I want these lines to be deleted. I feel, Sir, that

[Shri Kishen Chand.]

without any amendment he can manoeuvre things in such a way that a bogus director is always absent and he is acting. That will defeat the very purpose of the Bill, and since we have passed the other clause in the Bill, this should automatically be deleted.

SHRI C. P. PARIKH: Sir, my amendment is quite simple. The Finance Minister wants to exclude the private limited companies altogether while counting the number of '20'. Now, Sir, I have moved this amendment in order that the private limited companies which have a paid-up capital of over Rs. 10 lakhs should be included. And, how many companies are there in all? There are 156 companies, manufacturing companies, which are private limited companies with a paid-up capital of Rs. 10 lakhs and over, and there are 289 non-manufacturing concerns, which are private limited companies with a paid-up capital of Rs. 10 lakhs and over. So, the total number is 445. Now, they are excluded. And such companies should be included while calculating the number of '20', because when he is including the public limited companies with a capital of even Rs. 2 lakhs and Rs. 1 lakh, I think, there is all the more reason why he should include the private limited companies which have a capital of Rs. 10 lakhs and over. It is based on the principle which the Finance Minister has accepted at some other places. Read, Sir, clause 327, sub-clause (c) where it has been stated as follows:

"a private company which is not a subsidiary of a public company, unless the Central Government, by general or special order, specifically exempt the private company."

Only then, it will <sup>be</sup> excluded. Therefore, Sir, in clause 278, when we adopt certain principles for including or excluding private limited companies, then naturally, there must be some governing principle. We cannot have different principles in different

clauses. When this Bill was in the Lok Sabha, this particular provision was adopted ".....unless the Central Government, by general or special order, specifically exempt the private company." The directorate may not be in the hands of a few persons, and if that is the desire of the Finance Minister, then this provision should be there in the Bill. If he does not accept even that much, then, I suggest that at least this provision—"unless the Central Government, by general or special order, specifically exempt the private company."—should be accepted here, because that is appearing in other clauses also.

SHRI M. C. SHAH: I regret, I cannot accept the amendment of my friend about the private companies. We have said so many times that we do not propose just to have more and more restrictions on private companies. Here, we are concerned more with the public limited companies, and we have provided 20 directorships.

Now, Sir, with regard to Mr. Kishen Chand's amendment, if he will refer to clause 313, he will find stated therein as follows:—

".....during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held."

It may be that some directors may go out of India and for three or four months they may not return. And therefore alternate directors may be appointed for three months. Therefore, there is not going to be any loophole or any evasion of the law that we are making. This is only a provision for certain emergencies. Therefore, Sir, I cannot accept his amendment.

SHRI KISHEN CHAND: It does not say "not more than three months". But it says "not less than three months". That means that he can be absent for a whole year.

SHRI M. C. SHAH: It says "during his absence for a period of not less

than three months from the State in which meetings of the Board are ordinarily held".

SHRI KISHEN CHAND: It means that they will just appoint the alternate directors, and instead of 20, there will be 30, 40 and so on.

PROF. G. RANGA: May I, Sir, ask for some elucidation? May I understand the significance of the amendment moved by Shri Parikh? Is it calculated to increase or to decrease the concentration of power in the hands of a few people?

SHRI M. C. SHAH: Suppose on a board of directors, there are 10 directors or 12 directors. That does not mean that there is concentration of power in one director. As I have explained, they would just have 20 directors. We want certain people who are well-versed in industrial management, and who have got reputation regarding their financial status and also regarding organisational ability. Whenever there is a good company, it would always like to have those people as directors who are well-reputed for their integrity and for their financial status, as also for their ability in managing the company. Therefore, in order not to hamper the industrial progress of the country, and for the time being, we have proposed that there should be 20 directors. The question of concentration of power will come in in other spheres, and not here.

SHRI KISHEN CHAND: 'During his absence' does not mean outside India. It is a clear wrong statement by the hon. Minister. If you permit.....

MR. DEPUTY CHAIRMAN: There is no limit to questions. This cannot be turned into a question hour. He has explained.

SHRI M. C. SHAH: I say under clause 331.....

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

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72. "That at page 143, lines 35 to 37 be deleted."

The motion was negatived.

SHRI C. P. PARIKH: Sir, I beg to withdraw amendment No. 132.

\*Amendment No. 132 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 278 stand part of the Bill."

The motion was adopted.

Clause 278 was added to the Bill.

*Clause 279 (Penalty)*

MR. DEPUTY CHAIRMAN: Amendments Nos. 227 to 229 are consequential and are, therefore, out of order. The question is:

"That clause 279 stand part of the Bill."

The motion was adopted.

Clause 279 was added to the Bill.

*Clause 280 (Age limit and vacation of office on reaching age limit)*

SHRI KISHEN CHAND: Sir, I move:

73. "That at page 144, line 6, for the word 'sixty-five', the word 'seventy' be substituted."

SHRI JASPAT ROY KAPOOR: I am not moving amendment Nos. 133 and 134, because I would suggest the deletion of this whole clause. In that case no amendment is necessary.

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

SHRI KISHEN CHAND: I have hardly anything to say except that 65 is too low an age. Now that longevity is increasing in our country and

\*For text of amendment, vide col. 4658 *supra*.

[Shri Kishen Chand.]

people are quite healthy at 65, they should be permitted to serve till 70 years.

SHRI JASPAT ROY KAPOOR: Sir, I have to oppose this clause. I would like to oppose not only this clause but, with your permission, I would like to oppose the retention of clauses 280 to 282 because all these three clauses relate to the retiring age of directors and if one goes, the others also have to go automatically. These three clauses appear to me to be very fantastic and if I may use a word, it is something childish to have these three clauses here. I hope I will have the fullest support of my hon. friend, the Finance Minister in charge of this Bill, Mr. Shah, and out of dignity for his own age at least, or out of respect for that, I hope he would support me. What does it mean?

SHRI M. C. SHAH: I am not old

(Interruptions.)

SHRI JASPAT ROY KAPOOR: He is not old but he will be soon reaching that age of 65 and according to this, he will be practically condemning himself and condemning us also when we reach that age. Let us see what the position is with regard to the different walks of life. So far as Members of Parliament are concerned, there is no upper limit of age. So far as doctors are concerned, no upper-limit is there. So far as lawyers are concerned, there is no upper limit. There is lower limit prescribed for Members of Parliament—25 for the Assembly and Lok Sabha and 30 for this House and the Councils. But no upper limit is fixed anywhere ...

SHRI BHUPESH GUPTA: For judges?

SHRI JASPAT ROY KAPOOR: Even for doctors who have to deal with the question of life and death, there is no age-limit prescribed; they are permitted to treat patients upto any age and no upper age-limit is fixed for

them even, but in the matter where we have to deal with only finance, upper-limit is going to be placed. Let it not be said of us that we attach greater importance to money than to law itself. Therefore this is absolutely unnecessary. What do these three clauses provide? They say that one who has attained the age of 65 shall not be eligible to be appointed a director, but if the shareholders so want, they may, by passing a resolution, of which special notice must be given in advance ....

PROF. G. RANGA: Government of India should agree with it.

SHRI JASPAT ROY KAPOOR: Government does not come in the picture at all. Everything is left in the hands of the shareholders absolutely. What is the meaning of having all these clauses? If the shareholders want to elect a man as a director, they can elect him whether he is 65 or 70. So ultimately, according to the existing conditions and practice, and even according to the practice that would be obtained after we had these three clauses, the shareholders would be the ultimate authority. Why then have these virtually childish provisions in this Bill? I, therefore, submit that we should not have these three clauses. They are unnecessary, lacking in utility, dignity and grace, etc. Let us not have these worthless provisions in this otherwise important and very well-drawn up Bill.

SHRI D. D. ITALIA (Hyderabad): Sir, I also want to support my friend and want the deletion of these three clauses, Nos. 280 to 282. There are so many Members of Parliament who are sitting here and making laws, who are over 65 years and there are so many Ministers also who are administering the State affairs at ages of over 65. So I don't understand why we should have the restriction that directors should be of the age of less than 65. As I said in my speech the other day, I am at present 74, having completed 73, and am director of four companies

in Hyderabad State. Why not take advantage of mature age and knowledge?

SHRI JASPAT ROY KAPOOR: And how wise you are!

SHRI H. P. SAKSENA: There are other Members wanting to speak.

SHRI B. C. GHOSE: Let us have 2 or 3 minutes each.

SHRI H. P. SAKSENA: It is not in any self-interest that I rise to speak on these three clauses in order to oppose them.

SHRI LALCHAND HIRACHAND DOSHI: Let my friend forget self-interest before public-interest.

SHRI H. P. SAKSENA: I have already forgotten it.

MR. DEPUTY CHAIRMAN: Are you opposing the entire clause?

SHRI H. P. SAKSENA: Yes. I am supporting Mr. Kapoor and opposing the retention of these clauses in the Bill. I may remind this House that Lord Pethick-Lawrence was 76 years of age when he presided at the Cabinet Mission which was sent to India by U.K. in 1946.

SHRI B. C. GHOSE: We have Shri M. Visweswarayya.

SHRI H. P. SAKSENA: Shri M. Visweswarayya whom we recently saw at Delhi receiving the grand decoration at an investiture held in the Government House is 94 years of age—my friend Shri Ramaswamy Mudaliar informed me that, Shri M. Visweswarayya is 94 years of age, I repeat.

(Interruptions.)

I am not confusing him with anybody else. I am myself, Sir, seventy, let me give my age; and I hope I am perfectly capable of being appointed the manager of any number of companies.

SHRI S. N. MAZUMDAR: But please do not become a capitalist.

SHRI H. P. SAKSENA: I say, any number of companies, not private, but public companies. Not that I want to become a capitalist by becoming the director of a company. I am positive and certain of my own inherent capabilities never to convert myself into a capitalist. And if I do become a convert to capitalism, I may say that all the money that I would squeeze out of the capitalists would be spent in the cause of the poor and the down-trodden people.

But what I say now is that a fixing of the age of a director at 65 years is unthinkable, inconceivable and absolutely arbitrary and would be of no use whatsoever. This provision, therefore, must be dropped. Consequently all the three clauses mentioned by my hon. friend, Mr. Kapoor, clauses 280, 281 and 282, will have to go. I do not know why a person, as soon as he reaches the age of 65, should be deemed to be capable of doing no mental work. Does this apply to any other walk of life, as was pointed out by my hon. friend here? Parliament is the supreme body which looks after the administration of the whole country, and even there there is no maximum age-limit. Therefore, there is no earthly reason why in a small affair of a company, it should be so jealously guarded as to fix a limit on the age of the director as 65. Therefore I wholeheartedly support the amendment.

SHRI M. C. SHAH: Sir, there seems to be some misconception in the mind of my hon. friend, Mr. Saksena. We do not say that a man of 65 years of age cannot be a director. We only say that if the shareholders think that he is fit enough, competent enough at that age, that he is perhaps not deaf or something like that, but that he can attend to his business quite competently, then the shareholders may elect him. Government do not prohibit anything. All that Government say is

[Shri M. C. Shah.]  
that, at the age of 65 years, the appointment must have the approval of the shareholders. That is the only thing that is put in here.

SHRI H. P. SAKSENA: Then, why not leave the matter to the discretion of the shareholders? Why does Government step in?

SHRI M. C. SHAH: It is there already. Therefore, we say that if the shareholders feel that a person is competent to serve the affairs of the company, up to 120 years or more, they can keep him there, they are free to do it. So far as the point raised by Mr. Saksena and Mr. Kapoor is concerned, that though we are seventy years old, we are here in Parliament. I may point out that it is the electors that send hon. Members here, those whom they consider fit enough. Hon. Members here are elected by the electors of the Legislative Assemblies and in the Lok Sabha, they are elected by the voters and if the voters come to the conclusion that even though a man is old, he is capable of representing them, he is elected. So also, there is no objection, in the case of a company.....

SHRI JASPAT ROY KAPOOR: But on the same grounds, Sir, I wonder why the hon. Minister does not yield, at least sometimes.

SHRI M. C. SHAH: Why should I yield? This is a trivial matter which should not take more time of the House. The Company Law Committee also had considered this question. Therefore, Sir, I am unable to accept the amendment.

MR. DEPUTY CHAIRMAN: The question is:

73. "That at page 144, line 6, for the word 'sixty-five', the word 'seventy' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 280 stand part or the Bill."

The motion was adopted.

Clause 280 was added to the Bill.

Clauses 281, 282, 283 and 284 were added to the Bill.

Clause 285 (Board to meet once in every three months)

SHRI LALCHAND HIRACHAND DOSHI: Sir, I move:

135. "That at page 147, line 32, after the words 'every company' the words 'other than an association not carrying on business for profit or which prohibits the payment of a dividend' be inserted."

MR. DEPUTY CHAIRMAN: Clause 285 and the amendment are now open for discussion.

SHRI LALCHAND HIRACHAND DOSHI: I would like to explain in brief what is the purpose of the amendment that I have moved. The amendment applies only to institutions which are not really companies, in the real sense of the term. Therefore, it has been suggested that the words "other than an association not carrying on business for profit or which prohibits the payment of a dividend" be inserted in this provision. Such an association does not have any day to day business and therefore, it calls a meeting of the directors at such periods as it finds it necessary. For that reason, this restriction put in this clause need not apply to such associations which have been allowed to be called companies only as a special case. Therefore, I do hope that Government will find it possible to accept this amendment.

SHRI M. C. SHAH: Sir, I am not able to accept this amendment, for we do not allow the directors to hold meetings at their will and pleasure.

SHRI LALCHAND HIRACHAND DOSHI: Sir, I request leave of the House to withdraw my amendment.

\*Amendment No. 135 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN. The question is:

"That clause 285 stand part of the Bill."

The motion was adopted.

Clause 285 was added to the Bill.

Clauses 286 to 290 were added to the Bill.

MR. DEPUTY CHAIRMAN. Now we come to the new clause proposed by Mr. Parikh.

*Proposed new clause 290A*

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

233 "That at page 148, after line 42, the following new clause 290A be inserted, namely:—

'290A. The minutes book of the Board's meetings will be open for inspection and taking extracts by any shareholder'."

Sir, at present the minutes of the meetings of the directors are really closed secrets and the shareholders are not allowed to know what is happening in those meetings. There are dissensions also in the meetings. Also, it is laid down that the board of directors will be independent. Therefore, I say, if the minutes of the meetings of the board of directors are open to any shareholder for inspection or for taking extracts, then I think, the shareholders will be able to know what has been happening in these board meetings and whether the directors have been discharging their duties towards the concern properly, and whether the shareholders can put confidence in those particular directors or not.

Therefore, the amendment is useful and I hope it will be accepted.

\*For text of amendment, vide col. 4668 *supra*.

SHRI BHUPESH GUPTA: Sir, I rise to support this amendment, which I feel is a very reasonable one. And since it has the support of both sides of the House, I hope, the Government will be able to accept it.

PROF. G. RANGA: Before the hon. Minister rushes in to reply pointing out that he does not want to have this amendment accepted at this late hour, I would like him to consider the advisability of having a provision like this on the Statute Book. After all, if the Government is not going to lose anything, and the public will also not lose anything, while it is quite possible that the shareholders will stand to gain in having an effective voice in the affairs of the company, if the minutes of the meetings of the board of directors are kept open to them, to be examined or inspected or studied by the shareholders, I don't see anything against having such a provision like this. Therefore, in view of the fact that anyhow this Bill has to go back to the other House for final confirmation, I would like the hon. Minister to take some time for himself to consider this matter and let this particular clause be kept open till tomorrow, so that it may be possible for the Government to give proper consideration to this question and thereafter, come to a final decision whether they are going to accept it or not.

4 P.M.

On the face of it, it appears to be so eminently reasonable and it would really not look good enough for the Minister to come here and now say that he is not going to accept it.

SHRI M. C. SHAH: We have considered this amendment.

SHRI B. C. GHOSE: I was just going to support Prof. Ranga. I want to say that if the wording was not happy and if the amendment was going to be rejected because of that fact, Government may consider a revised wording.

SHRI LALCHAND HIRACHAND DOSHI: I oppose this amendment.

SHRI S. N. MAZUMDAR: Family quarrel again!

PROF. G. RANGA: I want the Minister to take some time. If they can possibly amend it suitably, and incorporate it, I would be very happy.

SHRI LALCHAND HIRACHAND DOSHI: It is a very unwise thing to say that certain decisions taken by the management should be made public. There are several instances, for example, take the Cabinet.....

SHRI B. C. GHOSE: The company is not the Cabinet.

SHRI LALCHAND HIRACHAND DOSHI: Any resolution passed by the Cabinet does not come even to the notice of Members of Parliament, leave alone the public.

SHRI BHUPESH GUPTA: Does the hon. Member think that a managing agency concern is equal to the Cabinet? What does he think himself to be?

SHRI LALCHAND HIRACHAND DOSHI: I am a director of a company and I have as much honour as a Cabinet Minister so far as the management of the company is concerned. Let me make it clear to my hon. friend who asked that question. Therefore, Sir, it would be unwise to make any decisions of the Board public; not only will the decisions be made public but also the differences of opinion that may prevail amongst the directors will be made public. This would enable groups to try to.....

SHRI BHUPESH GUPTA: Why say "public"? It is only a question of the shareholders knowing it. That is what the amendment says.

SHRI LALCHAND HIRACHAND DOSHI: There may be groups of shareholders trying to pull in different

directions and creating complications. That is one of the worst things that could happen in a company, and I would strongly oppose this kind of a provision which is going to cause mischief rather than be of good to the company.

SHRI C. D. DESHMUKH: Sir, if we oppose this amendment, it is not for not having given sufficient thought to it. Neither would it be to escape adding to the number of amendments because, in any case now, we know that we probably have to take this before the Lok Sabha, not in this but in the next Session and, therefore, the House must believe when we say that we have given thought to it and we reject this, as I am going to do, deliberately. In all these cases, our primary interest is to see that the business of an enterprise is carried on in the most efficient manner. That may mean, in some cases, a certain amount of restraint, shall we say, on the part of those who are entitled to get information from time to time. I think this proposition would be agreed to by every Member that it is not that every single thing that happens in the management must come to the notice of the shareholders. I do not like to tread upon dangerous ground as the speaker who has just now finished has done; in other words, I do not like to refer to what the Cabinet does for one very good reason that we do not maintain any minutes; only the decisions are recorded and no minutes are maintained. That, I do not think, is a Cabinet secret and, therefore, I am free to mention it to the House but that is not the case in other countries. I know of one other country where some kind of minutes are maintained as to what every one said. That is to enable a kind of historical record to be kept of who said what at what critical moments. In a sense, of course, every voter is entitled to know what passes on in the Cabinet; theoretically, suppose, he has the right, but, on the other hand, we must consider the practical aspect of it and reflect on how difficult it is going to make for



the top-level management to come out in the open with their differences. It may be that some directors may not like it to be known publicly that they opposed a particular thing; they may have a good reason and yet may wish to avoid trouble. Therefore, I think we should be content with the scheme wherewith something is recorded which, at the proper time, an inspector or an investigator who looks into the affairs of the company, can see on behalf of the shareholders. It is not necessary that everything should be open. After all, when we say "shareholder" we mean all kinds of people; there may be some one who just wants, shall we say, to create trouble. He may become a shareholder and may wish to bring out in the open whatever has passed in the deliberations at the higher level of management. It is from that point of view that we feel that it would be unsafe to include a provision like that in the Bill.

SHRI C. P. PARIKH: Sir, I would like to withdraw the amendment.

SHRI BHUPESH GUPTA: Sir, I am opposed to permission being given for the withdrawal of the amendment. Let us take the vote.

MR. DEPUTY CHAIRMAN: The question is:

233. "That at page 148, after line 42 the following new clause 290A be inserted, namely:—

'290A. The minutes book of the Board's meetings will be open for inspection and taking extracts by any share-holder'."

The motion was negatived.

Clause 291 was added to the Bill.

Clause 292 (Certain powers to be exercised by the Board only at meeting)

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

136. "That at page 149, line 21, after the word 'company', the words

'subject to sections 293 and 372' be inserted."

Sir, under sub-clause (1)(d) the board is given power to invest the funds of the company and these are to be exercised only at the meeting. Clause 293 also refers to the very same powers and also certain restrictions, such as contained in sub-clause (1)(c). Further on is clause 372, which deals with purchase by company of shares, etc., of other companies in the same group. These restrictions are there and, therefore, I want the words "subject to sections 293 and 372" to be added after the word "company". I have an amendment in regard to clause 372 also, and I shall discuss that at that stage.

SHRI C. D. DESHMUKH: Sir, the amendment seeks to provide specifically that the powers of a board to invest funds of the company shall be subject to the provisions of clauses 293 and 372. Generally, the power vested in the board is always subject to the restrictions and limitations prescribed in regard to the particular investments mentioned in clauses 292, 293, and 372. The restrictions are cumulative and not in substitution thereof. When you say clause 292 is subject to clauses 293 and 372, it will mean that clause 293 or clause 372 will apply. Where either of those clauses is applicable and not clause 292, then, that also is applicable. That is not the intention of the mover and, therefore, this amendment should not be accepted.

SHRI C. P. PARIKH: Sir, I beg leave to withdraw this amendment.

\*Amendment No. 136 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 292 stand part of the Bill."

The motion was adopted.

\*For text of amendment, vide 4673 *supra*.

Clause 292 was added to the Bill.

Clause 293 (Restriction on powers of Board)

SHRI KISHEN CHAND: Sir, I beg to move:

74. "That at page 150, lines 25-26, for the words 'to charitable and other funds', the words 'to public charitable funds' be substituted."

75. "That at page 150, lines 28-29, for the word 'twenty-five', the word 'five' be substituted."

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

SHRI LALCHAND HIRACHAND DOSHI: Sir, I beg to move:

137. "That at page 150, line 3, after the words 'a public company', the words 'where such public company or its subsidiary is managed by a managing agent or secretaries and treasurers,' be inserted."

138. "That at page 150, line 4, after the words 'in general meeting', the words 'in the case of matters mentioned in clauses (a), (b), (c) and (d) below and except subject to the condition that the contribution, in excess of the limit laid down provided therein, shall cease to be valid if it is not approved by the company in the annual general meeting in which the accounts are laid, in the case of the matter mentioned in clause (e) below' be inserted."

139. "That at page 150, line 9, the words 'or give time for the repayments of' be deleted."

140. "That at page 150, after line 10, the following proviso be inserted, namely:—

'Provided that nothing said in clause (b) of sub-section (1) shall be deemed to prevent a banking company from giving time to its director or directors for repayment of a debt due from him or them' "

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

141. "That at page 150 line 11, after the word 'invest', the words 'surplus funds otherwise than in the approved investments as laid down under clauses (a) to (s) of section 27A of the Insurance Act, 1938, nor shall invest' be inserted."

SHRI B. M. GUPTE (Bombay): Sir, I beg to move:

142. "That at page 151, after line 10, the following be inserted, namely:—

'(4A) The Board of directors of a public company, not being a banking company, or of a private company which is a subsidiary of a public company, shall not, except with the consent of the Registrar, accept from the public, deposits of money repayable on demand or after a period shorter than two years'."

(Amendment No. 143 was not moved.)

SHRI BHUPESH GUPTA: Sir, I beg to move:

234. "That at page 150,

(i) in lines 28-29, for the words 'twenty-five thousand rupees', the words 'three thousand rupees' be substituted; and

(ii) in line 29, for the words 'five per cent.' the words 'one per cent.' be substituted."

235. "That at page 150, after line 32, the following proviso be inserted, namely:—

'Provided that no such contribution is to be made to an institution with which any Minister and any political party or its leader is connected, unless it is passed unanimously in a general meeting' "

SHRI BHUPESH GUPTA: Sir, I leave the other provisions of this particular clause to the other hon. Members who have been good enough to move amendments from the right side of the thing, but from the wrong side of the House, as generally, they do not move such amendments. I would like to speak now on my amendment, but before that, I would like to just refer to the clause itself. The clause begins, "The Board of directors of a public company or of a private company which is a subsidiary of a public company shall not, except with the consent of such public company or subsidiary in general meeting"—then, I come to the very sub-clause to which my amendment relates—"contribute, after the commencement of this Act, to charitable and other funds not directly relating to the business of the company or the welfare of its employees, any amounts the aggregate of which will, in any financial year exceed twenty-five thousand rupees or five per cent. of its average net profits as determined in accordance with the provisions of sections 349 and 350. during the three financial years immediately preceding, whichever is greater."

Now naturally, this particular sub-clause relates to certain charities that are claimed to have been made and will be made by the joint stock companies in the country. That brings us to an important aspect of the matter. Sir, I make it very clear that we are not opposed to charities if they are right type of charities; if the charities are really charities with the noble intent of serving the cause of the people, bringing welfare to them, ameliorating their conditions and bringing succour and relief to the distressed and the down-trodden people. If any company does it, we shall welcome such effort on the part of the joint stock companies. Yet, we have certain very strong feelings about this matter because in the past, the experience has been one about which we feel rather sorry for the simple reason that the charities have not been directed by the companies along the lines on which

they should have been directed. I am not at all saying that there have not been concerns which have not made good charities, but again there are concerns in the country which are accustomed to dissipating the company's assets and funds for all types of charities and purposes which have nothing in common with either the interests of the shareholders, the public or the country. I would try to convey my ideas by relating to this House a particular case, the case of the Sugar Distributing Syndicate, Ltd., 161/1, Harrison Road, Calcutta. Sir, this is a company which existed during the war, and continued after the war, till 1954. This company had certain claims with respect to supplies it had made or alleged to have made to the Government of the day. The claims were pending against the West Bengal Government and two litigations were started in the High Court of Calcutta with respect to about Rs. 9 lakhs claimed by the company against the West Bengal Government. I am very glad to see the Finance Minister listening with rapt attention and I hope he will kindly listen to this case because I am absolutely on firm ground with foolproof evidence with regard to this matter. Then, Sir, it was not possible for the company to realize the funds. The Government had certain contentions of its own. they disputed certain claims. The matter went on undecided and the case dragged on in the courts

MR. DEPUTY CHAIRMAN: We are not concerned with all those details; all those details are not necessary.

SHRI BHUPESH GUPTA: I am coming to this thing. This is a case; I am coming to that.

MR. DEPUTY CHAIRMAN: You mention the main point; details are not necessary.

SHRI BHUPESH GUPTA: I have to mention this case. Names will not be many.....

MR. DEPUTY CHAIRMAN: Don't mention all details. Details of the case are not necessary.

SHRI BHUPESH GUPTA: Permit me to give the details.

MR. DEPUTY CHAIRMAN: They are not necessary, I may tell you.

SHRI BHUPESH GUPTA: It is necessary for the Finance Minister.

MR. DEPUTY CHAIRMAN: You may mention the case.

SHRI BHUPESH GUPTA: Then suddenly, personal contacts apart from negotiations, were attempted to settle this matter. In the Syndicate's Report for the year ending June, published in July 1954, the members were informed, "Personal contacts also were made by several directors with the West Bengal Government and with the Government of India, New Delhi. The matter had been discussed on several occasions. The matter is still being pursued with the Government of West Bengal and with the Government of India in New Delhi and all efforts for an amicable settlement are being made. During the last two months, however, some practical suggestions for an amicable settlement have been evolved and the same are in course of negotiations. Advice of the General Body was also taken at the informal general meeting of the members held on 10th May, 1954." That is how we come to the 10th of May, with the practical suggestions and all that. Now, Sir, on the 10th of May, an informal meeting was held as we are told. We did not know what that informal meeting was until after we got the facsimile of a circular. Here it is published in this paper. The circular was issued by the Sugar Distributing Syndicate, Ltd., signed by its Chairman, Mr. P. D. Himatsingka. The name is printed there. Therefore, I name it—holy names sometimes one must take. Now here, this whole thing is in English. It was published in the 'Swadhinata' of the 18th August, 1954 and was reproduced in the 'New Age' of the same month but of the 29th. Now, what do I find there in this circular; that I am afraid I will have to read and the House will bear with me. "28 Members were present." The meet-

ing was held at 3.30 P.M. on 10-5-54. "28 Members were present either in person or through representatives, as per attendance sheet attached."

MR. DEPUTY CHAIRMAN: What is it that you are reading from?

SHRI BHUPESH GUPTA: Some circular, the facsimile of which is published here in the 'Swadhinata' and it is in English, but it will strain my eyes to read it from the paper. I am reading it from this typed paper which contains the contents of that facsimile. If you like, I will read it from the paper itself.

MR. DEPUTY CHAIRMAN: You need not give all the details.

SHRI BHUPESH GUPTA: I will have to read.

MR. DEPUTY CHAIRMAN: You please mention the point involved.

SHRI BHUPESH GUPTA: I will come to the point because it is important. You will again understand that we have taken a little pains to find these things out. If we cannot relate these things in Parliament, I do not know why we are participating in this debate. Will the hon. Minister say that I am not entitled to bring to his notice certain important facts in this connection? If he says it, it is a different matter.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI BHUPESH GUPTA: I claim my parliamentary right and privilege to read it. This relates to 'charity'. "The overall position of the negotiations....."

MR. DEPUTY CHAIRMAN: Are you prepared to lay it on the Table of the House?

SHRI BHUPESH GUPTA: Yes, I have brought it for laying it on the Table of the House. I have done all this work of getting it from Calcutta by a special person.

MR. DEPUTY CHAIRMAN: You read only the relevant portion.

SHRI BHUPESH GUPTA: Kindly let me proceed, Sir. I do not know how many Members in this House can speak on a subject like this, if they are interrupted so many times.

MR. DEPUTY CHAIRMAN: Mr. Gupta, I want you to read only the relevant portion.

SHRI BHUPESH GUPTA: I am coming to the relevant portion. I have got some idea of relevancy. I know how many relevant things are said by the Members on the other side. We hear their speeches. We do not get up and interrupt them.

MR. DEPUTY CHAIRMAN: You need not cast any reflection.

SHRI BHUPESH GUPTA: Because I know, Sir, I have to read it, the relevant portion. Whatever I think relevant, I will read. But before I have read it, you say that I am not reading the relevant things. How do you know what it contains?

MR. DEPUTY CHAIRMAN: You cannot read the whole thing.

SHRI BHUPESH GUPTA: I say you first of all hear me before stopping me. I have got the Rules Book here. I am entitled to read this. I stand on my privilege to refer to a statement which bears directly on the amendment. If my right is taken away, let it be taken away. Let the public know that I am not being allowed to speak.

SHRI M. GOVINDA REDDY: The Chair is not taking away any right from you. (*Interruptions.*)

MR. DEPUTY CHAIRMAN: Order, order. I do not want to take away any of your rights.

SHRI BHUPESH GUPTA: I am not going to sit down until and unless I am allowed to read it.

MR. DEPUTY CHAIRMAN: Please understand me, Mr. Gupta. You need not read the whole thing. I have already told you that I do not want to take away any of your rights. But please be brief and be relevant.

SHRI BHUPESH GUPTA: I had a talk with the Chairman this morning, and if it is not.....(*Interruptions.*)

SHRI B. C. GHOSE: My friend's contention is.....

SHRI BHUPESH GUPTA: I demand that the House be adjourned and then decide.....

SHRI B. C. GHOSE: My submission is that without hearing him, we cannot say whether it is relevant or not.

MR. DEPUTY CHAIRMAN: But he is reading the whole thing

SHRI BHUPESH GUPTA: If that is the view, as a Member of the House, standing on my privilege, I demand that the House be adjourned. Let there be a discussion in the Chamber with the Chairman. And whatever decision is taken in the Privileges Committee, I will stand by it. Whenever I bring up such things, I find that I am not allowed to proceed with the matter. We have not come here for the sake of fun. We have come here to discharge our public duties.

MR. DEPUTY CHAIRMAN: I do not want to take away any of your rights, but I want you to be brief. Read only the relevant portion. I do not come in your way. Please go on.

SHRI B. C. GHOSE: Whether it is whole or part, unless he reads we do not know the relevancy.....(*Interruptions.*)

SHRI BHUPESH GUPTA: I find that hon. Members are.....

MR. DEPUTY CHAIRMAN: Please continue, Mr. Gupta.

**SHRI BHUPESH GUPTA:** Let me proceed in this matter in my own way. As you know, I am not a person who easily yields to things.

It says here:

"The notice convening the Meeting was read. The over-all position of the negotiations carried on with the West Bengal Government was reported by Messrs. M. D. Khaitan and S. P. Jalan. It was reported that the West Bengal Government was prepared to consider payment of Rs. 8 lakhs, 21 thousand and odd in full settlement of Syndicate's claim, provided the suits were withdrawn *in toto*. The West Bengal Government, however, may allow the Syndicate's claim for Rs. 57,000 and odd for supplies to Districts to remain, but only against the East Bengal Government."

Now, here, I leave out a certain portion and read here:

"Still the members should consider and decide on the issue as to whether the above amount should be accepted or not as once the Government had repudiated there was less chance by persuasion."

I will lay this on the Table. The next paragraph is important:

"The matter was fully discussed amongst the members and it was decided that the Directors be and are hereby authorised to proceed with the said negotiations with the Government of West Bengal and to realise as much as possible on the other scores by persuasion and to effect settlement by accepting about Rs. 8,21,000 and odd if not more, in full settlement as above. It was also proposed and decided by the members present that as the Syndicate during its existence has not paid any big amount for any charitable or benevolent purpose or for any public general and useful objects, and now that the Syndicate may be wound up soon, a sum up to Rs. 1 lakh be spent for such public general and useful objects including

donations to the Indian National Congress or any of its Branches or Committees to be spent by them in their absolute discretion as they think fit."

I hope, I am relevant.

"The above decisions were unanimous. In this connection, the members present signed two letters' authorising the Directors to proceed with the above negotiations and to pay the donations not exceeding Rs. 1 lakh as above. It was further resolved that the Directors may, if they so like, get the two letters signed by as many of the other members not present in the meeting as possible by personal contacts.

With a vote of thanks to the Chair, the Meeting terminated.

(Sd.) P. D. Himatsingka,  
Chairman."

Then, what happened after that decision? Practical steps were taken. When the decision was taken, the company did not have even Rs. 2,000 in its Bank. Obviously, the decision was taken on the assumption that the Government would pay this money. Then comes July 30, which was the D-Day for the Syndicate and also for the West Bengal Congress. I hope, the Finance Minister understands that. Both sides won here. D-Day in the war means only one side wins and the other side loses. Here both sides won. On that day, the West Bengal Government made out a cheque for Rs. 8,21,277-13-6 to the Sugar Distributing Syndicate Ltd. On the same very date the Syndicate made out a cheque to the value of Rs. 70,000 to the West Bengal Provincial Congress Committee. You may call it a coincidence, but an interesting coincidence at that. The Government's cheque could not be cashed till August 2. On August 13, the curtain was rung down on this seven year old affair. The Managing Director of the Syndicate informed the members of the amicable settlement with the Government. By the same communication, they were also informed of the donation of Rs. 70,000.

Now, this is the position. Here is the facsimile and here are the papers.

SHRI C. D. DESHMUKH: What was the original claim?

SHRI BHUPESH GUPTA: The original claim was for about Rs. 9 lakhs. It is all there. I will give the whole thing to you. You can read it.

SHRI C. D. DESHMUKH: First a figure was quoted by the hon. Member, when he began, to say what the claim was.

MR. DEPUTY CHAIRMAN: What was the original claim?

SHRI BHUPESH GUPTA: Then I will have to read it over again.

MR. DEPUTY CHAIRMAN: No, no. Give him the figure.

SHRI H. C. DASAPPA: What was the original claim, Sir?

SHRI BHUPESH GUPTA: The original claim, as I said, was about Rs. 9 lakhs. That is what I have been telling, my dear fellow. I have nothing against the claim.

SHRI JASPAT ROY KAPOOR: Sir, can a Member of the House be addressed as 'fellow'? I want the Chair's ruling, Sir.

MR. DEPUTY CHAIRMAN: You will withdraw that word.

SHRI BHUPESH GUPTA: Yes, Sir. I withdraw that word. You (pointing to Shri Jaspal Roy Kapoor) sit down.

SHRI JASPAT ROY KAPOOR: Again, Sir, has the hon. Member any authority to ask me to sit down? He has withdrawn that word and I am glad good sense has dawned upon him. He has done well, but again.....

MR. DEPUTY CHAIRMAN: Mr. Gupta, please use dignified language.

SHRI BHUPESH GUPTA: Yes, Sir. I do not want to be diverted on this

language. I am not a literary man. I stand corrected.

Here my point is not about the claim. See how the whole thing was done. The company's money was spent in charity to a particular political organisation and the coincidence of things will tell you as to how it had been arranged. From that, would I be wrong in inferring that the arrangement was that the West Bengal Government would pay the money and probably an unofficial agreement had been reached with somebody in the Congress that if the money is obtained, they will make a donation to the Congress? And we find that Rs. 70,000 has been spent as donation.

SHRI C. D. DESHMUKH: That is why I wanted to know what the original claim was.

SHRI B. C. GHOSE: About Rs. 9 lakhs, he says.

SHRI C. D. DESHMUKH: It is of material interest to know exactly what the original claim was. If the claim was for Rs. 9 lakhs and Rs. 9 lakhs was paid by the West Bengal Government, there is nothing wrong in the transaction.

SHRI BHUPESH GUPTA: The West Bengal Government agreed to settle with the company and paid a certain portion of that claim and according to me.....

SHRI C. D. DESHMUKH: I want to know what that portion was.

SHRI BHUPESH GUPTA: According to my information, the claim was about the order of—you are not generally excited—Rs. 9 lakhs, but I am not in a position to give you the exact amount of the claim. From the evidence in that circular I come to the conclusion that the company has received from the Government about Rs. 8,21,000 and odd. It may be a little more or little less, that is not my point. But what is most important is—and the hon. Finance Minister will kindly note this—that on the same

[Shri Bhupesh Gupta.]

day a cheque was made out in the name of the West Bengal Congress for Rs. 70,000. That is also stated and that is my point, and entirely made on the basis of the general body decision to make charities. Now, charity to the Congress of seventy thousand rupees ...

SHRI H. P. SAKSENA: What is wrong with it?

SHRI BHUPESH GUPTA: Nothing wrong. But we say, let us all share those charities, why you alone?

SHRI H. P. SAKSENA: Deserving candidates will get.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI BHUPESH GUPTA: Now, Sir, this is the kind of thing here. We published this in our paper. No one had the courage to contradict it. It had been there. We published in the English paper; none had the courage to contradict it, because we had come into possession of certain very important documents. As you know, sometimes we get to know some of facsimiles of the bank books also. Now, nobody challenged it. Therefore as the matter stands today, this is how sometimes the company makes their charities. Now, you are allowing them a sort of free hand by raising this amount to these figures as stated in sub-clause (3) of clause 293. Now, these moneys are spent for patronising a particular political party. Big companies do not patronise opposition parties. They patronise a particular party. I am not naming that party. It is well-known in the country. Now, we would like to know, somebody should tell us. We have information—I stand subject to correction—that during the elections some of the companies raised funds for a particular party. The Ahmedabad millowners had been approached for contributing definite sums of money at the time of the Andhra elections. We know of this thing. I know what had happened in Bombay. Sometimes, it had hap-

pened that some of our acquaintances are there high up, and we get to know some of these things. This is how it is going on in the country. Charity is not of that type. When Prof. Ranga was talking about temples and all that—I can understand from the religious point of view such charity—I did not interrupt him. I respect that point of view. We respect the religious sentiments of the people. If charities are made for religious purposes, one can understand. But why should a company spend in that particular manner for patronising a party. What is this? I would ask the hon. Finance Minister to look into the whole matter because this is only typical of many things that are taking place in the country, where charities are made in the name of parties. Huge sums of money are made over at the time of bye-election or general election to the party in power. The party in power is in a position to deliver the goods at least to settle the claims in dispute like that! I, therefore, want to be very strict in such things. I am entirely in agreement if Prof. Ranga suggests certain ways and means of formulating this. I am prepared to do it. I do not think the Finance Minister is himself a party to it. I say, I am prepared to agree to it, but I would ask the hon. Finance Minister to tell us what is the protection in your company law to see that the moneys are not spent in that manner, in the name of charity, to patronise the party in power and thereby not only to corrupt public life, but also make it impossible for democracy to function in the country? This is the question that I put to him. Sir, company funds are built out of the shareholders' contribution, small people's contribution. Some people decide at an informal meeting how this money should be spent, and there the money goes from one account to another on the same day. Strange things, I do not know as to why the Government did not do anything, as the matter was made known to the public through the daily and weekly newspapers. Even at this hour, I would beg of the Finance Minister to go into such cases and



listen to such complaints and here make full provision so that such malpractices, such tricks, cannot take place which enable these people the syndicate people, and monopolists to get some of their things settled out of court, by paying out some moneys to the Congress. If the West Bengal Government was contesting this case, I take it that certain very reasonable grounds were there for disputing some of the claims. Why this settlement was reached in that manner and who are these people in the Government of India with whom this gentleman had established personal contact; the Finance Minister should be the person to find that out. I say, therefore, that this is an amendment of some importance to me....

MR. DEPUTY CHAIRMAN: You have taken 35 minutes. Please wind up.

SHRI C. D. DESHMUKH: Which amendment is he referring to—234 or 235?

SHRI BHUPESH GUPTA: I shall read it:

235. "Provided that no such contribution is to be made to an institution with which any Minister and any political party or its leader is connected unless it is passed unanimously in a general meeting."

"Political party" includes my party, "including its leader", including myself. From this case, it would appear that the meeting was informal and the unanimous decision was fictitious. I say, make it impossible for them to make charities of this sort, until and unless, the meeting has unanimously passed it, and prevent donations being made to such organisations with which the hon. Minister on that side and hon. leaders of the parties from both sides are associated. I want to be reasonable in this matter. Therefore, I say that my proviso should be accepted, because the charities should not be prostituted to buttress the fin-

ancial position of the party in power, squandering away the assets of the company and selling away, bartering away the interests of the shareholders and of the public.

SHRI KISHEN CHAND: Mr. Deputy Chairman, my amendment is very simple. The whole clause 293 is "restrictions on powers of Board". If a general body meeting decides, it can give any amount of money in charity or to other funds. There is no restriction on the general shareholders holding a meeting and giving any amount of money. The restriction is only on the powers of the directors. The directors can give, according to the proposed Bill, twenty-five thousand rupees or five per cent. of the profits, whichever is more. That is the power. The directors, if they want to give more than that amount, have got to take the permission of the general body meeting. My amendment is that this power should be further restricted, that it should be for charitable purposes only and not to "other funds". If they want to give money to other funds, they can go to the general body meeting and get their permission.....

MR. DEPUTY CHAIRMAN: "to public charitable funds," that is your wording.

SHRI KISHEN CHAND: In the clause the words are "to charitable and other funds". I have replaced them by the words "to public charitable funds". If the directors want to give it to any other fund, they can do so, by referring the matter to the general shareholders' meeting, get the sanction of the general shareholders. The general shareholders can give any amount of money but the directors trying to give money, without the permission of the shareholders is not right. Why it is not right, I will try to explain in a few words. As pointed out by Mr. Bhupesh Gupta just now, some time, compromises are arrived at between fair and unfair claims, by certain parties on a promise of giving a contribution to a

[Shri Kishen Chand.]  
 party fund. The hon. Finance Minister by his questions indicated the way he was thinking in the matter. He was asking again and again the question as to what was the total claim. Probably his contention would be, as far as I can understand from his line of argument, that, supposing the claim was for ten lakhs of rupees, and if the compromise was reached for Rs. 8,23,000, there is nothing wrong in it. I do not think that line of argument is correct. Without knowing whether that claim of ten lakhs was entirely bogus or right, simply because the claim was for ten lakhs or twelve lakhs or for any amount, and it was settled for a smaller amount, does not make the claim to be correct. There is an agency of Government. If the Government wants really to scrutinise any claim, there is a Government agency. There are law courts. There is the Land Acquisition Officer or the Compensation Officer. He goes into the merits of the case and makes enquiries. Suppose instead of enquiring into the matter, for ten lakhs of rupees, a compromise is arrived at for eight lakhs of rupees on the assumption that some compensation is paid to the Congress fund, it smacks of some sort of partiality, nepotism. It smacks of fraud because the claim has not been carefully scrutinised. You arrive at a compromise only on the promise of payment of certain amount to a particular fund. I can give any number of other examples, where big contracts have been given on the assurance that a certain building for the Congress Office is built. I know it as it has happened in my part of the country. If you go on in this way corrupting the political life, if you give some sort of inducement to the directors of companies that their actions will not be looked into very carefully, if they contribute some substantial sum to the party fund, then, there is no end to it. It will always go on. Therefore, not only I do not want this power to be here to give funds to any party, but I will go a step further

and suggest that even the general body meeting should not be authorised to give sums to party funds. My contention is based on the fact that after all, all our companies are now going to be governed by the 51 per cent. shares who will have full controlling powers. If a particular person wants to pay fourteen or fifteen thousand rupees to any party fund, and if he does not get the sanction from the board he calls a general shareholders' meeting and gets the sanction for the money, irrespective of the fact whether other shareholders like it or not; for after all, 49 per cent of shareholders do not stand a chance against 51 per cent voting the entire profits being given to any party fund. In that way, that particular man might get a special position or special privilege from that party. I had in my first speech already pointed out that various other countries were selling titles for contribution to party funds. But that practice has been discontinued in many countries, and ours is a new democracy. We are setting up new precedents and traditions. Is it right and fair that, directly or indirectly, we bring pressure? This is a big Companies Bill of 600 clauses, out of which at least 200 are penal clauses, threatening any board of directors for any possible breach, to bring pressure on the board of directors to contribute something to party funds. And if contributions are made, well the board of directors go scot-free. Therefore, we should not leave a loop-hole like that. I certainly think, if the words 'and other funds' are omitted from here, the public charities will get the full benefit. I have suggested five thousand rupees. For a small company, twentyfive thousand rupees is an excessively high amount. It is an upward limit. Consider the case of a company with a capital of rupees five lakhs. Can it afford to pay twentyfive thousand rupees or anywhere near that amount? Therefore, I suggest the small sum of five thousand rupees. The hon. Finance Minister in his various speeches, has always said that there should be cer-

tain relationship between the amount suggested and the amount that is to be given. When you keep a figure of twentyfive thousand, the chances are that the contribution will be as near twentyfive thousand as possible. Therefore, I am suggesting the figure of five thousand so that the contribution may be as near five thousand as possible.

**SHRI LALCHAND HIRACHAND DOSHI:** My amendment is of a nature involving certain principle. The principle is that the present thought of the opposite side is to discourage managing agents and to encourage director-managed companies or managing director and like that. Therefore, in order to induce that, director-managed companies may be formed and the managing agency system should be discouraged. I suggested that these words be added after the words "public company" so that these little extra powers, if they are given only to director-managed companies, they will induce many of the managing agents to give up their rights and that will encourage more and more the formation of director-managed companies. Therefore, I am suggesting this.

**SHRI C. P. PARIKH:** I have my amendment No. 141 and that says:

"Surplus funds otherwise than in the approved investments as laid down under clauses (a) to (s) of section 27A of the Insurance Act, 1938, nor shall invest."

First of all, before discussing my amendment, I say with regard to Mr. Bhupesh Gupta, that investments by individual companies to political funds are not to be encouraged. We are also a people who believe in an ideology. Whatever political parties there are, we are willing to assist them, but so long as they do not believe in violence. It is the duty of every one to give up violence. You may shape any ideology, but establish it peacefully. Some openly advocate violence. That is the main difference between them and those who are con-

tributing to certain funds so that violence may be eradicated. Any ideology should be established peacefully, and not by violence. You may understand now. I will now come to my amendments.

First of all, the Finance Minister in this Bill has very wisely controlled investments. One is by Clause 372, in which it is decided that in the same group of companies, investments will be controlled and that is very material. He says that the investment should not exceed more than 10 per cent of the subscribed capital, in any other body corporate. There is a limitation that the total investments of a company shall not exceed 20 per cent of the subscribed capital. That is a certain restriction. I think, both these restrictions, which appear in clause 372, are very welcome and they were necessary in the case of interlocking of funds by directors. And I think, this power which is given under clause 372 to restrict the investment on the lines he has laid down, will go a long way in preventing interlocking of funds.

Coming to clause 293, first of all; it says, first of all, that a company shall not invest except with the consent of the general meeting. That is certain. So, the sale proceeds resulting from the acquisition of a concern will not be invested by the board of directors, unless with the consent of the general meeting. Therefore, when the concern gets surplus proceeds on account of the sale proceeds of an undertaking, they will be invested after getting a resolution of the general meeting. The powers of board of directors are taken away by this clause. I want to go further and say that there are other surpluses over and above the sale of undertakings which also should be controlled in such a manner in order that there is no interlocking and also clause 372 is not circumvented in other ways, because the interest may be not in the same group but the interest is created in such a way that interlocking will happen to the detriment of the shareholders.

[Shri C. P. Parikh.]

I think, Sir, when the shareholders are there, and when the power is given to the shareholders to pass in a general meeting the way in which the investment should be carried out, then, it is more the necessary that surplus fund and reserve fund, which have accumulated with many companies during the war, should also be regulated as regards their investment, in order that only the managing agents or those who are controlling the directorate do not directly or indirectly derive advantage to the detriment of the shareholders. As regards such investments, that is the main point which I want to elucidate. The Finance Minister has already accepted this principle as regards 1(c), acquisition of funds. There are very heavy surplus funds with many companies. They are either not invested or, if invested, invested according to what the board of directors like. Presently, there is no control over them. What I mean to suggest is, that such funds should be invested according to the approved investments which are laid down in the Insurance Act, where Government is acting as the trustee of the policy-holders of the life insurance companies. Sir, I plead that when Government are watchful of the interest of the policy-holders, shareholders likewise should be given an authority over the board of directors, as regards the investment of surplus funds. They will not invest the funds in a way which is detrimental to the interest of the shareholders. Sub-section (1) of clause 27A (1) of the Insurance Act, 1938, lays down:

"shares of any company on which dividends of not less than 4 per cent, including bonus, have been paid for the seven years immediately preceding or for at least seven out of the eight or nine years immediately preceding;"

That is a welcome restriction on these investments.

Further, Sir, Government have very well provided that the investment in

the country should be encouraged in the channels which Government desire. That is the last clause. It reads:

"(s) Such other investments as the Central Government may, by notification in the Official Gazette, declare to be approved investments for purposes of this section:

Therefore, it is clearly laid down that the Central Government have powers to notify what concerns and what investments will be approved investments. Similarly, I say, Sir, if surplus funds are to be invested by public limited companies, it is provided that the board of directors will invest only in such investments as are authorised, as are notified by the Central Government. If they want to invest in any other way, or in any other channel, the general meeting sanction should be necessary. Not that a special resolution is necessary; I say, Sir, only ordinary resolution should be necessary. It is all the more necessary because Government have, on page 362 of the Bill, given the general instructions for preparation of balance-sheet. It gives separately the list of investments. This list and the list of other investments should be attached to the balance-sheet. I can say that Government is very vigilant; it has gone a long way in controlling investment. But I want to mention that when the authority is given to the board of directors, there should be no restriction regarding certain investments which are notified by Government as approved investments. For other investments general meeting sanction should be necessary.

Sir, I am connected, indirectly or directly, with the investment of 100 out of 800 prosperous concerns in the country.

SHRI C. D. DESHMUKH: And director of only five concerns.

SHRI C. P. PARIKH: I refuse to be a director of any concern where I cannot effectively control its affairs,

or discharge my duty, which every director is supposed to discharge. If any person is capable of controlling 20 companies, he should do it, but I think, my capacity is limited, and I do not want to be a director of any company which I cannot control.

Now, Sir, there may be an argument that it is talking of idealism. Sir, an idealist can never prosper in his life. I have said this for nothing. I have pride that I have not been an idealist. I know, an idealist can never prosper. I have also enjoyed high positions in public life, not because of idealism, but due to practical working. Businessmen are always practical.

**SHRI B. C. GHOSE:** Sir, I want to know whether he, as an idealist, prospered or not?

**SHRI C. P. PARIKH:** So after leading a political life, one must learn from his past experience. I know, what is happening in the commercial and industrial community more than what the Finance Minister knows with regard to details, because he knows of only which is brought before him. But I think, the details which many shareholders know are hidden from the public. So, I say, Sir, in order that such things may not happen, and in order that the managing agency system may be above reproach, above rebuke, and command the respect of the people once more, I think, some such step should be adopted; it may be idealistic or it may be practical.

Sir, there are so many people in business and industry. Have they pointed out any loopholes just as they have asked for concessions. I think, Government must look into these matters. The greed that has crept into the business community has to be arrested and the powers which are given to the business community have to be arrested. I am making this remark only from one point of view. I also belong to the industrial community and I do not like the business community should be criticised adversely. Therefore, I want that the

restriction should be put in such a way that the business community is honoured and respected. I think it is a shame for me also that I belong to such community that invites such adverse criticisms. With that ideal, I ask my colleagues not to shield those people in industry and business, whose actions you do not approve. Organisations, big individuals, business magnates, are shielding their colleagues on that account. Indeed, it is a matter of shame for them. On their account, the community has come to disrepute. This Bill, which is now before us today, would never have come up if the industrial community had voluntarily put checks over them. Therefore, these restrictions appear in this Bill in this nature. Now, they are real. As a matter of fact, the community would have never dreamt of such restrictions; it would have dreamt them as idealism. I think, Sir, they have now become real and sealed by Government. Government have also put the industrial community on trial, and if it does not behave well even in the coming four years, Government will have to take stringent measures. With these words, I support the amendment I have moved.

**SHRI B. M. GUPTE:** My amendment is designed to check the evil of acceptance of short-term deposits by companies. In my speech on the first reading, I have already pointed out that this is a serious defect in the working of the companies, at least in my part of the country. The trouble is that short-term deposits are accepted and used for long-term purposes. I do not see why there should be any freedom for the companies to accept these deposits, because for their working capital, they can look to the bankers. The sub-clause (1) (d) of this clause recognises this fact, because temporary borrowing from bankers is excluded from that clause. I, therefore, submit that in view of this, there is no reason why short-term deposits should be accepted from the public. I do not want to prohibit them altogether. What I have said is that they should be taken only with the

[Shri B. M. Gupte.]

permission of the Registrar. If the Government is prepared to accept this principle, namely, the control of short-term deposits, then, I do not mind any other controlling authority named in place of the Registrar. With these words, I commend my amendment to the House.

SHRI B. C. GHOSE: Sir, I want a few minutes.....

MR. DEPUTY CHAIRMAN: The Finance Minister has got a Cabinet meeting. Let him speak.

SHRI B. C. GHOSE: Can he wait for some time? I want to say something on the amendments moved by my hon. friends Shri Bhupesh Gupta and Shri Kishen Chand, because let me frankly say, that we have misgivings in our minds about the contributions to be made by companies to charitable and public funds. These misgivings have been increased by the use of the words "charitable and other funds". We do not know what "other funds" mean. The misgivings have been further increased by my hon. friend Mr. Parikh's statements. The case which Mr. Bhupesh Gupta said was very apposite in the sense that apart from the question of settlement of the money or the money that was involved, the fact remains that certain contributions were made to a political party. I do not know what the Finance Minister was driving at when he asked as to what the amount involved. The amount involved was Rs. 9,65,000. The settlement was for an amount of Rs. 8,21,000, but that, I believe, is irrelevant. Whether 5 P.M. the settlement was for the whole amount or even for a fraction, the fact remains that a certain contribution was made to a political party. And we know, that companies, particularly managing agency firms, contribute substantial amounts to certain political parties. The question which I should like to ask the hon. Finance Minister to reply is, whether he considers it desirable that companies should be permitted to contribute funds to political parties in any case and under any circumstances. And if

he says 'Yes', then, does he not consider that it would be desirable that if any contribution is to be made to political parties, then it should be done with the concurrence of the general body of shareholders? I should like to have a proviso somewhere to the effect that if any contribution is made to political parties, then, it must be done with the knowledge and concurrence of the general body of shareholders. As the Finance Minister very well knows, if a Party does not hold out prospects of success, people do not contribute to its funds. And the other parties, which are not in such a happy position, find themselves in extremely great difficulties, particularly as elections, nowadays, are a very costly affair. And as my friend, Shri Kishen Chand, pointed out, the Government have got various sources of powers, and people might use them as levers to obtain funds for political parties, and that is certainly not good in a democracy. That is all I have to say. I should also like to support Shri Gupte's amendment about deposits which are a source of serious abuse sometimes, if they are for a short period. There is no reason why the companies should accept deposits for short periods. If they are for a very long period, there might be some justification.

MR. DEPUTY CHAIRMAN: The Finance Minister.

SHRI S. N. MAZUMDAR: Sir, I want to speak.

MR. DEPUTY CHAIRMAN: Your Leader has taken 35 minutes.

SHRI BHUPESH GUPTA: You can find some time, Sir.

MR. DEPUTY CHAIRMAN: There is no time.

SHRI S. N. MAZUMDAR: If the Finance Minister is to go to the Cabinet Meeting, Mr. Shah can later on reply. But this amendment stands in my name, and I have got the right to explain my point of view.

MR. DEPUTY CHAIRMAN: It stands in both the names. I have already called on the Finance Minister to speak.

SHRI S. N. MAZUMDAR: I strongly protest, Sir. This is absolutely unjustified.

MR. DEPUTY CHAIRMAN: You can protest. I have already called on the Finance Minister.

SHRI C. D. DESHMUKH: Sir, so far as Mr. Gupte's amendment is concerned, it does pose.....

SHRI BHUPESH GUPTA: In that case, we want to leave the House. Unless he is allowed to speak.....

MR. DEPUTY CHAIRMAN: I have called on the Finance Minister to speak.

SHRI S. N. MAZUMDAR: You have shut me out from speaking. So, I am going out of the House.

*(At this stage Shri S. N. Mazumdar and some other hon. Members left the House.)*

SHRI C. D. DESHMUKH: After the Banking Companies Act was passed, we were seized of the problem, so to speak. And if the hon. Members will refer—perhaps they may not remember—to the Banking Companies Act, they will find that there is a kind of saving clause which allows industrial concerns to take deposits, although the general definition is that any one who takes deposits on demand is a banking company; and as soon as it becomes a banking company, then all the laws, regulations and other provisions of the Banking Companies Act apply to it. At one time, we were thinking in terms of prohibiting this by this indirect way, that is to say, as soon as any one receives deposits payable on demand, then he becomes a banking company, whether he calls himself a bank or not. At that time, it was pointed out to us that there were many concerns which were built up

with the help of deposit funds, especially in Ahmedabad, where they had not been misused; and we were influenced by those considerations. That is why that saving clause was introduced. Now, since then, an abuse of this has come to notice in other parts of the country.

SHRI LALCHAND HIRACHAND DOSHI: On a point of information, Sir. Even loans from the banks are to be paid on demand. So, merely because it happens to be a loan on demand, it cannot be excluded, because the loan from the bank itself is on demand.

SHRI C. D. DESHMUKH: One could have made a distinction between deposits and loans from banks. It is not a question of drafting. It was not because of any drafting difficulty that we made this difference. One could distinguish a deposit from a loan, and what I am speaking of is, that deposits are not bank loans, and therefore, I say that it would be possible to find a form of words which might make a difference in regard to deposits and loans. Now, my information is that most of the deposits are received for six months. They really are not deposits on demand in the same way as the bank receives them. After considering this problem again, in view of the observations made by hon. Members, particularly from Maharashtra, in the Lok Sabha as well as here, I have come to the conclusion that the position will have to be watched very carefully.

What I propose to do is to use the power—provided that is included in the final Act—to call for information from the companies, and to institute a system under which periodical returns of deposits received and details in regard to those deposits are called from the companies. One could then study the situation, and if necessary, one might make an amendment. If we are dealing merely with deposits on demand, the proper place for the amendment will be the Banking Companies Act, and we shall have to deal

[Shri C. D. Deshmukh.]

with that problem there. If the examination of the statistics shows that, in any case, something is required which must find a place in this Act, then, we shall bring forward an amendment to that effect. In view of this proposal of ours, I hope that the hon. Member will not press his amendment. In other words, we undertake to study this matter far more carefully than has been done in the past.

Now, in regard to the other matters, I will deal with Shri Parikh's amendment first. This amounts to a kind of counsel of perfection. I ask him whether he was a director, because in that case, he would possibly be aware of the importance of a certain amount of discretion in the matter of directors, who have the interests of their company at heart. I am including him among the good directors. And if that is so, I was wondering whether he himself at any time felt that there ought to be a certain amount of freedom available to the directors to dispose of the surplus of a company in the manner most advantageous to the company. I myself must bow both to his evangelical fervour and to his superior knowledge of the industrial world, and nevertheless, I feel that it might be putting unnecessary restrictions on the directors to say that every time they shall have to employ the surplus resources of the company, perhaps then, they must wait for a meeting of the general body. It seems to me that the company itself will probably be put to a loss. Secondly, the approved securities are all right for insurance companies; there the problem is investment of life fund and guarding the interests of policyholders. In the case of a company, it is a matter of helping also in the expansion of industry. And I doubt whether preference or other share being paid dividend for a number of years is the best way in heading towards the expansion of industry. I should expect a certain amount of dash and enterprise on the part of businessmen, and therefore, I think it should be open to the directors

to find out fresh fields, fresh woods and pastures new, for the employment of their funds. And I think that in that way only, they will be able to assist in the industrial expansion of the country. Therefore, one must not allow oneself to be over-influenced, so to speak, by the consideration of what every director can do. One has to strike a mean somewhere and I think—I repeat—it is going too far to fetter the directors, that apart from certain lifeless securities and investments they will not be able to make any investments except with the consent of the general body in an annual general meeting.

As regards Mr. Doshi's amendment, I do not think there is very much connection between the desirability of encouraging other forms of management and this particular clause. I have said as a general proposition, that the powers of directors should be reasonable, but I have not said that one should discriminate between directors of companies which have no managing agents and directors of companies which have managing agents.

SHRI B. C. GHOSE: It is Mr. Doshi's amendment, not mine.

SHRI C. D. DESHMUKH: Yes, it is Mr. Doshi's. The 'dhosh' is not mine. If the hon. member misheard me, the 'dhosh' about 'Ghose' is not mine.

Sir, there is no particular relevancy between this clause and this kind of backdoor way of pushing forward the claim that somehow the director-managed companies ought to be given some additional powers. That general issue has already been discussed extensively elsewhere, and therefore, I am not able to accept that amendment, i.e., 137.

I now come to Mr. Kishen Chand's amendment. Actually, the range between 25,000 and the possible maximum figure is very large. It is a matter of judgment. You can take 1,000 and then go on to the 5 per cent.



of the highest possible net profits, which will be quite large. As I pointed out in the course of my speech on this clause elsewhere, there is a general limit to this. Under section 15B of the Income-tax Act, it is Rs. 1 lakh. In other words, most companies will not be able to go, whatever the total of 5 per cent. of net profit, beyond Rs. 1 lakh, and therefore, the range is between Rs. 25,000 and Rs. 1 lakh, which is a reasonable range so far as the ceiling is concerned. Why should anyone assume that every company, no matter how small, will give away more than Rs. 25,000? In the case of many companies, to give away Rs. 25,000 will amount to giving away not 5 per cent, but the whole of the year's profits. If the hon. member takes Rs. 25,000 as 5 per cent, he will find what the capital of the company ought to be—5 per cent of the profits or one-twentieth of the profits. Therefore, I say, there is no danger of small companies wanting to give away such figure as Rs. 25,000 and therefore, there is no particular reason why we should alter these figures. That is one point.

The other point is that Mr. Kishen Chand wants to substitute the words "to public charitable funds." If you read the clause with Mr. Kishen Chand's amendment, it will read like this:

"contribute, after the commencement of this Act, to public charitable funds not directly relating to the business of the company....."

Does it make any particular sense? What does it mean, "charitable funds and other funds not directly relating to the business of the company"?

SHRI V. K. DHAGE (Hyderabad): "Other funds" ought to be eliminated.

SHRI C. D. DESHMUKH: The words are not to be eliminated.

SHRI KISHEN CHAND: May I explain? The wording may be defective but the idea is clear.

SHRI C. D. DESHMUKH: I say this makes no sense if you add the words

"to public charitable funds not directly relating to the business of the company". When we say "other funds", these words "not directly relating to the business of the company" have some meaning. In other words, the words "other funds" are important. If you want to restrict the powers of directors, it is important that there should be a general provision of this kind. The word "charitable" has been specifically mentioned. In charitable matter, this is the limit of your authority. If you are considering any other matter and if that matter has no connection with the business of the company, then we have some restrictions here. If you make this substitution, you will lose the most essential words in this clause. It is the danger of a double or treble negative. This clause does not put any restriction on the powers of the company. You are here dealing with another issue and that is about the distribution of power or delegation of powers. No, it is not delegated powers but powers conferred by the Law. This lays down the spheres of authority of directors and the general sphere of authority of the company. There is no amendment which says, apart from the amendment of the member who has gone out in regard to something associated with Ministers and so on and so forth, that the company shall not give anything to political parties, or private purposes, or whatever it may be. So far as the company's powers are concerned, they are what they will be, according to the Articles of Association or the Memorandum. There is no restriction on them, and therefore, we are only concerned with what the directors' powers should be. So far, there have been no restrictions on directors' powers. The powers of directors were co-extensive with the power of the company, but what we are doing today is, for the first time, to put a restriction on the powers of directors, not for the transaction of business, not with any measure connected with the welfare of employees and so on. Where it is a matter not directly connected with the conduct of affairs of the company, then, we say to the directors, "You

[Shri C. D. Deshmukh.]  
shall be restricted to this, but if you want to go beyond this, you have to go before a general meeting". At present, the directors exercise unlimited powers. They do what they want to do and then that matter goes before the annual general meeting for approval and there, it is always open to a shareholder to pick out any of their actions and raise an issue. I am quite sure that with the more stringent rules and regulations and the provisions that we shall have in this new enactment, the shareholders will be enabled to be far more critical of what the directors are doing in this matter. Therefore, against this background, it really does not very much matter what the directors do within those, I consider, narrow limits of 25,000 rupees, or 5 per cent.

Now, I have been asked whether I am in favour of companies giving any money to political parties. I think that question is irrelevant. We are not dealing with any amendments here which say that a company shall not give to this or that. Although it is irrelevant, I should like to answer it. It is very well known that, when the country was struggling for independence, funds were given by our businessmen and industrialists to the political party which was working for the independence of the country. It is all very well for hon. Member to oppose this, because they happen to be on the other side of the fence.

At the same time they were all glad when our businessmen and industrialists showed.....

SHRI B. C. GHOSE: Conditions have changed.

SHRI C. D. DESHMUKH: My answer relates to the theory of it. I was asked whether I am in favour of any company giving money to political parties. My answer is that it all depends on circumstances, and the retort that conditions have changed now is not right. They have changed in

the sense that democracy is prospering in the country and other parties have also come to occupy this stage. Now, I still think—I am sorry that the Communist representatives are not here. But I can well understand the feeling of a company, belonging to the private sector as it does, of apprehension against coming into power of a certain party—I mean, if that party's open programme advocates the entire destruction or liquidation of the private sector. Now, they may be genuine believers in a certain state of affairs, as they no doubt are. They feel confident that they have a contribution yet to make to the economic development of the country, and their point of view has been approved by the Planning Commission. Now, subject to certain limits, it may be open to them to say "We shall encourage this or that." I was asked another question, whether it is not a fact that they have contributed to a particular party. Now, I am not in politics to that extent to be able to answer that. But my information is that, sometimes, companies try to insure, so to speak, and try to give to all parties. There have been instances which have come to my notice, where they have given by right hand to one party, by the left to another party, and from behind to some other party.

SHRI B. C. GHOSE: What is the proportion?

SHRI C. D. DESHMUKH: I cannot throw any light on this. All I can say is, I cannot find it in my heart to blame a company for trying to safeguard its own interest in a manner. It is not like bribing a party, because we are putting a limit so far as directors are concerned, and there is no amendment by which we are trying to put fetters on the companies. Now, we come to certain cases. I don't understand the relevance. In spite of the fact that we spent so much time on it. I don't understand the relevance of it. Are we considering the purity of public life, or are we considering the interests of a company? That is why I ask a question.

Supposing the company had a claim of Rs. 5 lakhs and the West Bengal Government decreed a payment of Rs. 8 lakhs from the public revenues, in that case, one might say that they are giving a bribe—let us use hard words—to the West Bengal Government in order to get this high sum from the public treasury, in which case, one should have something to say or feel about it; but even so, the right thing would be to take the Bengal Government to task. So far as the interests of the company are concerned, they made a very good bargain. Instead of receiving Rs. 5 lakhs, if they received Rs. 8 lakhs and gave back Rs. 70,000,—it may be a very immoral kind of transaction—but so far as the interests of the company are concerned, they have not been prejudiced. Therefore, what we have to put before us is the interest of the company—not the purity of public life. Certainly, purity of public life is a very important aim and one ought to take proper steps in the proper place for it. Put a provision like this in the Representation of Peoples Act, or amend it as you like, when it comes before you. You certainly can say that “Any candidate belonging to any party which has.....”—I am not suggesting this—it may be for you to suggest, because that is the proper place to put forward a provision like that. So far as companies are concerned, we must try and see where the interest of the company lies and the main fact is, we tell the director “So far you have been enjoying complete freedom in regard to the grant of moneys in charities or for other purposes” and for other purposes need not be political. Why need one be overwhelmed by this feeling merely because the election is in the offing, that it is all going to be for political purposes? After all the largest amount of money was given, if I may say so, to commemorate the memory of the Father of the Nation. It was not given for political purposes in that sense and maybe, in this more enlightened age, enlightened industrialists may wish to encourage art or culture or any other matters and they

may wish to give money. All that we say is, let it be only Rs. 25,000 or let it be 5 per cent. of the net profits. That is not such a very unreasonable provision to make and therefore I think none of these amendments should be accepted.

MR. DEPUTY CHAIRMAN: The question is:

74. “That at page 150, lines 25-26, for the words ‘to charitable and other funds’ the words ‘to public charitable funds’ be substituted.”

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

75. “That at page 150, lines 28-29, for the word ‘twenty-five’, the word ‘five’ be substituted.”

The motion was negatived.

SHRI LALCHAND HIRACHAND DOSHI: Sir, I beg to withdraw my amendments Nos. 137 to 140.

\*Amendments Nos. 137 to 140 were, by leave, withdrawn.

SHRI C. P. PARIKH: Sir, I beg to withdraw amendment No. 141.

†Amendment No. 141 was, by leave, withdrawn.

SHRI B. M. GUPTE: Sir, I beg to withdraw amendment No. 142.

†Amendment No. 142 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

234. “That at page 150,—

(i) in lines 28-29, for the words “twenty-five thousand rupees”, the words “three thousand rupees” be substituted; and

(ii) in line 29, for the words ‘five per cent.’ the words ‘one per cent.’ be substituted.”

The motion was negatived.

\*For text of amendments, vide col. 4675 *supra*.

† For text of amendments, vide col. 4676 *supra*.

MR. DEPUTY CHAIRMAN: The question is:

235. "That at page 150, after line 32, the following proviso be inserted, namely:—

'Provided that no such contribution is to be made to an institution with which any Minister and any political party or its leader is connected, unless it is passed unanimously in a general meeting.' "

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 293 stand part of the Bill."

The motion was adopted.

Clause 293 was added to the Bill.

Clause 294 was added to the Bill.

Clause 295 (*Loans to directors, etc.*)

SHRI SHRIYANS PRASAD JAIN: Sir, I move:

80. "That at page 152, after line 13, the following be inserted, namely:

'(1A) For the purpose of subsection (1), the Central Government shall frame rules illustrating and explaining the circumstances under which the Board of directors, managing director, managing agent, secretaries and treasurers or manager of a body corporate will be deemed to be accustomed to act in accordance with the directions or instructions of the Board of any director or directors of the lending company.' "

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

SHRI SHRIYANS PRASAD JAIN. Sir, I have given notice of an amendment to clause 303 of a similar nature. I will speak on both the amendments

together as they are identical. Sir, I am not opposing this clause at all, but I want some clarification as to what will be the meaning of the words "accustomed to act in accordance with the directions or instructions of the Board of any director or directors". Supposing this clause is violated, and it is found later on that a particular person or the board was acting under the instruction of somebody else, then, there are some penal clauses which will apply, and they are very serious. For instance, take clause 293, under which loans are given, and if later it is found out that the loans have been given through the influence of somebody by a particular director of the board, in spite of the fact that the board as a whole may not be knowing that a particular director was under the influence of somebody, the penal clauses will apply to them. In spite of the above fact, it will be constituted that the board of directors are under the instructions of somebody else and the penal clause which is mentioned will be applicable to all members of the board. Therefore, it will not be fair to apply those penal clauses in those cases. What I suggest is that unless a company is declared as acting under the instruction of somebody else, irrespective of whatever may be found out afterwards, in which case all those penal clauses may not be applied or alternatively, in the rules or regulations, it may be mentioned in what circumstances and in what manner it will be deemed as acting under the instruction of somebody else so that the provision may be clear and no person may suffer for want of clarification. Take the clause 303, Take clause 303, where you want a register to be maintained containing the particulars about the directors, managing agents etc. A particular secretary or a particular official of the company may not be knowing that the board of directors or a particular member on the board was working under the instructions or the directions of somebody else, but even then that particular official is liable to be punished. He may

be fined, for he is an employee of the company. He is, after all, an innocent man and he has probably no knowledge of the internal workings of the board, to know whether somebody on the board is under the directions or influence of somebody else, or what outside influences are exerted on the board. In spite of his ignorance, he will be penalised. This, I submit, would be unfair. Therefore, I suggest that Government should, in the rules that they will be framing, define the conditions in which a particular person or a member of the board could be considered as acting according to the directions of somebody else.

SHRI M. C. SHAH: Any two bodies acting may know whether one is acting under the instructions of some one else or not. Anyway, what we propose is to note this suggestion and as we are going to issue a booklet giving instructions on the points. In that guide, we shall try to illustrate certain cases. That much can be done. I am not able to accept the amendment.

SHRI SHRIYANS PRASAD JAIN: Sir, I request the House to give me leave to withdraw my amendment.

\*Amendment No. 80 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 295 stand part of the Bill."

The motion was adopted.

Clause 295 was added to the Bill.

Clauses 296 to 302 were added to the Bill

Clause 303 (*Register of directors, managing agents, secretaries and treasurers, etc.*)

SHRI B. M. GUPTE: Sir, I move:

, 238. "That at page 159, after line 5, the following be inserted, namely:—

\*For text of amendment, *vide* col. 4711 *supra*.

'(1A) Each director, managing director, managing agent, manager, secretary, and each director or partner of the body corporate or the firm as the case may be of the managing agent and the secretaries and treasurers of every company shall notify to the company every change that may occur with respect to himself, in the particulars specified in the register, within fourteen days of the happening of the change.'

239. "That at page 159, line 18, for the words and figures 'sub-section (1) or (2)' the words and figures 'sub-section (1), (1A) or (2)' be substituted."

MR. DEPUTY CHAIRMAN: Clause 303 and the amendments are now open for discussion.

SHRI B. M. GUPTE: Mr. Deputy Chairman, this clause makes the company responsible to intimate certain changes in the register to the Government within a certain period. But the corresponding responsibility is not being placed upon the directors or the managing agent or the managing director. There may be certain changes, as for instance, the particulars about taking over of other directorships and things like that. Unless these are communicated by the directors to the company, the company cannot in its turn communicate them to the Government. Therefore, I have suggested that this corresponding responsibility should be placed upon the director or the managing director or managing agent, to notify the changes to the company first.

The validity of my amendment is borne out by the Bhabha Committee also, who on page 81 of their Report have said exactly the same thing, namely, that the register cannot be maintained by the company unless the corresponding responsibility is placed

[Shri B. M. Gupte.]  
upon the director, the managing director, managing agent etc. etc. My amendment is exactly on the lines suggested by the Bhabha Committee and therefore, I hope the House will be pleased to accept it.

SHRI M. C. SHAH: I am unable to accept the amendment, for we have made the necessary provision in clause 305 and so the amendment is not necessary.

SHRI B. M. GUPTE: Sir, I request the House to give me leave to withdraw my amendments.

\*Amendments Nos. 238 and 239 were, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 303 stand part of the Bill."

The motion was adopted.

Clause 303 was added to the Bill.

Clauses 304 to 308 were added to the Bill.

*Clause 309 (Remuneration of directors)*

SHRI B. C. GHOSE: Sir, before we come to clause 309, I would like to submit one thing and it is this. I would like to suggest that we stop today after clause 323, before we come to the question of managing agents, even if we reach that stage before it is six o'clock. Otherwise I will have to speak unnecessarily to spend the time on other clauses and if that is your intention. I shall do so.

MR. DEPUTY CHAIRMAN: I am not shutting you out.

SHRI B. C. GHOSE: No, I do not suggest that I am being shut out. I

\* For text of amendments, vide cols. 4713-4714 *supra*.

am only suggesting that we may stop today, before we come to the clause dealing with managing agents.

MR. DEPUTY CHAIRMAN: Why?

SHRI B. C. GHOSE: I suggest that we stop with clause 323 even it is before six o'clock.

MR. DEPUTY CHAIRMAN: All right, you can make your suggestion when we come to clause 323.

SHRI B. C. GHOSE: Otherwise, you will be compelling me to speak on clause 309.

MR. DEPUTY CHAIRMAN: You need not bother about that, because Mr. Kishen Chand is going to speak on clause 309. There are three amendments to this clause given notice of by Shri Gupta and Shri Mazumdar, but they are not here and so the amendments are not moved. But even if they are not moved, if anyone wants to speak on the clause, he may do so.

SHRI KISHEN CHAND: Mr. Deputy Chairman, Sir.....

MR. DEPUTY CHAIRMAN: But you wanted to speak on clause 313?

SHRI KISHEN CHAND: Yes, Sir. I will speak on that clause also. Normally I would have got a chance to speak on clause 309 because I thought the amendments given notice of to this clause would be moved. But they are not. Anyway, this is a very important clause and we must take the principle of the Bill into consideration before we arrive at any result. Here certain amendments were suggested which would have the effect of restricting the remunerations paid to the directors and others. But on account of the absence of the hon. Members who were to move the amendments, the amendments were not moved. But all the same, we may consider the spirit of the amendments. Here, I

submit, there are two or three types of payments made to the directors. Of course, there is that overall limit of 11 per cent. That is the overall limit. 11 per cent., there are three ways of But in spite of that overall limit of payments to the director. There is first of all, the sitting fee. That sitting fee is not counted in this expenditure of 11 per cent. So that means that the expenditure on sitting fee is besides this 11 per cent.

There is absolutely no restriction so far as the payment of a sitting fee is concerned and I am really surprised that the hon. Finance Minister, when he had put in so many restrictions, had left this open and not imposed any control on the sitting fee. The normal practice in our country has been to pay up to Rs. 250 for a sitting. Of course, there are certain companies which pay Rs. 100 plus travelling expenses. If expenses on account of air passages from distant places are to be paid, the remuneration under this heading would become pretty high. I should like to know from the hon. Minister as to why no restriction has been placed on the sitting fee, particularly when this fee is not counted towards the total expenses covered by the 11 per cent of the net profits.

Then, Sir, it is said that the director may receive remuneration either by way of a monthly payment or by way of a fee for each meeting attended or partly by the one way, and partly by the other. Now, in addition to the sitting fee, the director can receive a monthly remuneration and there is no limit to this kind of payment. In a big concern where the profits may be a crore of rupees—hon. Members on that side have pointed out that there are certain very big concerns which make profits in excess of five lakhs of rupees and their number is nearly 800—the amount received by the directors may be very much more. When we have such large number of companies making profits in excess of five lakhs of rupees, a director in one of the concerns may get a percentage of the

profit besides his monthly remuneration. The figure fixed in such a case is 5 per cent. Now, 5 per cent. of even ten lakhs of rupees would mean Rs. 50,000 and if the profit is thirty or forty lakhs of rupees, then 5 per cent may run to lakhs of rupees. Is it fair, in such circumstances, to pay the director up to 5 per cent. of the net profits? The amendment, notice of which was given, wanted that figure to be reduced to 3 per cent. May I request the hon. Minister to permit me to move that amendment?

SHRI V. K. DHAGE: Why the Minister? You ask for the leave of the House.

SHRI KISHEN CHAND: May I request you, Sir, and through you the Finance Minister, to allow me to move this amendment? Do you permit me, Sir?

MR. DEPUTY CHAIRMAN: No, not now.

SHRI KISHEN CHAND: I have tried to show that in case of big companies even this figure of 5 per cent. will be very excessive. If there are more than one, then it can go up to 10 per cent. Even if there are four or five directors and they share this 10 per cent. amongst themselves, each can get a very big amount. It is against the very spirit of this Bill that we should permit large amounts being paid to directors. I humbly request the hon. Minister to consider this and reduce the figure from five to three.

SHRI M. C. SHAH: There is a kind of confusion of thought so far as my friend, Mr. Kishen Chand, is concerned. We have recently discussed clause 198.

SHRI KISHEN CHAND: That includes everything, managing agent, secretaries and treasurers, and so on.

SHRI M. C. SHAH: Our scheme is—and the desire of the Members is—that we should bring to an end this system of managing agents. If we want to end this system, we must

[Shri M. C. Shah.]

encourage some other alternative method. The alternate methods are those propounded in the Bill. It has been said that, instead of managing agents, we may have secretaries and treasurers or managing directors or paid directors who may look after the management of the company. To enable us achieve this object, it is necessary that we must pay the other people enough and that is why 5 per cent. has been fixed.

SHRI KISHEN CHAND: I want it to be 3 per cent.

SHRI M. C. SHAH: I was going to say that 3 per cent. will not give enough of an incentive. Supposing there is no managing agent and only a managing director has to manage the company, then I think, 5 per cent. is a very reasonable figure. If there are two managing directors, then the figure becomes 10 per cent. If there is to be a managing agent as well as a managing director, then the whole thing comes within the purview of the 11 per cent. limitation. If there is to be a monthly remuneration paid to the director, then too it will come within the scope of clause 198. So, 5 per cent. is not an unreasonable figure, if we want the institution of managing directorship to come up and manage the companies. We have, therefore, advisedly put 5 per cent. as the remuneration to be paid to the managing director in order to encourage that form of management to come up as early as possible and replace the existing system of managing agency.

SHRI KISHEN CHAND: The hon. Minister has not replied to my point about the sitting fee. It is not included in the 11 per cent.

SHRI M. C. SHAH: Supposing there is monthly paid director or managing director, he will also get the sitting fees. We have not included the sitting fees in clause 198, because we know that there will be few meetings and the directors should be given some sitting fees for attending those few

meetings. Ordinarily, in the Articles of Association, the fees to be paid to the directors on account of sitting fees, etc., would have been fixed; if the fees are high, then the shareholders will take note of that fact and will do what they think is best in the interests of the company.

SHRI KISHEN CHAND: It is said that it will be paid partly by one way and partly by the other.

MR. DEPUTY CHAIRMAN: Mr. Kishen Chand, there cannot be any endless discussion of this type.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 309 stand part of the Bill."

The motion was adopted.

Clause 309 was added to the Bill.

Clauses 310 to 312 were added to the Bill.

Clause 313 (*Appointment and term of office of alternate directors*).

SHRI M. C. SHAH: There is no amendment, Sir.

MR. DEPUTY CHAIRMAN: But he wants to speak. We must finish clause 324. Let us stop at clause 324.

SHRI KISHEN CHAND: I will take two or three minutes. Clause 313 deals with the appointment and term of office of alternate directors. The hon. Minister referred to this clause when I was speaking on another clause. This clause reads as follows:

"The Board of directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint an alternate director to act for a director \*\*\*\*\*during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held."

It only relates to absence from the State. You must take a concrete



example. Supposing a company is registered and holds its meetings in the State of Bombay and appoints a director who does not belong to Bombay. He is always absent from Bombay and the absence will be in excess of three months. Could you appoint a director in his place? That is question number one.

No. 2, he says that a director may be absent from the State; he may be only in the next State, in Saurashtra, in Madhya Bharat, or anywhere else. He does not say, 'going out of India'. So, if that loophole is left, every company will have in its Articles of Association provision for alternate directors and with that provision, appoint somebody from some other State as a director; because he is outside the State, the alternate director will come in, and when the alternate director comes in, he can act for any period. Now, if you read sub-clause (2), this is what it says: "An alternate director appointed under sub-section (1) shall vacate office, if and when the original director returns to the State in which meetings of the Board are ordinarily held." So if he does not return to the State in which the meetings are held, the alternate director can continue as long as the original director remains a director. So, I am trying to show that you have restricted the directorships to twenty. You do not want one person to hold more than twenty directorships and you keep this clause of alternate directors. By keeping this clause of alternate directors you are opening an indirect way of getting more than twenty directorships. Therefore my contention is: What is the necessity of appointing alternate directors. Normally, in companies there are seven or eight directors and it does not frequently happen as a genuine case that several directors go out of India. Even if they go to a neighbouring State, they can come back. They can come and attend the meeting. Why do you want an alternate director if the man goes only to a neighbouring State? You can change the words "the State" and

substitute the word "India", when this part will read as "during his absence for a period of not less than three months outside India". Then, there will be some sense in it. If you say that he goes outside India there is reasonable justification. After all, he has gone out of India and he cannot come and attend the meetings. When out of the normal number of directors, even 50 per cent directors belong to another State, they normally come to attend the meeting as to and fro fare is paid to them and sitting fee is paid to them. I do not see any reason for appointing an alternate director, when the original director goes out of the State for a period of three months, because, as I have pointed out, it is likely to be abused. Either this change should be made, or this whole clause should be omitted. We should not have any alternate directors. Well, if there is a casual vacancy, there is a regular provision in this Bill for filling a casual vacancy. Why do we want an alternate director, when there is specially the chance of abuse.

SHRI H. P. SAKSENA: If the majority of directors go out at one and the same time, how are the meetings of the directors going to be held? If they are in India, all the directors can be called.

SHRI KISHEN CHAND: I have said there are two alternatives. Either you have it 'outside India'; then there is reason in keeping an alternate director. But if he is in a neighbouring State, there is no necessity for an alternate director. Now, what is the difference between Delhi and Punjab? A director of a company registered in Delhi goes to Punjab, goes to Hissar, then again he comes here.

SHRI SHRIYANS PRASAD JAIN: Now regarding the appointment of alternate directors, is it only the board of directors or can the directors appoint one in place of the original director?

MR. DEPUTY CHAIRMAN: It is the board of directors; it is quite clear.

**SHRI M. C. SHAH:** It must be by a resolution passed by the company in general meeting and the appointment must be by the board of directors.

**SHRI SHRIYANS PRASAD JAIN:** Suppose there is a provision in a particular company today that a person can appoint an alternate director in his place, will that provision be nullified by virtue of this clause.

**SHRI M. C. SHAH:** As a matter of fact, if the articles so provide, or there is a resolution passed by the company in general meeting, then and then only, an alternate director can be appointed. Now he says that because of this alternate directors, there will be many more directorships. He will be in twenty and if there be an alternate director in his place he will be prohibited to act; as long as the alternate director acts, he does not act as a director. Only when he goes from the State for more than the prescribed period, the alternate director is appointed and acts in his place. So I do not understand how that twenty directorships rule is being evaded. The twenty directorships rule means that that person will act as director in twenty companies. Now when an alternate director comes in, then that director is not acting as the director as long as the alternate director is acting there.

**SHRI B. C. GHOSE:** The point was this that a man who has already twenty directorships wants to act as alternate director. He gets a dummy as a director and then sends him to another State so that he can function as an alternate director, so that he can function in more than twenty companies as director.

**SHRI M. C. SHAH:** The twenty limit is there. He will not be in a position to act as long as that alternate director is there. If he is already appointed in twenty companies, he cannot be appointed to another twentieth company, that is, his directorship of those twenty companies will stand. Now, because he is out of the State, if the articles say.....

**SHRI B. C. GHOSE:** He is not out of the State.

**SHRI M. C. SHAH:** The director is out of the State.

**SHRI B. C. GHOSE:** The other chap who is a bogus director and he .....

**SHRI M. C. SHAH:** The bogus directors are here.

**SHRI B. C. GHOSE:** That is a reflection.

**SHRI M. C. SHAH:** The alternate directors also cannot be in more than twenty; he cannot have alternate directorships in more than twenty and those directors, who have alternate directors also, cannot act in another twentieth company so long as the alternate director is acting in his place. The appointment of alternate director is just for the convenience of the board meeting. If a director is staying outside a State, then an alternate director is appointed, if there is a resolution to that effect or if it is so provided in the articles. There are these safeguards. Therefore, I do not think the fears expressed by my friend Mr. Kishen Chand are genuine; I think they are misplaced.

**MR. DEPUTY CHAIRMAN:** The question is:

"That clause 313 stand part of the Bill."

The motion was adopted.

Clause 313 was added to the Bill.

Clauses 314 to 323 were added to the Bill.

**MR. DEPUTY CHAIRMAN:** The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at fifty-six minutes past five of the clock till eleven of the clock on Tuesday, the 27th September 1955.