

[Shri M. C. Shah.]

relate only to the details of some of its provisions.

There is, however, one particular clause to which I should like to draw attention in this connection. Hon. Members will remember that clause 575 of the Bill containing a saving provision for companies in which Government has a predominant interest. We have given some further thought to this provision in the light of recent discussions on the appropriate form of organisation for Government undertakings and the nature of control to be exercised by Parliament over them. It is in our minds to amplify this clause, and to replace it by a short chapter in which we shall set out those provisions of the Bill, which will not apply to such companies or will apply only with such modifications in the relevant provisions as may be prescribed. As soon as a formal decision in the matter has been taken, we shall place our views before the Select Committee. We considered that this was a better method of dealing with this subject than to rely on the power to issue notifications from time to time conferred on the Central Government under the terms of clause 575, as drafted at present and I feel sure that the members of the Select Committee will duly approve of this line of action.

Sir, I now move.

MR. DEPUTY CHAIRMAN: Motion moved:

"That this Council concurs in the recommendation of the House of the People that the Council do join in the Joint Committee of the Houses on the Bill to consolidate and amend the law relating to companies and certain other associations and resolves that the following Members of the Council of States be nominated to serve on the said Joint Committee:—

1. Dr. P. Subbarayan
2. Shri Shriyans Prasad Jain
3. Shri S. P. Dave
4. Dr. R. P. Dube

5. Shri B. K. P. Sinha
6. Dr. N. Dutt
7. Shri R. S. Doogar
8. Shri J. R. Kapoor
9. Shri S. C. Karayalar
10. Shri Amolakh Chand
11. Shri M. C. Shah
12. Shri V. K. Dhage
13. Prof. G. Ranga
14. Shri S. Banerjee
15. Shri B. C. Ghose, and
16. Dr. P. V. Kane."

(Shri Kishen Chand rose to speak.)

MR. DEPUTY CHAIRMAN: Just a minute. Before I call upon Mr. Kishen Chand to speak, there has been an omission in the items of programme. A Statement had to be laid on the Table of the House by Mrs. Lakshmi Menon. I call upon her to lay the Statement on the Table.

#### PAPER LAID ON THE TABLE

##### AGREEMENT BETWEEN INDIA AND CHINA ON TRADE AND INTERCOURSE

THE PARLIAMENTARY SECRETARY TO THE PRIME MINISTER (SHRIMATI LAKSHMI MENON): Sir, I beg to lay on the Table a copy of the Agreement between the Republic of India and the People's Republic of China on Trade and Intercourse between Tibet Region of China and India. [See Appendix VII, Annexure No. 310.]

#### THE COMPANIES BILL, 1953— *continued*

MR. DEPUTY CHAIRMAN: Yes, Mr. Kishen Chand.

SHRI KISHEN CHAND (Hyderabad): Mr. Deputy Chairman, we are considering a very important Bill dealing with the industrialisation of our country. And when this Bill is referred to a Select Committee, the

discussion here should be a sort of recommendation to the Select Committee to consider the various viewpoints and to rectify the shortcomings in this Bill.

Sir, it is a well-known and recognised principle that for industrialisation of a country it is the joint stock companies that will have to bear the principal burden. Individual ownership and individual running of an industrial concern are things of the past, because the unit of production is so large, and the capital requirements of an industry are so big, that it is not possible for individuals to set up factories and industries. And if you look to the foreign countries, you find the general pattern there to be of joint stock companies. This new legislation is coming after nearly 30 years, and therefore we must consider that the provisions should be such that they may last for at least another 20 years.

11 A.M.

The first and the most important thing in a company is its share capital, and it is ultimately the shareholder who should control and govern the management of any company. With regard to the shareholder, Sir, every company has got two or three varieties of shares. One is the ordinary share, the other is the preference share and the third is the deferred share. At the outset, Sir, I may say that I believe that there should be only one kind of shares. They should be only ordinary shares. And I will recommend to the Select Committee to consider this question very carefully, and I shall point out in a few words here as to why I do not want the preference shares or the deferred shares. I will try to give the reasons for that.....(Interruption.) As I was saying, Sir, I think a company should have only ordinary shares. The poor investing public does not know the intricacies of law, and in the

past, the promoters of any company issued these varieties of shares in order to safeguard their own interests at the expense of the ordinary shareholder. You will ask me, Sir, as to how this was manœuvred. The preference shareholders did not have any voice in the management of the company, except in so far as it affected their rights to interest and arrears of interest. I submit, Sir, that the promoters of the company who were holding a large number of the ordinary shares, got this capital under preference shares from the investing public, utilised that fund for the promotion and the running of their company, and paid only a fixed and limited amount to the preference shareholders. The preference shareholders did not have any voice in the management of the company. Similarly, Sir, there used to be deferred shares. I am glad that this law has done away with deferred shares. And then, Sir, there used to be debentures. I particularly draw the attention of the hon. Members to the Tata Hydro and Power Electric Supply Company. They had a very big debenture capital. The idea was "keep the share capital to a small amount, borrow large amounts of money from the market, do business on it, and out of the profits clear away the debentures, and then the whole company will become the property of the ordinary shareholders." I feel that if we want really the full development and industrialisation of our country, then it is the small investor who has got to be invited. We want a capital structure in such a manner that the shares of the companies are distributed amongst the largest number of people; we do not want a few people possessing nearly 60 to 70 per cent. of the share capital and dominating the company. It is a well-known fact that companies are transferred from one party to the other by acquiring 51 per cent. interest in the company. I believe that the entire corruption in the joint stock companies is due to the fact that a few people get a dominating

[Shri Kishen Chand.]

voice in the management of the companies by holding 51 per cent. shares. I would subsequently suggest certain changes in the voting rights so that a group of people may not be able to dominate the management of any company. Sir, I was pointing out that the existence of the preference shares is unfair to the investing public, because it utilises their funds without giving them a voice in the management of the company. I do not want any preference shareholders. If there is only one variety of shares, if the company is prosperous or it does not prosper, all will be equal gainers or equal losers. When there are preference shares, the interest of the preference shares is limited. It was all right in the days of the past when the investment was mostly done by certain charitable institutions or institutional investors as they were called. But now, these institutional investors invest their funds either in Government securities or Government promissory notes. We want the whole of the shares to be subscribed by the public, and there should be no difference between preference shares and ordinary shares. Further, in order to gain control of a company, there is a system of what is called a holding company or interlocking of companies. A company has got certain reserve funds or uninvested capital. They float another company, take 51 per cent. shares in the new company in the name of the existing company and allow the public to subscribe 49 per cent. of the share capital. The result is that the general public subscribes 49 per cent. of the capital but has no control in the management of the new venture. I think that 90 per cent. of the evils of joint stock companies is due to the holding companies. A few groups or a few families control all the big industries, and by this method of holding back companies, they go on extending their net. In other countries there are laws against cartels and

grouping of companies. It is a well-known fact that before the Second World War in Japan there were hardly 100 people controlling 60 per cent. of the entire industrial output of Japan. In America also, in spite of the Cartel Law, there are a few families controlling a large part of the industrial progress of that country. We do not want our industrial progress to be modelled on those lines. We want it to be as broad-based as possible; we want the largest number of people in this country to take part in the industrial development of our country, either as shareholders or as promoters or as members of the management. That is only possible if we completely ban all sorts of interlocking, all sorts of holding companies. We should impose a restriction that, if a company is floating another company, it should not invest its funds in excess of 25 per cent. of the share capital of the new company, and 75 per cent. of the shares of the new company should be left to be subscribed by the public. There should also be a restriction on the number of directors appointed by the holding company on the newly floated company; in no case should it be more than 33 per cent. so that the virtual control of the new company lies in the hands of the new shareholders who have subscribed their funds in the new company. If an existing concern has large funds to invest, they can open subsidiary industries entirely owned by them. To ask the public to subscribe 49 per cent. of the shares of the new company, while the old company retains complete control of the new company, is not fair to the subscribing public.

SHRI S. C. KARAYALAR (Tiruvancore-Cochin): Is it not open to the subscribing public to keep away from such companies?

SHRI KISHEN CHAND: I entirely agree with my hon. friend that in a society which is very advanced, which knows the intricacies of the

companies law, what he says is quite possible, but consider the case of a poor investor, an investor who wants to have five or ten shares in a company. Can he possibly understand the intricacies of the law? Do we want that every investor should know the intricacies of the law? We want laws to be made in such a way that even the ordinary ignorant investor is not misled, is not duped by people who are floating these concerns under holding companies. Sir, we are entering a new phase of industrialisation in our country. In this new phase, the underlying idea is to make everybody in this country interested in the industrialisation of the country. That is only possible if we make laws in such a way that the ordinary man may be able to invest his funds without any fear or any risk.

Further, there is a system of private companies. It is a well-known fact that private companies are really one-man companies. They are limited only to restrict their liability; they are floated to circumvent certain laws governing the use of the wealth of the man who has floated the private company. I am personally against all private companies. I think the institution of private companies should disappear. We should have only public limited concerns. If a man wants to have a private company, let it not be limited. He may run it as an individual concern. To have a limited company but at the same time to restrict it to a small family or group is not right, is not fair.

SHRI GOVINDA REDDY (Mysore): They do not ask you to subscribe.

SHRI KISHEN CHAND: There are certain companies and I know the Taxation Enquiry Commission is making a thorough study of it and it is quite possible that that Commission may make recommendations which will take away all the charm of the private limited companies and

they will die a natural death. I am suggesting that instead of allowing them to die a natural death, we may as well remove them from the Company Bill completely.

Then I come to the directors. There are a large number of clauses with regard to the directors against which I wish to raise my voice. The minimum number of directors is restricted to 3. I think this is too small a number. The big shareholders can somehow or other have all the three directors of their own choice. If the number is larger and there is only single transferable vote system followed in it, the smaller shareholders will also have a chance of having a director of their choice. Otherwise what happens is that a few big shareholders nominate and select all directors and the company is virtually run by them. So I would suggest that in the matter of voting also upto the first 10 shares, there may be one vote for one share but after 10 shares, there should be one vote for every 10 additional shares. This will directly and otherwise control the power of the big shareholder in the management of a company. For example, supposing a person has got 100 shares, at present he has 100 votes. According to my suggestion, he will have only 19 votes—10 votes for the first 10 shares and for the remaining 90 shares, he will have only 9 votes. The person who has 20 shares will have 11 votes. Now consider, according to this system the difference between the man who holds 100 shares and the man holding 10 shares will be only 10 and 19 while in the other case according to the present law, it will be 10 and 100. That means one man holding 100 shares is really equivalent to 10 shareholders who hold 10 shares each. This is very unfair. For these reasons we are making a new Companies Law which will avoid abuses. There have been abuses. If there were no abuses and there were no deficiencies, why are you changing the law which has been in force

[Shri Kishen Chand.]  
so far? The Enquiry Committee found that there have been abuses of company law. They have suggested certain things and only in that light I am giving my suggestion for improving the company law further.

Then under clause 287 there is monthly remuneration and share of profits to the directors. I submit that except the managing director there should be no monthly remuneration paid to the director. The directors may be paid for sitting and the company for its better management may even hold two meetings per month or may even hold weekly meetings. But the moment you give monthly salaries, the tendency will be to have fewer and fewer meetings of the Board of Directors. The directors will feel that their monthly salaries are fixed irrespective of the number of meetings that they have to attend and so the tendency will be not to hold enough meetings. While if the remuneration is paid to them per meeting, in their desire to obtain more money, they will call for more meetings and the result would be that there would be more control over the management of the company. When they meet, they will certainly probe into the affairs of the company and there is likelihood of greater control over the management of the company.

Then I come to clause 248 about qualification. Here it has been pointed out that the maximum share holding qualification required should be Rs. 5,000 for a director. In a big company which has a capital of several lakhs of rupees—say Rs. 50 lakhs—a person who holds shares of only Rs. 5,000 has not got enough stake in the company and naturally he will not take enough interest in the management of the company. I submit that there should be 2 or 3 categories of directors, the principal directors i.e., the representatives of the shareholders should have a share qualification of a higher order. They

are the representatives of the shareholders and therefore, their stake in the company should be fairly high. I submit that something like half to one per cent. of the paid-up capital of the company should be the qualification for becoming a director on behalf of the shareholders. Then upto one-third of the total strength of the directors should be representative of labour and consumers. What sort of arrangements should be made to give representation to labour and the consuming public is a matter for the Select Committee to go into and suggest suitable amendments to the proposed law. But I think it is very essential to give some sort of representation to the labour employed in that industry and to the consuming public. Of course the representation of the consuming public will be through some sort of nomination by Government.

Then with regard to the number of companies in which a particular person can be director, under this Bill it has been suggested that a man can be a director of 20 companies and he can be director of more than 20 companies by special provisions and by special permission. It is a well-known fact that during the last century in England, the big Lords used to be directors of 40 or 50 companies. It was a well-known fact that you paid a guinea per meeting and you could have any Lord as a director on your Board. They had absolutely no interest. They used to just sit for 5 minutes, in one company and the next five minutes in the second company and in two hours they disposed of half a dozen companies and secured their sitting fees for attending the meetings of the Board of Directors. I think the number 20 is too large. No man should be director of more than 10 companies. It should be absolutely prohibited by Statute and it should be laid down that a person cannot be director of more than 10 companies. If possible, some sort of suggestion or hint may be given that

the meetings should not be held one after the other in such a way that they extend to only a few minutes. Proper scrutiny should be made of all the income and expenditure incurred by that company in such meetings.

Then I come to the most controversial matter, that of managing agents. Sir, in the past when this idea of joint stock companies was introduced in our country, it was right to have the managing agency idea of companies. The investing public were not familiar with the system and they were not willing to come forward to invest their funds in joint stock companies until they were assured by the reputation of these managing agents. The managing agents by their reputation helped in the development of joint stock companies. But that phase is past. The hon. Deputy Minister for Finance, while introducing this motion, pointed out that we should mend the managing agency system and not end it. I agree with him, Sir, but the mending will have to be so drastic that there will be nothing left of it and so it will really amount to the ending of it. Sir, at the present moment, the managing agency system is almost a curse to the industrial development of our country. The managing agents are directly or indirectly the selling agents, they are directly or indirectly the purchasing agents of the concern and in every way, rightly or wrongly they take away all the cream of the thing and only the whey is left for the poor shareholders. Sir, I do not want to go into the details as to how the managing agency system is now withholding the progress of the industrialisation of our country. But as a tentative suggestion I may suggest that if you really want the managing agents, then their interest in the company should be substantial. What is substantial interest in the company? Some people will say they should own 10 per cent. of the share-capital. Some will suggest 15 per cent. and some will suggest 20 per cent. of the share-capital, and some

will go even further than that. I am of opinion that the managing agents should have at least 20 per cent. of the share-capital in the company.

SHRI GOVINDA REDDY: How much, please?

SHRI KISHEN CHAND: I say 20 per cent. of the shares should be held by the managing agents. Then they will realise that their money is invested in the company and then they will not abuse it. Even if they take a little extra on other items, they will naturally lose in their profits or dividends on the 20 per cent. that is invested in the company. But there are managing agents who have no funds, no stake at all in the company. They are not serving the company in any way. Just by their name, or by their influence, they want to become managing agents and take all the profits of the company, leaving almost nothing to the poor shareholders. So if they have to invest about 20 per cent. of the share-capital, they will realise their responsibility. Further, there should be a complete stoppage of their being appointed as the selling agents or the purchasing agents. Managing agents should not be directly or indirectly the selling agents or the purchasing agents of the company.

Then, Sir, you will notice that in this Bill, the number of directors to be appointed by the managing agents is restricted to one-third of the total. What happens is this. Suppose in a company the number of directors is 12. Then 4 directors can be nominated by the managing agents. If two or three of the other directors are absent and because directors nominated by the managing agents are always present—or it can be manoeuvred so that they are always present—then the result will be that the four directors of the managing agents will be there and they will be able to carry out their policies through the board of directors.

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Therefore, I submit that the managing agents should not have more than two directors on the board of directors. Their number should not be more than one-third of the total strength, subject to the maximum figure of two; thus in any case, the number of the managing agents' directors will not go beyond the number two. So even if the board consists of twelve directors, the managing agents will have only two directors on the board.

Then I come to the question of the remuneration to be paid to the managing agents. In the Companies Bill, it has been suggested that the managing agents should get 12½ per cent. of the net profits, but if the company has not made any profit, then there is the provision that a minimum of Rs. 40,000 may be paid to them. I submit that this is very unfair. If you keep the minimum at that high figure, you take away all the restrictions imposed on the remuneration of the managing agents. I submit that the managing agents should get only 10 per cent. of the net profits as their managing agency commission. They are entitled also to out-of-pocket expenditure and under that name, they charge very high figures for their office, for the employees in the head-office and so on, and in this indirect way they take away a large part of the profits. Therefore, I would suggest that there should be a ceiling fixed on the out-of-pocket expenses also.

Sir, in case the company has not made sufficient profit, the maximum remuneration should not exceed Rs. 10,000. Instead of Rs. 40,000 I would like it to be reduced to Rs. 10,000.

Sir, I can go on pointing out similar defects in this law, but I would like to confine myself to a few points and later on I will send my suggestions directly to the Joint Select Committee for their consideration.

Here I would only suggest that the period of life of the managing agents should not be 15 years—that is too long a period—and I suggest that it should be brought down to 10 years.

AN HON. MEMBER: It is ten years.

SHRI KISHEN CHAND: No. It was 30 years and then it was reduced to 20 years and in this Bill it is suggested to be kept at 15 years. I want the period to be reduced to 10 years.

Then there is some sort of a provision for the interest of the promoters. But what place have the promoters in a joint stock company? If there are managing agents, then the promoters have no place. Therefore, I suggest that there should be no interest of the promoters in a joint stock company. The promoter can get an interest in it only to the extent of his share-capital and not anything beyond or over and above that.

I would also suggest that there should be a ceiling fixed to the individual share-holding in any company. I think that an individual should not hold more than 25 per cent. of the share-capital in any company. We want the company to be as broad-based as possible, and this is only possible when the share-holding capacity of an individual is restricted. You know, Sir, when the Reserve Bank was floated the individual shareholder was not allowed to take more than five shares, but by circumventing the law, people accumulated shares and the result was that the Reserve Bank had to be nationalised and the shareholders had to be bought out. We do not want similar things to happen in the case of these joint stock companies and in order to keep them free from abuse, no individual shareholder should hold more than 25 per cent. of the share-capital.

I have suggested only certain alterations in a few clauses. As I

said, this is a very big Bill covering nearly 600 clauses and it is not possible to deal with all those clauses and point out the defects in them.

As I have said, Sir, I will send my notes to the Select Committee.

DR. J. P. SRIVASTAVA (Uttar Pradesh): Sir, I rise not to give answers to the points raised in the arguments of the previous speaker because I think, Sir, that the Select Committee will see the futility of some of those arguments but, Sir, I would like here to clear the suspicion which seems to exist in respect of the functions and the duties of the directors and the managing agents. Managing agency is a big institution in this country and it is due to them very largely that industrial progress has taken place. If my memory does not fail me, Sir, I think there are about thirty thousand companies in this country out of which 80 per cent. are managed by managing agents. Sir, it is wrong, I think, to say that all of them are dishonest, that all of them look after themselves and not the shareholders. Sir, in every sphere of life, there are black sheep, honest men and dishonest men. Sir, it is difficult to imagine any society in which there are only saints but, Sir, a few wrong-doers should not result in the punishment of all the people belonging to that society. The managing agents in the past in this country have, I think quite impartially speaking, rendered great services to industry. If we take managing agents like the Tatas or several other firms in Calcutta, who have developed and built up large industries, I think, Sir, we have reason to be grateful to them and not to vilify them and brand them as rascals and scoundrels. Sir, I do not know whether the Company Law Committee had evidence before it to show to what extent managing agents had done wrong. What were their faults and what were the sins for which they deserved to be pulled up?

I would very much like the hon. Deputy Finance Minister to give us any figures or facts that he may have. I hope that he will be the first to recognise that the country owes a great deal to the majority of the managing agents who have pioneered and built up industry.

Sir, the work which managing agents do cannot be described in a few words. They start from the beginning when a company is to be floated; the promotional services are all rendered by them. They may be called upon to do a lot of experimental work, prospecting work and that kind of work before they float a company and place a proposition before the public. They make themselves responsible for seeing that the preliminary work is done. Now, if the promotion of a company were left to an individual, a beginner in company, promotions, he would, I think, lead a lot of people astray and the share-capital which would be subscribed on his initiative would probably be lost, all of it. I know the cases of a lot of such companies which have been promoted by people who had no experience and many of these companies have come to grief in a very short time indeed. Sir, that is the responsibility of a managing agent.

Sir, the managing agent is responsible for taking up the capital which the public would not subscribe. In these days when capital is so shy in this country, I do not think a company can be promoted by any one excepting a house of repute in whom people have faith and confidence. The need of the hour is more industrialisation and more economic development of the country. We talk every day of doing this, that and the rest of it, but unless we have more money and more wealth, we can do nothing.

Sir, I feel that the Company Law now proposed contains many hinder-



[Dr. J. P. Srivastava.]  
ing restrictions which will probably make a respectable firm shy of undertaking further ventures. Sir, I do not know why a provision has been inserted that managing agency agreements which have still to run would all be terminated in 1959. I think this is hard on those firms who have proved their worth and their mettle, and who are carrying on the business of a company well. What I mean, Sir, is that a firm which has made a success of business in the face of many competitors and many rivals should not be made to do this. There are many kinds of people who are interested in breaking up a profitable company who specialize in a scramble for proxies and, in a meeting which may be held in 1959 or before that, there will be those very people wanting to prevent the re-appointment of that firm, a firm which has made a success of the business and about whom the shareholders genuinely have no complaint. Simply because it is a paying concern, there will naturally be lots of people who would want to get hold of the company. This has been done in several cases already, in Calcutta, in Bombay and even in Kanpur. It is quite an easy pastime for one to go round and collect proxies and worry the management. It can be sometimes very profitable to those irresponsible people.

Sir, I have heard it said that the shareholders should have this right and that right. Well, Sir, I do not know on what grounds this can be maintained. The old Company Law gives, I think, ample power to the shareholders but it stops short of making the company a bear-garden. If you make it a bear-garden or a municipal board where everybody is canvassing, everybody is wanting to pass a vote of censure and turn out the people in power, then business cannot be carried on and the most successful concerns would come to grief. I say, Sir, that this is not the opportune time for that kind of ex-

perimenting. There is room, perhaps, for the sins of a few, for legislation of a regulatory character but, Sir, let us not do anything which will destroy the industry that has been built up or which will retard the pace of future development.

I should have thought, Sir, that the existing laws combined with the Penal Code and other codes had ample powers to prevent the misdeeds of directors and managing agents. The managing agents and directors both hold a fiduciary position *vis-a-vis* the company. They are trustees of the company and if they do anything wrong, if they make away with the funds of the company or if they go contrary to the Company Law, they can be prosecuted under the existing law and a shareholder with five shares in his name can file a suit. Now you want to make it easier for shareholders to create trouble. But, Sir, I want to warn you. Let us not go so far as to defeat the object we have in view. I think we are all agreed that we want development in the country and whether this is the opportune time to bring in all these galling restrictions I do not know. Still, Sir, I am sure the Select Committee would consider the two sides carefully, because, Sir, we have in this country about Rs. 2,000 crores invested in industry, I think and on present-day valuation it would be much more probably. Even as it is, Rs. 2,000 crores is not a small sum, and once the old management goes, which has kept the company steady, which has kept it on even keel, then that company breaks up. Sir, I am afraid of it. It is my fear, and I am quite sure, Sir, the moment this Bill is passed, you will see that a lot of well managed and well organized concerns will go and that would be a great loss to us. But the concerns which have made losses, where the managing agents have done everything wrong, will not go. They will still remain, because no matter what loss you make, there is a way of getting round it. One can dodge

every law in this world. It is not the law which makes us apprehensive but the practical steps that you take. I am quite sure that if we do not take precautions not to unduly weaken the hands of management, we shall see a great catastrophe overtaking us. I am not trying to plead the cause of those managing agents who have been guilty of delinquencies. Punish them by all means, but don't condemn the system for the faults of a few. But why condemn it alone when it is admitted that even in Government departments there is a lot of corruption? Committees are appointed daily to investigate them. Well, corruption there is in every branch of society, I am sorry to say, in India today. But that should not be a reason for breaking up such a valuable thing as the industrial structure of the country. If you break up the managing agency system, that will be the result.

I do not wish to refer to specific clauses in the Bill. But there are several in it which would, to my mind, be found unworkable. I will not take up the time of the House by going into them because it would be a long business. I am sure the Select Committee, on which we have such able representatives, some of them as sponsors of managing agents—my friend here is giving a broad smile and he is going, I hope, to sponsor the managing agency system—will be fair and just and they will not be taken away by shibboleths or slogans. A company cannot be run in that ultra-democratic fashion. A company must not divulge more secrets than it should because competitors will take advantage of it; they put up a shareholder with five shares to go and find out this secret and that secret and convey it to them. You have got to avoid such a thing. We are still in the beginning of our development, just starting with our country's industrial development and let us not build for ourselves hurdles which we won't be able to cross.

SHRI D. D. ITALIA (Hyderabad): Mr. Deputy Chairman, I rise to support the motion moved by the hon. the Deputy Finance Minister for referring this Bill to a Joint Select Committee of both Houses of Parliament. We are really thankful to the hon. the Deputy Finance Minister for the lengthy explanations which he has given of the various clauses. As far as I know this is the most comprehensive and the longest legislative measure during recent years. It contains as many as 612 clauses and twelve schedules. This is the first consolidating measure of Companies Act since 1913. The size of the Bill threatens many of the persons who are in company management. It will be a hard task to the members of the Select Committee to read this whole Bill and to digest the provisions in a very short time and I do not think it will be possible for them to send their recommendations within the short time which is given to them. As this Bill will be discussed fully after the same is returned by the Select Committee, at this stage I will deal with only one or two aspects of the Bill and so I shall not take much time of the House.

Let me now take the question of the managing agents. Many of the hon. Members have criticised them and abused the system of managing agency and some of them even want to abolish the managing agency system, but I think this is not right as many of the Members know well that it is the managing agents who have done great service in developing some of the industries in India, such as Tata Steel, Hydro-Electric, many of the jute mills in Calcutta, many of the textile mills in Bombay and many other industries have been developed only by these managing agents. We must not abuse or criticise them about their management. No doubt, there might be some exceptions but because of those few exceptions I do not think we must altogether discourage the managing agents. I am glad that the hon.

[Shri D. D. Italia.]

Minister has assured of the continuance of this managing agency system for a certain time with certain restrictions.

There is one point about the age limit of the directors. The age limit that is now fixed is 65 years but to my mind it seems that the limit should be fixed at 75 years as otherwise some of the experienced directors will not be able to give their help and assistance to the industries. As far as I know in Hyderabad State, I am myself a director and I am now 72 and if you ask now to go away ..

SHRI SHRIYANS PRASAD JAIN (Bombay): After notifying to the company you can still continue under this Bill.

SHRI D. D. ITALIA: Anyhow, I think the limit should be raised to 75 years.

Then, if I mistake not, the remuneration of the managing agent is not a fixed amount payable monthly but certain percentage of net income of the company. I feel that a fixed monthly remuneration has to be given over and above certain percentage in profit since the managing agents have to give all their time and attention looking after the welfare of the companies.

I think nothing has been said about legal advisers in this Bill. The question of legal adviser is an important one which the Joint Select Committee will have to consider. There must be some provision for legal advisers in this Bill. Then in certain companies the legal advisers are also directors. Whether the legal adviser can be a director has also to be considered. With these words, I support the motion moved by the hon. Deputy Finance Minister.

SHRI LALCHAND HIRACHAND DOSHI (Bombay): Sir, I rise to support the motion that is before the

House for referring the Companies Bill to a Joint Select Committee.

[THE VICE-CHAIRMAN (SHRI B. C. GHOSH): in the Chair.]

Sir, my first reaction after seeing the Bill is that it is a very bulky Bill. A new code for the companies is being formed and I am afraid, Sir, it is going to cause much more difficulty in running the companies than the Company Law has caused hitherto. Some people have described it as a paradise for the lawyers and advocates, because up till now the Company Law though passed several years ago has been administered through the various courts and their decisions have established certain ideas. We are now rewriting the Act in such a way that perhaps those ideas are disturbed. While probably we are trying to put those ideas in the form of a law, new interpretations will be put by courts and the lawyers whereby litigation will considerably increase. Sir, what the business community needs at present is a period of peace rather than a confusion of ideas, as is likely to be the result of this big Bill. I should have therefore desired that the Finance Minister came with such modifications in the Company Law as were absolutely necessary to improve some of the defects rather than to put a new code before the public. Sir, a good portion of this Bill has been devoted for the management of the companies including the managing agents.

12 Noon

A joint stock company is a company belonging to the shareholders. I had occasion to be a director of a co-operative association and I asked some of the people who have devoted a good deal of their life in the development of co-operative societies, "Gentlemen, what is the difference between a joint stock company and a co-operative society?" After considerable discussion we could understand that the main difference is in two ideas. Firstly, a joint stock company is governed by the share-capital, having a full hold in proportion to the share-capital held by the individual, while a co-operative

society is not governed by the capital but by the heads that hold the capital. In other words, it is not the amount of risk that a person takes in a concern that will be the guiding factor in the management but the individuals that are in the concern that will be the guiding factor in the management. The second difference is the restriction on dividend. A co-operative society is restricted in the distribution of its profits, whereas in a joint stock company there is hardly any such restriction so far as equity capital is concerned. If the company is in a position to make good profits it can distribute those profits in full proportion to the capital invested in the concern. These are the main differences that exist between a joint stock company and a co-operative society. In other respects, as far as I could see and as far as the champions of co-operative societies could explain, there is no other difference. And with these good restrictions, as the critics of joint stock companies have always advocated, the co-operative societies have hardly made any progress, particularly have hardly made any impression on the investing public. The Government, whether it is the Central Government or whether it is the State Government, have tried to give considerable encouragement to the various co-operative societies and the co-operative concerns by passing legislation, by giving concessions in income-tax or by various other methods, but the co-operative society and co-operation as a whole has hardly made any impression on the investing public and the investment market has not been able to attract capital for the co-operative concern. Sir, what is the reason? The main reason is that the investing public does not have confidence in a political institution because the capital is not the consideration in that but it is the ability to carry the vote of the persons holding capital rather than the capital itself that counts. That is the main criterion why the co-operative society has not been able to get sufficient capital for starting concerns that are so much needed for the development of industries.

Sir, it has been suggested by some Members that even in joint stock companies the vote should not be in proportion to the capital invested. When single individuals put more money, their votes should be restricted. If that is not done, it will be doing the greatest harm to the joint stock institutions, because people who want money will feel diffident and doubtful that their interests will not be protected and therefore the institution of joint stock companies will considerably suffer.

Sir, there has been considerable criticism against the managing agents who are in charge of the management of the various companies. A great deal of fuss has been made against certain managing agents who have not properly managed the various companies. Now, what is the alternative? There are bound to be some people who may not be honest enough to discharge their duties properly. The alternative, as has been suggested, is Government control of undertakings and corporations. Well; have these, at least, been honest? Have those who have been in charge of these governmental undertakings been brought to book? There is hardly such things happening. There have been occasions where even Government departments themselves have been charged with corruption. Therefore, Sir, you cannot lay too much claim on this, because certain managing agents have not discharged their duties properly. Government want to take greater powers than what they have hitherto been holding in bringing all these people to book. The case of the Sholapur Mills will go as an historical case in the industrial sphere of this country. Government felt that the management of this undertaking was bad. Let us assume for the sake of argument—I am not pleading for those managing agents—they were bad. What did they do? They put a new set of agents to carry on the business of that company. With what results? The new agents again made heavy losses. The case went from one court to another with the ultimate result that the Supreme

[Shri Lalchand Hirachand Doshi.]

Court decided against the action taken by Government. The decision was stunning. The last thing that the Government have done is to give back the mill to the old management. If they had utilised the powers, that they had, properly right from the beginning, I am sure the results that had happened would not have happened and the management would have been much better. The old management wanted to effect some rationalisation; that was not allowed, but when the management was changed and the new management was brought in, the same rationalisation was allowed and was allowed with greater freedom. Why did not the Government then allow that rationalisation in the initial stages; and if the old management was not doing things properly, why did not Government pull them up at the right time? And if they are not doing that even now, then why put them back? Sir, it is a difficult thing to understand why Government should put the old management back when they have got, even today, a lot of power to exercise in improving the management.

It has been said that there will be proportional representation in the directorate. A business is run efficiently if it is run smoothly. If the directors begin to quarrel amongst themselves, that business can never run properly. What we are trying to do is to put on the Board of Management different sets of shareholders with different ideas and try to run it as a homogeneous body, they can never run it like that.

Even in this House, after all, the majority is running the Government. If in the management of the country's destiny the majority can rule, I cannot understand the logic of suggesting that the minority should be in power.

SHRI KISHEN CHAND: There are Opposition Members in this House also.

SHRI LALCHAND HIRACHAND DOSHI: I understand that. The minority will be in the shareholders' meeting; they will ask questions, criticise

the management but it does not mean that the minority group should be put in the Government or in the management of a company. That is my point; I hope I have answered my hon. friend.

Sir, it has been suggested that more restrictions and more controls should be put on the management of these joint stock companies. I am afraid this is the worst thing that the Government can do, because we have had the experience of controls and restrictions. A stage had already reached when we had full controls; and we gradually realised that these controls hamper production, hamper movement of goods and do not help the society in any way. Indeed, restrictions and controls may be all right in an emergency. Nobody disputes that. But, in normal times if we have to have too many controls, rigid controls and various restrictions, well, these restrictions and controls will not help the persons whom we want to protect, but will ultimately hamper production, trade and industry.

It was only this morning, Sir, that in answer to a question that was put in regard to chillies the hon. Minister told us that the experience has been that the restrictions and controls have caused deterioration in the development work and they have not helped the society over a long period.

SHRI GOVINDA REDDY: They have burnt their fingers in controls.

SHRI LALCHAND HIRACHAND DOSHI: Yes, they have burnt their hands and fingers through controls. Therefore, Sir, it would be unwise and undesirable to suggest this kind of restrictions and controls on other institutions where we find that over a long period, over a fairly good period, there has been good progress in industrialisation, in the development of trade and industry in spite of great handicaps in the form of lack of sympathy or even obstruction from foreign Government. Sir, the business community can feel proud that though there was no sympathetic Government, they have

built up these industries in spite of opposition from foreign interests who had dominated the economic activities of this country. There have been some mishaps no doubt, but the results of good achievements have been so big that these mishaps can be ignored, unless some of the critics want to maximise these defects. I therefore feel, Sir, that the various restrictions and controls that are proposed to be put on the managing agents and the management in general will not help anybody or the shareholders and the society as a whole. But they will hamper the economic development in the country.

SHRI H. P. SAKSENA: May I seek one clarification from the hon. Member? He said that the then Government was unsympathetic and yet the industrialists progressed. The then Government was not unsympathetic to them. They were hand in glove with that old Government, and therefore, they received all possible sympathy from it.

SHRI LALCHAND HIRACHAND DOSHI: I am afraid, Sir, the hon. Member is ignorant of history.

SHRI H. P. SAKSENA: Thank you, Sir, for the compliment.

SHRI LALCHAND HIRACHAND DOSHI: History has amply proved that the business community was not hand in glove with the old Government. And it was the foreign investors who were hand in glove with the Government, and Indian enterprise was looked upon with prejudice and had to face a variety of handicaps in their efforts towards the development of this country. Perhaps the hon. Member is prejudiced against the business community, and particularly against the Indian business community—perhaps—I am not sure about that. But if he cares to read the industrial history of this country, he will find that the foreign Government tried to obstruct the industrial development, and particularly through the Indian management, as much as it possibly

could. And the history of the shipping industry is a landmark, I may say, in the development of industry in this country, Sir, in spite of the vast resources held by the foreigners backed by the then Government of this country, the Indian management and the Indian shareholders put up a fight and established this industry in this country and carried the Indian flag on all the oceans of the world. Therefore, Sir, if somebody says that Indian industrialists were hand in glove with the foreign rulers, I am afraid, he is not talking the truth—I would not use a stronger word.

Sir, as the hon. Deputy Minister mentioned in his opening remarks, the object of this Bill is to protect various sections such as small shareholders, labour etc., and particularly to avoid mismanagement. But I really do not understand how this Bill will protect the small shareholders who have neither the strength nor probably the time to attend to the functions of the various companies. Sir, I have a little experience of attending the various general meetings of the companies. How many people care to attend these general meetings? A dozen or two dozen in a population running into thousands of shareholders, and the professional people mainly interested in stock exchange and whose main interest is to get a little more dividend than what has been declared. The criticism is of a stereotyped nature. They say, "You have not done this; you have not done that, and you have not given more dividend." The moment you yield to their suggestion, they are very happy, because there is then a greater chance to speculate in the stock exchange business. Sir, are we going to protect the so-called champion of the shareholder? Is the shareholder himself going to attend any of these meetings? He is concerned more with the reputation of the management. And if I may quote a classical case of the agitator at these shareholders' meetings, it is the case of Mr. Shamdasani. What is happening at every meeting? People of this nature are attending the meetings and dragging the manage-

[Shri Lalchand Hirachand Doshi.]  
ments to the various courts where their case is smashed, because it is not based on facts. Sir, are we going to give tools in the hands of such people, so that the management should be harassed every now and then? Are we going to make business difficult? We want the economic development of this country and we say that private enterprise should be encouraged. If you do not want private enterprise, by all means go by a straight road. But let us not introduce such things as will hamper private enterprise, if we do not place at the disposal of the investing public a better machinery than the managing agents or the joint stock company for the economic development of this country. If you say, "No. The private enterprise has failed"; by all means you can go ahead with State enterprise in a straightforward manner. But do not give a bad name to private enterprise and create difficult conditions. The private enterprise has run in the past under very adverse circumstances. It looked to this Government for a more sympathetic consideration. We have now developed new ideologies, and we are making the task of private enterprise again difficult.

I would therefore plead with the Government that in framing this law, they should do it in such a way that no doubt the dishonest man will be punished but that the honest and straightforward businessmen may flourish, whereby they will get the confidence of the investing public and also help in the development of industries at a faster speed. Sir, with these few words, I support the motion before the House for referring this Bill to a Select Committee.

SHRI GOVINDA REDDY: Sir, I have very great pleasure in extending my support to the motion before the House. The main question, in considering this Bill, in my opinion, is.....

SHRI LALCHAND HIRACHAND DOSHI: Is not the hon. Member a member of the Select Committee?

THE VICE-CHAIRMAN (SHRI B. C. GHOSE): No.

SHRI GOVINDA REDDY: The main question, in considering this Bill, should be the measure of control that the State should have on the companies. This question should be considered in the light of the goal of the State. If the State has as its goal the nationalisation of industries, then of course the measure that the State should have of controlling these companies should be very large indeed. On the other hand, if the goal of the State is to have a mixed economy and in this mixed economy to afford large scope, a large field, for private enterprise, then I beg to submit that the control that the Government must exercise must be of a limited character. It cannot be denied that we have as our goal a mixed economy. We have very few nationalised or State-owned industries and we have a large number of joint stock companies which have attended to both industry and trade. I am one with the hon. Dr. Srivastava when he says that the companies have contributed in a very large measure to the economic well-being of the country. Everyone must be proud that in India, with all the handicaps we had, with greedy mercenary foreign powers ready to throttle every attempt made by indigenous industrialists to build up industries here, the Indian companies have really thrived. If therefore today anybody advocates a measure of control over these companies, it is not because the companies have not thrived, it is not because the companies have gone to rack and ruin, but it is because there should be proper management of these companies and also some sort of safeguard for those who are not actively associated in the management of these companies but who have risked their money in these companies. It is a matter of history how our Indian Company Law came to be indifferent in the matter of management of industries. As we all know, under the foreign administration which was commercial in character, which had its own vested interests to encourage, the companies were given as autonomous a

power as possible. The control that the Government exercised over the management and the working of these companies was very little indeed in practice. In theory and in law, the control is already there. The Company Law provides every device for ensuring a better management of the companies. What was wrong in the past was that the Government did not exercise its control, it did not exercise its powers which were given to it under the Indian Companies Act. The Government delegated its powers to the State Governments, and the State Governments also were not closely concerned with the management of the joint stock companies. They were very indifferent. They appointed registrars of joint stock companies who knew nothing of Company Law, and the offices of the registrars were not properly staffed, the staff that they had were not well-versed in Company Law, and therefore the entire control that Government did exercise through the registrars of joint stock companies was confined to the calling of the nominal and formal returns, like the return of share collections, the return of shareholders, return about annual general meetings, etc. Those were all that the Government was concerned with, and the returns that were received were not even scrutinised, but were thrown into the waste paper basket. The Indian Company Law as it is, without this amending Bill, has got very provision for a proper control of the companies. First, there is the control over the issue of the prospectus. Every joint stock company holds out prospects for investors, wherein they explain to them the nature of the business and the prospects of the concern to persuade the investors to invest in the company. There is provision for controlling this. No company can hold out lavish prospects. It must give the correct position to the public so that the public may not be misled in making its investments. Again, in the matter of the directors, for instance, it is provided that they must disclose to the shareholders the interest that they have in promoting the company.

[MR. DEPUTY CHAIRMAN in the Chair.]

Then all the contracts between the company and the managing agency or managing directors must also be disclosed. The remuneration of the directors must also be disclosed. As was pointed out by Mr. Doshi, it was not that there was no control according to the Indian Companies Act but that the control was loosely exercised. The other fact is that the shareholders were not taking as keen an interest as they should have taken. I have also some experience of the working of companies—small concerns; cottage industry concerns—and I have tried to persuade the shareholders to attend the meetings and take some interest in the meetings. I have gone from door to door, from individual to individual and asked them to be present at the meetings and at least try to know what has happened.

But I must say that not more than six or seven out of 500 or 600 shareholders would come. That is the position in the biggest insurance companies for instance. You have hardly 12 or 20 shareholders presenting themselves at the general body meeting and taking interest. It is only those who are interested in occupying the places of directors that would go to each shareholder, canvass votes and take proxies and collect thereby some individuals. So it is not entirely the fault of the management of the companies if the companies have failed. The share of the shareholders is also large. So I was making the point that as it is, in the Indian Companies Act there is every possible control so that if we should have a larger measure of control, then there is very little scope left. In my opinion the Government should not enter into the details of day to day working of the companies. The control of the Government should be limited to several broad points. One is the shareholders' interest. The Government are the trustees of the shareholders. It may be that a few directors take control of the entire management and arrange very remunerative terms for themselves and then show little profit or knock away as Shri Kishen Chand was saying, a large



[Shri Govinda Reddy.]

share of the profits for themselves. Because of the shareholders who have made small investments not being concerned very closely with the management and because of their helplessness before directors who have according to the charter of the companies all the powers in their hands there must be someone to safeguard their interest. If they cannot look after their interest, the Government should place itself as their trustees and then should try to safeguard their interests and there should be control over profits. The Government should not allow any company to make excessive profits so as to bring about this differentiation in society. Then there is the third condition and that is, that Government should not allow the company to disturb the economic balance. By that I mean, that if the company is concerned with trading or producing articles of necessity in the country and articles which are widely in use, the company may, by raising its prices, or by creating an artificial shortage in production, or by creating monopoly of distribution, disturb the economic balance. It should be the duty of the Government to see that they do not disturb the economic structure in the country, that they do not create an artificial shortage of goods, that the companies do not take advantage of this artificial shortage and enhance the prices and make good profit for themselves. Therefore in the economic field also the Government should exercise control. The fourth factor, which is also very important, is the labour question. Since most of these companies, particularly industrial companies and many of the commercial companies are employing a very large share of the labour, it should be the concern also of the State not only to see to the welfare of the labour, but to the prospect of their being continued in employment. If, on all these broad points, the State has some directions to give to the companies, there would be some control and I should think that with the amending Bill, the companies should run very well indeed.

Suggestions have been made that this Government should get into the details of the working. Hon. Shri Kishen Chand has suggested that the Government should see that there should be only one category of shares, that the directors should not be the promoters themselves, that the directors' remuneration should be restricted and then in the amending Bill there should be a provision saying that the age of the director should be restricted. He also suggested that the managing agents' remuneration should be restricted, that the managing agents' out-of-pocket expenses should be controlled and so on and so forth. Supposing we enter into these details and make provision for a sufficient measure of control in these details; what will happen?

SHRI KISHEN CHAND: On a point of order. The provisions are there. I have only suggested some amendments relating to them.

SHRI GOVINDA REDDY: I am only discussing the suggestions you have made. I don't mean to say that there are no provisions at all in the Indian Companies Bill in this regard but you are suggesting some more amendments. Supposing we make these amendments, and try to exercise due control over these details and day to day affairs, then would there be sufficient scope and would there be sufficient initiative for private enterprise to run these industries? If there is no scope and no initiative for them, it can be easily realised that instead of running the companies with all these checks and controls, they would better dissolve them, or they would run into subterfuges as Dr. Srivastava was pointing out, or close them. Supposing they close that, what an amount of loss would it be for the State and particularly in these days of unemployment, supposing very big manufacturing concerns or trading concerns should close or we should make it so tight for them as to make them impossible to run, then we will have an enormous problem to face, the problem of labour and problem of goods. Therefore it is not

desirable, in my opinion, to enter into the details but without entering into these details, the State can control the managing agents. It must be said to the credit of the managing agencies that have functioned in India that they have earned a very great reputation. Very few individual managing agents there are who have gone out of the way, who have made money for themselves but we can count them—they are individual instances—but there are firms of reputation in this country who have been functioning as managing agents, of not one company or 10 companies but 50 or 100 companies. They have established a reputation both in the Plantation Industry, both in the industrial field as well as in the commercial field. The managing agencies have established a reputation. Well, Sir, the managing agents, in their own interests, have to see that they have to be fair to their shareholders, otherwise the company cannot run. Then the managing agencies have a reputation also to safeguard. Therefore it is not as if the managing agencies would swallow all that they could get, to begin with. If they begin to do that, then they would naturally be committing suicide. So we cannot throw an aspersion against the managing agents and say that simply because there is a managing agency, they would misappropriate the profits of the company. But one suggestion the hon. Shri Kishen Chand has made, with which I entirely agree viz., that the managing agents should have no power either to supply goods or raw materials to the concerns which they are managing or to make distribution of the products of the concerns. The managing agents or their near relations should have no share whatever in the business of the companies. That is being provided for in the amending Bill. They should have no vested interest in the company's affairs. Managing agents should be far removed from all these things, they should have no interest in them. With such broad restrictions, Sir, I have no doubt that you would be able to control these companies.

There is another thing which I would like to suggest and that is about the

matter of borrowing powers of the directors. Usually, shareholders do not come to know because in the memorandum of association of the company, powers will have been delegated to the directors to resort to the borrowing powers. If it is a managing agent or managing director who is interested in the welfare of the company, then this delegation may not work adversely to the interests of the shareholders. If on the other hand, there are managing agents who are not concerned with the interests of the shareholders but only with their own interests, then these borrowing powers may be misused. Therefore, I would suggest that there must be some provision by which the shareholders may come to know the transactions that take place by way of borrowing. That is provided for in this Bill. But in the Act we do not have any provision for that.

In the matter of the audited balance-sheet it is of course provided that the shareholders should come to know every detail. The method of accounting should be changed and some particulars which do not ordinarily come to the notice of the shareholders should come to their notice. Especially in the auditor's report, the auditor makes apart from the general certificate which he gives to the balance-sheet, certain suggestions and remarks on certain of the irregularities that he has noticed and on certain defects that he has noticed. Those documents are not generally revealed to the shareholders. I do not know whether according to this amending Bill, it is provided that the confidential reports of the auditor are placed or made to be placed before the general body. But I personally wish that in the interest of the company as well as of the shareholders, it would be better to provide for such an opportunity as that, for the shareholders to know what the auditor has really observed in regard to the working of the company.

With these few remarks, I would like to support this motion.

**SHRI P. T. LEUVA (Bombay):** Mr. Deputy Chairman, I stand to support the provisions of the Bill before the House. Shri Lalchand Doshi and Dr. Srivastava representing the industrial and business community have made the complaint that this Bill puts restrictions on the business and industrial community of this country. May I just remind them, Sir, that this Bill has been drafted after considerable thought and experience? I would only invite their attention to the fact that this Bill which is before us was drafted only after the Government appointed a committee to investigate into the whole question of company law. After the Government had gone through the report which was presented by that committee they drafted this Bill and this present Bill in practically all respects accepts the recommendations of the Company Law Committee. If therefore there is any complaint to be made, it must be made against the members of that Committee and not against the Government or the person in charge of the Bill. For the information of my hon. friends I will read out the names of the members of that Committee who made these recommendations to the Government. After I read out these names, probably my hon. friends will have no grounds to complain against the Government, because that Committee professes to contain practically all sections of the community which were interested in company management, except one section and that was labour. Labour was not represented at all on this Committee. Now I will read out the names of the members: Shri C. H. Bhabha was the Chairman of that Committee and it is well known that Mr. Bhabha was at one time the Commerce Minister of the Government of India and surely nobody would say that—at least my hon. friend Shri Lalchand Doshi will not say it—Mr. Bhabha will commit any act which will go against the interests of the business and industrial community of this country.

**SHRI SHRIYANS PRASAD JAIN:** He was Chairman of the Sholapur Mill Committee.

**SHRI P. T. LEUVA:** Maybe, but surely I would suggest to Mr. Jain not to interrupt me, because he is supposed to keep an open mind.

Another member of the Committee was Shri Hussain Imam, but he did not take part in the deliberations of this committee because he went away to the other country. Then there were Shri M. Sankaraiya, Shri Mohanlal L. Shah, Mr. A. D. Vickers, Shri J. J. Kapadia, Shri P. N. Vajpeyi, Shri V. S. Krishnaswami, Shri G. P. Kapadia—there may be some objection to Mr. Kapadia—Shri Tricumdas Dwarkadas, Shri S. M. Basu, Shri S. Ranganathan and Shri D. L. Mazumdar. This was the Committee which went into the question of the Company Law. Some two or three members on this Committee were lawyers of great standing in Bombay, who have had great experience regarding company law and company management. As far as I know, Shri Tricumdas Dwarkadas is concerned, not in the capacity of lawyer, but as investor and as member of certain companies and as director of some. Shri J. J. Kapadia has the reputation of upholding the interests of the shareholders in Bombay, and I am not unmindful of that fact. But it can be said with great vehemence and with a certain amount of confidence also that the committee which recommended the overhaul and consolidation of the Company Law cannot be accused of doing any act which goes against the business community in this country.

With these few words, Sir, I come to the Company Law which is before the House. So far as the company managements are concerned, we have to change the whole of our approach to this problem. I do not for a moment suggest that managing agents in this country have not discharged their duty in the interest of the country. I do not dispute that fact. But one thing, we have to remember, is that if there are any abuses connected with them either as directors or as managing agents,

certainly nobody in this country, either in this House or outside, will object to making provisions which will prevent such abuses. Let us see what is the main complaint against managing agents in our country. Whether there is any truth in the complaint regarding the incompetence or dishonesty of managing agents, into that question, I will not enter at this stage. But let us see what was the history of the managing agency system in our country. As everybody knows, managing agency is a unique feature of our country. Practically nowhere else in the world do we see managing agencies as they exist in our country. Such a system does not exist in any other country. Of course, there is what may be called a trend towards managing agencies in other countries. It may not be in that direct form, but the indirect effects are there, and managing directors, chairmen or vice-chairmen or presidents in other countries also are now occupying the same position as managing agents do in our country.

SHRI RAJAGOPAL NAIDU: Will the hon. Member kindly tell us how this managing agency system is unique in our country?

SHRI P. T. LEUVA: It is unique.

SHRI RAJAGOPAL NAIDU: How? Is it in enriching themselves and making money?

SHRI P. T. LEUVA: That is the very idea of entering into business. After all everybody has got that natural instinct—making money. I cannot say that lawyers and doctors enter their professions not to make money. I am a lawyer, but I do not say I have become a lawyer only in order to do public duty. I am not against encouraging anybody—managing agents or anybody—entering into a profession, making money. There cannot be any serious objection to this very idea.

Now, Sir, I was referring to the question of the managing agency and how it has developed.

SHRI RAJAGOPAL NAIDU: You have not answered that question.

SHRI P. T. LEUVA: I will answer the question when the appropriate occasion arises.

SHRI RAJAGOPAL NAIDU: That is because you cannot answer.

SHRI P. T. LEUVA: I will answer it. In this country, corporate enterprise came with the British domination in this country. As you will see, Sir, after the British took over India, the first person to enter India was the commercial concern, the East India Company. They came to this country for the purpose of carrying on commerce and not for the purpose of acquiring India.

SHRI RAJAGOPAL NAIDU: It was not a limited company.

SHRI P. T. LEUVA: It was a company by Charter.

Now, Sir, the companies which started business or industrial activity in our country were foreign concerns. Those concerns were incorporated outside India, thousands of miles away, and probably the directors could not exercise that control over the industrial activity or business activity of such a company and, therefore, it was only an accident of history that the managing agency system was in a sense started by the foreign concerns in India. It was necessary for the companies which were incorporated outside India; they felt that they should have some machinery whereby the activities of those companies could be carried on in India for the benefit of the companies which were not incorporated in India. Surely, Sir, the business concerns which came from outside India did not come here for the purpose of advancing the cause of India, not for the purpose of making India big industrially but they came for the purpose of making whatever money they could and that was the reason why this managing agency system developed in our country.

SHRI LALCHAND HIRACHAND DOSHI: Could not we say that they started this experiment in this country and found it very useful?

SHRI P. T. LEUVA: Probably, Sir, looking to the example of foreigners, the class represented by my hon. friend might have followed that example. I do hope that he would not call it a bad precedent.

SHRI LALCHAND HIRACHAND DOSHI: No, it was useful.

SHRI P. T. LEUVA: I do not dispute that. I am coming to that. Now, Sir, the managing agency system started because of the necessities of the time. In those days, Indians who wanted to take advantage of corporate enterprise were few in number because in our country in those days also very few people could start any concern or develop industries or business. Those few persons who invested their money, who invested their intelligence and talent were surely entitled to adequate return for what they were going to do. If, therefore, Sir, managing agents were making any profit out of the system, there was nothing wrong in it. I do not for a moment suggest that managing agency should be done away with unless and until there is an alternative which would adequately replace this system. I, therefore, would not for a moment suggest that managing agency should be done away with entirely; the only question is, what are we going to do regarding company management in this country? Here, I say that we have to change the whole approach to the problem. What was the basic idea at the time when this system was started? It was purely a private motive because the English concerns came here for one purpose only and that example was followed by our countrymen as well. There is essentially nothing wrong in the profit motive, but times have changed now. We 1 P.M. are now moving towards a Welfare State and the basic idea now changes. We have now to carry on our activities, business or otherwise, for and in the interests of the country. So long as any system subserves the needs of our country, fulfils the needs of our country, and increases industrialisation in this

country, surely every system of that character will receive the support not only of this House but of the entire country. Now, Sir, the business community and the industrial community have to realise this point that, consistent with public interest and public needs, they have to carry on their activities in such a way that they will not hamper the industrial growth of our country. I do not for a moment believe that the industrialists of our country or the businessmen of our country would, at any time, think or suggest that they are going to carry on activities which will be against the interests of our country. None who has fought so valiantly against the foreign enterprise in this country, who has suffered at the hands of the foreign enterprise in this country will, for a moment, suggest that he will carry on business and industrial activities against the interests of our country. I very well know, Sir, that my hon. friend Mr. Lalchand Doshi and his family had to fight against foreign domination especially in the shipping field. I know, Sir, that for a number of years, English shipping companies tried their best to kill private enterprise sponsored by the House of my hon. friend Mr. Doshi. Sir, it was the late Walchand Hirachand who fought for years together for putting our shipping companies on the map of the world. Foreign domination was there and foreign interests were there, and the Government, in those days was also not in favour of any Indian concern entering the shipping line. They had put many obstacles. I am not unaware of that history. All the same, that family did well, fought for the interests of our country and, Sir, do you mean to suggest that anybody in this country would come up and say that the House of Doshi will act against the interests of our country? I do not believe it even for a moment. But there are very few houses of that character. You have to realise that private profit motive has still remained in our industrial and business activities. These industrial and business sections have now to think in new terms. India is launching upon

the ideal of a Welfare State. Therefore, all the activities in the industrial field and in the business field or any other field of economic activity will have to accept a certain amount of control and, if I may say so, guidance of Government. After all, what is the duty of the Government? The duty of the Government is not to hamper industrial activity, not to hamper business activity, but Government has got a responsibility and a duty towards the country at large. In this country, we can never forget that the interests of the public at large are much more important than the interests of a small section of the country. I would, therefore, appeal to my hon. friends who belong to that category of businessmen and industrialists to consider and approach the question of Company Law from that standpoint and to see whether the provisions that are contained in the Bill go counter to the interests of our country.

Sir, the companies consist of three parties, namely the shareholders, the directors and the managing agents. These are the three parties who are vitally interested in the formation of a company and in the carrying on of its activities. The shareholders, as a matter of fact, are the real masters of the company and in law, Sir, the shareholders have got a distinctive personality apart from the company itself. All the same, in the ultimate analysis, it is that category of shareholders who are the real masters of the company. Therefore, in managing the affairs of a company, the interests of the shareholders should have paramount importance and not the position which has been given to them at present. The managing agents, Sir, are appointed for the purpose of managing the affairs of the company from day to day. The managing agents can further the interests of the company and further the interests of the shareholders if they had such interests in their hearts. But it is sad experience no doubt that some managing agents have committed blunders—they might be through accident or by design. But

by and large it can be said that the managing agents have served the interests of the shareholders. But that does not mean that the managing agents should disregard the interests of the minority shareholders. My hon. friend Mr. Doshi raised that question of minority shareholders and he referred to the case of P. D. Shamdasani. I know, Sir, that P. D. Shamdasani is a troublesome shareholder. He creates trouble wherever he goes, but may I ask him one question? Barring P. D. Shamdasani, has he got any instance where a shareholder of the character of P. D. Shamdasani has ruined a company? Even P. D. Shamdasani has not been able to ruin any concern in our country. It is no doubt true that he created great difficulties for one banking concern. All the same, Sir, there might be, as he himself said, black sheep even in majorities but does it mean that the majorities are always right? It is not always necessary that the majority should be right. We do respect the voice of the majority but cases might arise where even the view of the minority should be respected and it is not an innovation in the present Bill that the rights and privileges of these minority shareholders are to be protected. That right existed in the previous Indian Companies Act. There is nothing new which shows that the present Bill would be too soft to the minority shareholders and the various courts would interpret the provisions in such a way that if the action of the company militated against the interests of any minority shareholders, then that action of the company would not be binding upon the minority shareholders and the courts would be entitled to interfere in suitable cases. Therefore there should not be any room in the mind of any person, who is interested in company management either as a managing agent or as a director, to be afraid of any of the provisions contained in the present Bill because the minority is always entitled to protection. Certainly such a protection does not mean that every unreasonable demand of a minority shareholder is to be respected. All

[Shri P. T. Leuva.]

the same the company is meant for the benefit of all the shareholders. If the managing agents or the board of directors are acting in the interests of the company itself, I fail to understand why a minority shareholder should get up and object to the acts of such companies. In that connection my hon. friend suggested that there are shareholders who are not interested in the industrial or business activities of the companies but only they are interested in speculating on the Stock Exchanges. It is common experience that the guilty persons are those who are connected with the company in its internal management. They know the details and the prospects of the company. They are the persons who know every detail of the company's management. They know whether the company is going to prosper and whether the company is going to make profits. These are the persons who are interested in speculation on the Stock Exchange and not the minority shareholders. It is the class of those directors who want to take advantage of their position in the board of directors and utilise the information acquired by them in such capacity for their own personal gain. It is not the question of those few shareholders who might collect proxies. These are not the guilty persons and that is the reason why, Sir, in this present Bill provision has been made regarding the directors dealing in the shares of the companies in which they are working as directors. I personally feel, Sir, that it is very very necessary. It is very long overdue because the persons who come into contact with the new company and know each and every detail of the working of the company, should not be allowed to take advantage of their special position and make gains for themselves. It is therefore necessary that the directors should not be allowed to deal in the shares of those companies in which they are working as directors.

Now, Sir, the question comes up regarding the powers and duties of the directors. Everyone knows that the

directors are not only agents of the company but they are also the trustees of the company. They are trustees of the property belonging to the company and therefore the directors have to exercise the same caution in dealing with the properties of the company as a trustee does regarding the property entrusted to him. If, therefore, Sir, there are any controls and any checks on the rights of the directors, the directors who are honest, the directors who are interested in the advancement and the expansion of the company should not worry about any checks or any restraints that are envisaged in the Company Law. After all law is applied for what purpose? Law is meant for the protection of the innocent. Law is framed to be directed against those who are guilty. None who is honest need worry about this. Now we have got the Penal Code and there you have got the section dealing with theft and the punishment for it. It is against whom? It is against those who are inclined to commit theft and not applicable to those who want to earn their livelihood by honest means. I therefore fail to understand the logic behind this argument that the checks and controls will hamper capital formation in this country. I do not for a moment believe it. This law is directed against those persons who want to act against the interests of the company, who want to defraud the shareholders, who want to put to loss the creditors. I, therefore, cannot understand why the industrial class or the business community should at all worry about the checks and restraints that have been provided in the present Bill.

Now, Sir, I do not wish to say that the company directors are always guilty persons. There might be classes and classes, persons and persons. All the same we want to make provision against a likely misuse of power. I can assure the House, Sir, that the company law, as it is now formulated, wants to provide against possible abuse of power. It is because we had bitter experience in certain cases.

I would now tell my hon. friend Mr. Doshi to remember the case of Sir Currimbhoy Ibrahim group of mills. Sir Currimbhoy Ibrahim is very well known in Bombay at least. The management by the managing agents led to the ruin not only of that family but of several families in Bombay. The managing agents did not care properly to look after the management of interlocking of company funds. Largely because of the crash of the Currimbhoy Ibrahim group of mills the provision regarding interlocking of funds was inserted in our company law. The managing agents may have very little stake because at the stage of formation or promotion of a company the managing agents are clever enough to withdraw their own capital. I will give you an instance how it works, Sir. When a new company is floated, the managing agents generally have their own proprietary

concerns in existence and they, at the time the new company is promoted, sell their own proprietary concerns to the new company which is established. The price is fixed by them and they sell the concerns to the new company and get away with their own capital and on top of that they make profit out of that.

MR. DEPUTY CHAIRMAN: Time is up for the House to get up. Would you require more time to speak?

SHRI P. T. LEUVA: Yes, Sir.

MR. DEPUTY CHAIRMAN: In that case you may continue tomorrow. The House stands adjourned till 8-15 A.M. tomorrow.

The Council then adjourned till a quarter past eight of the clock on Thursday, the 13th May 1954.