

DR. V. MAITREYAN: I would, earnestly appeal, to the Opposition to return to the House.

MR. DEPUTY CHAIRMAN: I would also request them because the Opposition in Parliamentary democracy is as important as the Government. It is equally important. If the Opposition is not present, then, there is no meaning of Parliamentary democracy.

SHRI BIRENDRA PRASAD BAISHYA (Assam): I am happy that the issue has been resolved and that the House will run smoothly.

MR. DEPUTY CHAIRMAN: I am very happy that the Opposition is back because without the Opposition, it is not democratic to run Parliament. The Opposition is an equally important partner as the Government as far as Parliament is concerned.

SHRI SATISH CHANDRA MISRA: We, totally, agree with it.

MR. DEPUTY CHAIRMAN: Now, with your permission, I proceed to take up further discussion on the Companies Bill, 2012. Shri Mani Shankar Aiyar was speaking on this. He could not finish his speech. So, he will resume his speech now.

#### GOVERNMENT BILLS — (Contd.)

##### The Companies Bill, 2012

SHRI MANI SHANKAR AIYAR (Nominated): Mr. Deputy Chairman, Sir, I had explained in my introductory remarks, that it was back in 1913, exactly a century ago, that the first Companies Act was passed by the Legislature of the time. *...(Interruptions)...* Between then and 1956, a number of changes were made, and in 1956, it was felt that there was a fundamental change in the nature of our economy, and the nature of management of our economy, and that the Act of 1913 needed to be replaced by a fresh Act in 1956. *...(Interruptions)...* Now, another fifty-five years later, we find ourselves faced with the necessity of recognizing the fundamental changes that have taken place since 1956 with regard to (a) the nature of our economy and (b) the nature of management of our economy. *...(Interruptions)...* And it is in consideration of this major change that the Minister of Corporate Affairs, my long time friend, Shri Sachin Pilot, has piloted, through the Lok Sabha, the new Companies Bill, and he has come here, with the approval of the Lok Sabha, for us to endorse it. *...(Interruptions)...* I think it is important that we extend to him,

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as the House, our entire support in the matter, particularly because, it has been made amply clear by him both in the other House and in the initial remarks that he made in this House, that in the process of rule-making whatever comments we have to make on the Bill in this House will surely be taken into consideration by him. So, instead of seeking to move amendments which would only delay the process even further, my humble plea to the House is that we extend our full support to the Bill, but we take the time during the course of this afternoon to make specific comments which the hon. Minister might please bear in mind in the process of not only rule-making ...(*Interruptions*)... but also the institutions that he will be setting up to manage our companies from now onwards.

It has been explained, Sir, that a principal motive for this new Companies Act is to ensure that we function in a business friendly manner and proactively attempt to ensure that the private sector is able to function efficiently and that the reason for this is that whereas in 1956 it was a conscious decision of the Government of India, backed by the Legislature, that the State should occupy the commanding heights of the economy, there has now been taken a conscious decision for the State to withdraw from the commanding heights of the economy. This, of course, has the advantage that it is likely that the private sector will be able to push up the rate of growth. But, at the same time, I think we should all be conscious that even as Nature abhors a vacuum, so also do the commanding heights of the economy abhor a vacuum, and if the State is going to withdraw from the commanding heights, there is the ...(*Interruptions*)... imminent possibility that other non-State actors will capture those commanding heights ...(*Interruptions*)... and we have to ask ourselves whether we really want those who represent the market forces to be in such control of the economy as to place themselves in commanding heights above the State. I make this point because it appears to me that while there can be little doubt that efficiency in a purely technical sense...(*Interruptions*)... can be obtained by increasing the role of the private sector and encouraging them to perform a bigger role, the State cannot abnegate its larger responsibility to the nation or its people. There are various ways of exercising this responsibility. There was the model that we had from 1956 onwards of the State directly controlling the commanding heights of the economy and now what the hon. Minister proposes to do is to put in place a regulatory authority which will perform the tasks which were hitherto being performed by his own Ministry ...(*Interruptions*)... I am quite ready to

welcome this in recognition of the reality, which is a reality which is not quite in consonance with my own ideology, but it is a reality that the private sector has grown in importance in the last 20 years....(Interruptions).. However, the experience of regulatory authorities in India has not been uniformly satisfactory. One of the problems we have had in the Telecom Sector with which the hon. Minister is familiar in his previous portfolio has been that the TRAI has not quite fulfilled the expectations that we have of the TRAI and had they been a little less ambiguous in the rulings that they gave, we would not have had some of the difficulties that we have faced in the last two or three years. The Petroleum Regulatory Authority, with which I have a little more familiarity having at one stage held that portfolio, has also been, in my view, a failure. So, the mere act of setting up a regulatory authority does not ensure that we actually have an effective regulatory authority. So, my plea to the Minister is, when you set up the regulatory authority under this new Companies Act, kindly bear in mind, the previous experience....(Interruptions).. with the private sector . I am saying this as a former Member of the JPC which was set up in 1992 to look into what was called the Harshad Mehta scam and subsequently, in 2002, to look into what was then popularly called the Ketan Parekh scam. It turned out that while unleashing capitalism upon this country, there was also the danger of unleashing crony capitalism. ...(Interruptions).. And, this crony capitalism consisted of firms in blatant violation of the laws and regulations of the country collaborating with each other, collaborating with financial institutions, collaborating with banks, to perpetrate fraud upon fraud on this country. I was most distressed to read in the newspapers a few weeks ago that the Supreme Court had asked, "Why is the Central Bureau of Investigation not completing its investigation into a scam which this Parliament had investigated, not two years ago, not five years ago, but more than 20 years ago?" And, because our young Minister was a school boy at the time of the JPC on the scam of 1992, and a college boy at the time of the Ketan Parekh scam in 2002, I would request him humbly, but very, very firmly, to please ensure that... ...(Interruptions)..

MR. DEPUTY CHAIRMAN: No, no. Don't do this. ...(Interruptions)..

SHRI MANI SHANKAR AIYAR: He has the various volumes of the 1992 report and the 2002 report so that he and his officers become completely *au fait* with all the tricks and the schemes ...(Interruptions).. that the private sector is

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capable of getting out, ...*(Interruptions)*... and to also recognize that notwithstanding the institutional recommendations of the 1992 Report of the Joint Parliamentary Committee, the failure to implement those institutional suggestions, or worse, the failure to ensure the effective implementation of those institutional suggestions, really was at the bottom of the 2002 scam, which, in many ways, was a mirror image of the 1992 scam. ...*(Interruptions)*... They had set up, for example, a High-Level Capital Markets Committee. It distinguished itself by never meeting! And the reason why it didn't meet is essentially a part of using the market for economic development, because when you use the market for economic development, there are times when there is a boom. ...*(Interruptions)*... and it is when the stock market is rising that the country is applauding whichever Government is in power. And don't forget, there were two different Governments in power at the time of the Harshad Mehta scam and at the time of the Ketan Parekh scam. So, I am not making a partisan remark here. ...*(Interruptions)*... Governments, when the stock market is rising, get so much applause for the stock market rising that they either take their eye off the ball or actually collaborate in allowing the market to continue rising ...*(Interruptions)*... And then, when suddenly the market falls, everyone is running for cover without recognizing that without a boom there cannot be a bust. And, therefore, it is necessary for the Government, as a political authority, to look very, very suspiciously at a boom in the stock market. But governments, by nature, cannot look suspiciously at what is fuelling their own political support. ...*(Interruptions)*... That is why this regulatory authority becomes so important. The regulatory authority is not dependent on political support. And if the Minister, in setting up that regulatory authority, ensures that it acts independently, that it acts as independently as the Reserve Bank of India has been acting under Mr. Subbarao, then there is hope for the country that the regulatory authority will put right what no political authority can put right. ...*(Interruptions)*...

Now, I am hardly an expert in Marxian economics as some of my friends, who are waiting to speak, are, but there is something in Marx which I think you should bear in mind, although as Minister for Corporate Affairs, if you were seen with Karl Marx's *Das Kapital* on your table, you would probably be removed at once. But in Marxian economics, it is said that the superstructure of a society is also determined by the relationship of classes to the means of production....*(Interruptions)*... For a long while, I didn't understand what this meant but, then, as I came into Parliament

and, more importantly, when I was in Government, I discovered that what Marx was saying was that classes that become dominant in the economy, attempt to become dominant in the polity. In other words, if the State vacates the commanding heights, then oligopolists and monopolists will try and seize those commanding heights. And it is to control them that we have to be very, very conscious of the need for an effective regulatory authority--as also be conscious, as Congress people or as the inheritors of the legacy of Indiraji. Indiraji set up the Monopolies and Restrictive Trade Practices Commission. We have now wound it down. But, it was set up because of the recognition that by definition The market creates inequalities. In these inequalities, those who rise to the top will necessarily utilise any means that they have at their disposal to remain at the top. *...(Interruptions)...* This will include a large number of unfair practices. It was the job of the Monopolies and Restrictive Trade Practices Commission to spot these, as they were happening, to prevent them and to punish the perpetrators.

Now, we don't have the Monopolies and Restrictive Trade Practices Commission. Your regulatory authority should be charged with the duty of keeping a very close watch on the market to see whether distortions are being brought about in the market economy by those who hold a dominant position. *...(Interruptions)...*

The latest information that we have obtained from the National Sample Survey and the Twelfth Five Year Plan shows that in our economy, inequalities have been increasing. The Gini co-efficient has started becoming worse. It is, in fact, suspected that, perhaps, those who constitute under 0.2 per cent of the population of this country are able to control at least 20 per cent of the assets of this country; and, if you took it beyond 0.2 per cent to about 5 per cent of our population, then you would probably reach to about half the economy. *...(Interruptions)...*

In these circumstances, as we know what our national income is, we just don't know what the sources, in terms of classes of income earners, of this income are. That is why all of our statistics are done in terms of consumption and not in terms of income. *...(Interruptions)...*

The National Council of Applied Economic Research is the only body in India which has attempted to ascertain what the share of different segments of our

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society in national income is. The shocking fact which has come up is that it cannot trace 56 per cent of national income to the point of origin. This is partly because the poor of India have learnt that if they confess to being above the poverty-line, then they will be denied various benefit schemes. So, the poor of India do attempt to under-report their own income. But, given the skewed nature of income distribution in our country, perhaps 50 per cent of this 56 per cent is the result of under-reporting by the rich of India. One of the consequences of Indian economic growth through the market in the last 20 years has been to substantially increase the GDP of Switzerland. So, in these circumstances, I think, you should be extremely careful....(*Time-bell rings*)

Sir, I thought I had plenty of time left. ...(*Interruptions*)... But, Sir, this is my main point. I have one or two other points to make. May I just complete? ...(*Interruptions*)...

MR. DEPUTY CHAIRMAN: Okay, take a maximum of five minutes.

SHRI MANI SHANKAR AIYAR: I think, you should be extremely careful to use The hon. Minister's usefulness, his dynamism, his obvious intelligence and his excellent education which, in some respects, he shares with me to be careful about those whom he is leveraging. They are tigers. But a tiger caged is a lovely animal to watch. A tiger out in the wild but yourself sitting on an elephant is a lovely animal to watch. But a tiger that is unleashed upon a population can be a very, very dangerous animal. And, it is the job of your regulatory authority to rein in these people. Please be pro-business. But, please recognize that businessmen are not as morally good as they are economically efficient.... ...(*Interruptions*)... Therefore, this Regulatory Authority has to be extremely careful about what they are doing. ...(*Interruptions*)... Please ensure that this happens in the course of making your rules while setting up these institutions.

The other matter that very quickly I wish to refer to, and I am hoping some of my colleagues will bring this up, is that you are being a bit liberal about the Corporate Social Responsibility. While it has been made compulsory, what they do with the CSR money is still a little in the area of ambiguity. ...(*Interruptions*)... I fear that some of them might be using the CSR to put up pandaaals for their daughters's weddings. So, we have to have some notional ideas of what are the

kinds of CSR activities that are excluded from the ambit of whatever you...  
...(Interruptions)... That you should not go and say what they should do over their CSR ...  
...(Interruptions)... but whether these companies are operating in the areas where there are very, very feeble populations. For example, among the tribals are the mining companies. ...  
...(Interruptions)... I think it should be made obligatory on them to spend their CSR exclusively on the rehabilitation and welfare of the tribal people that they are displacing or inconveniencing in any way. ...  
...(Interruptions)... So, please look into this at the time of making your rules.

Finally, Sir, about auditing, the two JPC Reports have clearly established that the Institute of Chartered Accountants of India, of which, my father, who was a Chartered Accountant, was one of the founders, and, therefore, I have a right to speak about my own inheritance, have not proved that they are absolutely capable on their own of ensuring effective and honest audit. ...  
...(Interruptions)... It is necessary that the auditors, who are working for these private companies, be brought within the ambit of your Regulatory Authority. ...  
...(Interruptions)... We must ensure that even if they are not instinctively or natively honest, that they are made honest by knowing that there is somebody sitting over them and that the punishment that will be visited on them will be very severe ...  
...(Interruptions)... because had the auditors done their job properly in the Harshad Mehta or the Ketan Parekh case, then, long before this would have become public information, it would have come to the knowledge of the Government, to the knowledge of the public, and the terrible losses suffered by individuals or investors would not have taken place. ...  
...(Interruptions)...

My final request to you, Sir, is that whereas we can be proud of the huge number of corporate entities that have come into existence and got themselves registered with you, you give, as I see a figure, that back in 1956, it was about 8,000; and now it has come up to about eight lakhs. There have been newspaper reports, which indicated that up to... (Time-bell rings) Sir, I am on my last sentence, which indicated that up to 8 lakhs of the companies which are registered with you are bogus/shell companies. ...  
...(Interruptions)... They are being set up not with the purpose of undertaking any business but they are cheating the revenue of India and thereby cheating the poor of India. So, it is absolutely essential that the Regulatory Authority assures itself that a company is being set up with a business

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purpose in mind and not with tax evasion purposes. If you can do some of these things, as also listen very carefully to what our colleagues are going to say, in answer, we are going to render unanimous support to you. ...*(Interruptions)*... Please ensure in your rules the establishment of these institutions that are suggested here. ...*(Interruptions)*... Thank you very much, Sir. ...*(Interruptions)*... I should now congratulate the Minister. I am placing my full support to this Bill. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Now, Shri Piyush Goyal. ...*(Interruptions)*... (Hindi)

(Hindi) But he wants to speak first.

(Hindi) No problem. (Hindi)

SHRI V.P. SINGH BADNORE (Rajasthan): Sir, I stand to speak on the much-awaited Companies Bill, 2012. This Bill has had a chequered history. It should have come much earlier. But I am glad that it is seeing the light of the day. ...*(Interruptions)*... Let me trace the history of 'companies' first. It was about 100 years ago, in the British Raj, that the first Companies Act came into existence. It was about 50 years later. We had Independence in 1947 and it was during Independence and in the fifties' that the Bhabha Committee was formed to look into this Companies Act, 1913 and make recommendations. It was only in 1955 that it was debated here and the Companies Act came into existence in 1956, nearly fifty years ago. In those days there were 30,000 companies, at the time when the 1956 Companies Act came into existence. It was the time that the British had just left us. We wanted to form our own companies.

The wheels of industry had to start rolling again in new direction and that was what we wanted. The growth, industry, self-sufficiency, innovations, all those things had to be put in this 1956 Act. It was debated in 1955. Let me just give you a thought. A lot of thoughts came then and I dug into what really went about in 1955. I have something very interesting but I will just say that late Mr. Bhupesh Gupta, who was a veteran, spoke a lot on this subject. He was respected in this House and that House. He said that the company law should be amended - he is talking about the evils of 1913 and remedy - so that reconstruction work could proceed along on the correct lines and that is how the people feel. But the hon.

Minister, the champion of the big money, brushes aside the wishes and criticisms of the people at large. ...*(Interruptions)*... He goes on to say, "I see some hon. Members trying vainly to search socialistic pattern-- that was thought then-- in this marathon Bill, and having searched it, many of them have been thoroughly disappointed." I am very sorry for the disappointment but I think the labour was a waste. After all this is a Bill to tackle or deal with certain internal affairs of the capitalist class where there can be no question of socialism here.

As far as I am concerned, I do not see an iota of socialism in this Bill. But let me continue. Companies were needed to be formed, as I was saying, and the flavour of that time was that in this independent India we have to grow in the right directions. In that backdrop, the 1956 Act came into existence. Sir, I commend the Minister who has taken such pains to push this Bill. Sixty years ago we had this Bill of 1956, there have only been piecemeal amendments. Everybody wanted a comprehensive Bill because the times have changed from 1956 till now and just these piecemeal amendments cannot really do the work. The Standing Committee very rightly looked into this Bill thoroughly. I must say that they did such a thorough work that came out with nearly 193 recommendations. Out of that, nearly 90 per cent have been accepted. ...*(Interruptions)*... All aspects of corporate governance, best international practices, suited for the country, have been taken care of in this Bill. And, this has been done by the Standing Committee and pushed by the Minister. Times have changed and we think that this is a comprehensive Bill. ...*(Interruptions)*... I think, it is a good Bill. We, today, live in different times, as I have said. We live in the jet age, in the age of digital computers. And, this has been reflected in this Bill of 2012. ...*(Interruptions)*... We live in the times of MNCs. We live in the companies that have to adapt to new times and to international practices. We live in the times of mergers, takeovers, MNCs, FIIs, FDIs, money coming from outside, etc.

All these have to be kept in mind. And, this Bill, I think, is suitable to do this. ...*(Interruptions)*... But having said all this, we need an atmosphere of corporate freedom, opportunities, transparency, regulations, what Mr. Mani Shankar was talking about, and, along with that, speedy justice. Then only an atmosphere of a good industrial hub would come about. We live in a competition from many countries, like, China and others. We have to have a Bill which would be suited to

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look after all this. Having said all this, let me come to the specifics of this Bill. ...*(Interruptions)*... There are some areas, where I would need some clarifications. There may be some areas, which are grey areas, people might call it, and I would come to that. ...*(Interruptions)*... The general issues....*(Interruptions)*...

The Bill contains 470 clauses, over 300 pages. I think you will take about one hour to pass this, but that is a different issue. But does this make it so cumbersome? Because, when the executives are going to make sub-sections and sections, it would run into thousands of pages. And, that is the time that we will have to ensure that the ambiguity does not come in and everything is clarified. ...*(Interruptions)*... Because, from 300 pages, from 470 clauses, the sub-sections and the rules, which are going to be framed, can become so complicated and may not have the clarity that one seeks for and it would be in the ambit of ambiguity. And, that is what I am really worried about.

Sir, the rules and clauses, as drafted in the definition of 'holding', that is, the parent company, and the subsidiary companies ...*(Interruptions)*... the rotation of auditors, definitions and all this need to be interlinked. It seems to be that there are separate laws, separate norms and the criteria for the holding company and for the subsidiaries. So, if there is not a link between them, it could create problems; there should be some uniformity. I request the Minister to look into that. The concept of One-Person-Company is a new concept. In India, we had not had this before. This could be good in many ways. ...*(Interruptions)*... Suppose in the time that we live in ---we have had so many ghost companies -- one person runs away ...*(Interruptions)*... one should really see that it is not misused. ...*(Interruptions)*... We also live in the times of terrorism, ...*(Interruptions)*... money laundering and if this one person runs away, how are you going to trace him? What is the liability that he is going to hold? So, we need more checking before a one-person company comes in existence. ...*(Interruptions)*... The clauses for appointment of independent Directors ...*(Interruptions)*... is another concept which has come about in this. ...*(Interruptions)*... It is a good concept, because this is where specialisations can come in. ...*(Interruptions)*... But you will have to look into the liabilities of this person ...*(Interruptions)*... and the concept, because if such a person comes in with a liability, he would not want to come in. ...*(Interruptions)*... So, he should not have the liability of the company on him. Whether he gets in the expertise or the

specialisation, that is also not very clear. ...*(Interruptions)*... So, I think that also needs to be looked into.

The auditor's responsibility and penalties on him is another issue. ...*(Interruptions)*... There should be a limited liability. There can be frauds, but not necessarily by the CA. ...*(Interruptions)*... One has to look into the Institute of Chartered Accountants views on this. ...*(Interruptions)*... If there is some fraud and you nail the CA, I think that can also create some problems. There should be a very limited liability on him. ...*(Interruptions)*... That also needs to be looked into.

The CSR is much talked about. It is the concept that you have got from some country or the other. I congratulate the Minister for this. It is a good concept. But there should be norms, where, how, how much money is going to be spent, etc. There is a limit that you have put; I am in agreement with that. ...*(Interruptions)*... But one has to look into the human rights and labour standards. ...*(Interruptions)*... There are United Nations Global Compact's 10 principles. Everybody knows about those principles. Can you incorporate them? That it should adhere to those, I think, would be a good idea. Kindly look into that as well. ...*(Interruptions)*... Looking at the fast growth, some entities may violate certain ...*(Interruptions)*... technical rules unintentionally. Law should emerge to protect them. The penalty is levied on them if there is a fraud in a different way. But, technically, if there are companies, because it is such a complicated affair, there should be some liability and not a fraud. So, you have to distinguish between the two. That has also to be looked into.

There is another clause which relates to revision of accounts, which has been put into one of your clauses. I feel that the Companies Bill ...*(Interruptions)*... empowers the Board nowadays, that they will be able to review these accounts. ...*(Interruptions)*... If the true picture of a company is something ...*(Interruptions)*... and they want to put up something which is different, because that is where the review will come in by the Board, I think, people will try to misuse it. ...*(Interruptions)*... You must review this as well, because that can create some problems. It can give a different picture to the shareholders and to the world at large. So, this review thing by the Board has to be looked into first. You have looked after the small investor's and the small shareholder's view also. That is a very good thing. But this review by the Board is also to be looked into. RoC has









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MR. DEPUTY CHAIRMAN: Prof. Baghel, please conclude. Your time is over.

...(Interruptions)...

... (A000 ...)

MR. DEPUTY CHAIRMAN: Mr. Baghel, please conclude.

... (A000 ...)

MR. DEPUTY CHAIRMAN: Mr. Baghel, please conclude.

... (A000 ...)

MR. DEPUTY CHAIRMAN: Mr. Baghel, please conclude.

... (A000 ...)

MR. DEPUTY CHAIRMAN: Please conclude.

... (A000 ...)

MR. DEPUTY CHAIRMAN: Please conclude. ...(Interruptions)...

No, no. What is this? ...*(Interruptions)*.. Nothing will go on record.

That is all. What is this? You are not even bothered about the Chair. ...*(Interruptions)*.. Nothing more will go on record.

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MR. DEPUTY CHAIRMAN: Nothing more will go on record. Now, Mr. P. Rajeeve. ...*(Interruptions)*..

DR. NAJMA A. HEPTULLA (Madhya Pradesh): Sir, I have to say something on a matter of procedure. ...*(Interruptions)*..

MR. DEPUTY CHAIRMAN: Please switch on the mike. ...*(Interruptions)*..

DR. NAJMA A. HEPTULLA: Sir, it is on a point of procedure. Sir, I believe when we were outside, this statement was circulated in House. Has it been laid on the Table of the House, and, if it is being laid on the Table of House, when are we going to seek clarifications on the statement of the Defence Minister regarding firing at the LoC? Could you please explain to us?

MR. DEPUTY CHAIRMAN: See, I wanted the statement to be read and I called the hon. Defence Minister for reading it. He started reading the same but because there was so much ruckus in the House, I had to adjourn the House. Most of the Members wanted the House to adjourn. So, I adjourned the House. I have not said that it is to be laid on the Table. I did not say that. Once I have not said this, how can it be laid on the Table?

DR. NAJMA A. HEPTULLA: The statement cannot be made in a vacuum and circulated.

MR. DEPUTY CHAIRMAN: Yes, the statement is not read.

DR. NAJMA A. HEPTULLA: The main thing is that the Chair can ratify the mistake or whatever happened. You adjourned the House. You can say that it is being laid because...

MR. DEPUTY CHAIRMAN: How can I?

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\*Not recorded.

DR. NAJMA A. HEPTULLA: Because the Defence Minister was on his legs, and, if you feel, because it has already been laid in the Lower House. So, something has to be done.

MR. DEPUTY CHAIRMAN: So many things were circulated; List of Business was circulated. It did not happen, it did not happen.

DR. NAJMA A. HEPTULLA: So, it is not a part of the record.

MR. DEPUTY CHAIRMAN: No, it cannot be a part of the record because I have not allowed the Minister to lay it on the Table. When I have not asked him to lay it on the Table, then, how can he do that?

DR. NAJMA A. HEPTULLA: I wanted only clarification, Sir? You don't have to. ...*(Interruptions)*..

MR. DEPUTY CHAIRMAN: If the Defence Minister wants, he can make another statement.

DR. NAJMA A. HEPTULLA: I only wanted to find out as to whether it is laid on the Table. If yes, we have a right to seek clarification, and, if it is not being laid, then, it is a piece of paper, which we don't have to. ...*(Interruptions)*..

MR. DEPUTY CHAIRMAN: Yes, yes. It is because I have not asked him to do so.

THE MINISTER OF OVERSEAS INDIAN AFFAIRS (SHRI VAYALAR RAVI): Mr. Deputy Chairman, Sir, I think, the clarification is necessary. The Defence Minister had started reading the statement; maybe he read two, three sentences. Thereafter, due to some problem in the House, the Chair had to adjourn the House.

MR. DEPUTY CHAIRMAN: I was forced to adjourn. I was forced to adjourn.

SHRI VAYALAR RAVI: But the fact remains that he had started reading the statement. He might not have completed it.

MR. DEPUTY CHAIRMAN: No, he had read only two or three sentences.

SHRI VAYALAR RAVI: That is enough, Sir.

MR. DEPUTY CHAIRMAN: No.

SHRI VAYALAR RAVI: Then, what is the status of the statement?



MR. DEPUTY CHAIRMAN: Shri P. Rajeeve.

SHRI P. RAJEEVE (Kerala): Sir, I am very happy to hear the remarks of our learned colleague and hon. Member Shri Mani Shankar Aiyar regarding the Marxian analysis of superstructure.

MR. DEPUTY CHAIRMAN: You started being happy with him!

SHRI P. RAJEEVE: On his remarks.

MR. DEPUTY CHAIRMAN: Since when?

SHRI P. RAJEEVE: Only on his remarks, Sir. *...(Interruptions)...* But I would like to treat his remarks as a safety valve. *...(Interruptions)...* There is no space for that type of school of thought in today's Congress leadership and in governance. *...(Interruptions)...* Only because of that, he lost his Ministership and our learned veteran leader from our State, Vayalarji, is still having a very low profile portfolio for having that type of thought. *...(Interruptions)...* Anyway, it was an interesting remark. *...(Interruptions)...*

Sir, I would like to congratulate our young and dynamic Minister Mr. Sachin Pilot on introducing this Bill. *...(Interruptions)...* We have been waiting for this Bill for several years. *...(Interruptions)...* After its introduction in the Lok Sabha, we have to wait for several years for its coming to this House. *...(Interruptions)...* I would also like to congratulate him on incorporating most of the recommendations of the Standing Committee on Finance. *...(Interruptions)...*

Sir, amending the existing Act and replacing the old Act is a good sign, a progressive sign of a legislative society. *...(Interruptions)...* While doing that, he should recognise the objective realities prevailing in the States. As Shri Mani Shankar Aiyar clearly stated, at the time of old Companies Act, the economic activities were controlled by the state. That was the time of Jawaharlal Nehru, the time of Nehruvian thought. *...(Interruptions)...* Jawaharlal Nehru considered the public sector enterprise as the temple of nation. *...(Interruptions)...* But the situation has changed. *...(Interruptions)...* As per Article 19(1) *...(Interruptions)...* of our Constitution, every person has the right to start an industry, business, etc. *...(Interruptions)...* But our Constitution clearly states *...(Interruptions)...* the intent of the economic activity. *...(Interruptions)...* Article 39 (c) under the Directive Principles of our Constitution clearly states that the function of the economy should not

result in the concentration of wealth. ...*(Interruptions)*... That is Article 39 (c) of the Constitution. ...*(Interruptions)*... The function of the economy should not result in concentration of wealth. ...*(Interruptions)*... What is the reality now? ...*(Interruptions)*... Some statistics have already been quoted by Mani Shankar Aiyarji. ...*(Interruptions)*... Ten per cent of the super rich in our country control 53 per cent of the assets of the nation. ...*(Interruptions)*... Ten per cent of the poorest of the country control only .2 per cent of the assets of the nation. ...*(Interruptions)*... This has intensified inequality. ...*(Interruptions)*... That is the result of neoliberal policies of our country. ...*(Interruptions)*... This is totally against Article 39(c) of the Constitution which gives direction to the economic activity of our country. ...*(Interruptions)*...

Sir, while a new Bill is presented, it should address changes in society. ...*(Interruptions)*... You just trust ...*(Interruptions)*...the corporate. ...*(Interruptions)*... Crony capitalism has already been mentioned here. ...*(Interruptions)*... Who are the cronies of the capitalists here? ...*(Interruptions)*... Crony capitalism is not a new way. ...*(Interruptions)*... It is connected with the classical capitalism. ...*(Interruptions)*... But in India, crony includes political leadership, bureaucracy, corporate and some sections of the media as clearly reflected at the time of Spectrum scam in our country. ...*(Interruptions)*... I wanted to know whether a specific provision is given in this Bill to address increasing crony capitalism after 1991 when Liberalisation Policy came. ...*(Interruptions)*... I could not find anything in this Bill regarding that class. What is the social condition in our country. You are disinvesting public sector units. ...*(Interruptions)*... You are ...*(Interruptions)*...on the reservation for the Scheduled Castes and the Scheduled Tribes in the public sector units and in the Government sector also. But the share of the public sector is diminishing drastically. The demand raised by several sections of the society is that there should be reservation for the Scheduled Castes and the Scheduled Tribes in the private sector. I think the previous Government had taken some steps for promoting concert between the corporate houses but nothing has materialised. It is still in the air. But there is nothing to protect the interests of the Scheduled Castes and the Scheduled Tribes in this Bill which consists of 70 clauses, Seven Schedules and 29 Chapters.

One of the specific features of this Bill is making Corporate Social Responsibility of the companies under Chapter IX, clause 135 of the Bill. But clause 135(5) the last sentence ...*(Interruptions)*... for diluting the real intent of the ...*(Interruptions)*... position of the CSR. It says,

[Shri P. Rajeeve]

"Provided that if the company fails to spend such amount, the Board shall, in its report made under clause(o) of sub-section(3) of section 134, specify the reasons for not spending the amount." ...(*Interruptions*)... If this sentence is there, then, there is no relevance of clause 135 on CSR. Most of the companies are ready to prepare the format for presenting their results and not spending the CSR amount. I have already moved an amendment to delete the last sentence of clause 135 (5), that is, exclusion of diluting the clause on CSR. ...(*Interruptions*)...

Then, while going through the Schedule VII regarding the area of the CSR, already one of my learned colleagues has mentioned that there is no specific utilisation of percentage for the SC and ST communities. In respect of public sector there is a certain provision and for utilisation of MPLAD funds, there is also a certain provision. While framing the rules it should be made mandatory that certain percentage of the CSR should be spent for the benefit of the SC and ST communities. Then, there is no specific mention regarding the area. What is the experience of the public sector units? Most of the public sector units utilise or spend their CSR where the corporate ...(*Interruptions*)... or where the Minister is coming from. Take for example, the Petroleum Ministry, major part of the CSR amount is spent in the constituency of the Petroleum Minister. In this Schedule there is no specific mention regarding the area of the implementation of the CSR activities. It should be incorporated, if possible, in the Bill itself; otherwise in the rules while framing it.

The next point is about rural areas and backward areas. There is no specific mention regarding that. It should be incorporated in this Bill.

Then, regarding the regulatory mechanism, already my predecessors have mentioned about it. Several regulators are there. It is the era of regulating. Then, what has happened in the Harshad Mehta scam? What has happened in the 2G spectrum scam? What has happened in the latest Saradha scam? The RBI is there. The SEBI is there. The Serious Fraud Investigation Office is there. Multi-regulators are there without any responsibility. Now, we have a mechanism, that is, the Indian Institute of Chartered Accountants for the corporate sector as per the Act of Parliament. Now, NRFI is coming. There is a contradiction. Who will prevail NRFI or the IICA? The functions of the NRFI and the IICA should be specifically defined. The NRFI is a 15-Member Body. What is the relevance of 15-Member Body? It is the wastage of money. It should be reduced. What is the minimum requirement?









there is one thing. We talk about auditors and we talk about audit. I think, one of the institutions which need to be modernized and really brought into the 21st Century is the auditing profession in India which, ...(Interruptions)... I don't think, should be allowed, in the name of professionalism, to be controlled by a closed group. Audit is an international system of checks and balances; it does not work well all the time. There are several audit standards internationally. But that does not mean that we should abandon an attempt to modernize and make our auditing profession competitive. I request you to really look into this far more seriously, because there will be lot of pressures from established groups in order not to permit this. ...(Interruptions)...

Secondly, Sir, I think, we must give even a bigger prominence to the role of Independent Directors. If you want checks and balances in the operations of a company, I underline and give in capital letters the word "Independent", then Independent Directors must enter into an official covenant while accepting the role of an Independent Director, in order to understand his or her responsibilities and obligations not only toward company, not only towards the shareholders, not only towards employees, but to society in general. ...(Interruptions)... Therefore, the quality of Independent Directors that we are seeking is not easy to get. I would seriously urge that definition Independent Directors proposed must not be an easy entry for those with a spare time in order to pass their time as Independent Directors. I think that is a very, very important role. ...(Interruptions)...

Now, we have to accept the fact that there is malfeasance in every section of society. And, therefore, the corporate sector cannot stand back and say that it is not true. ...(Interruptions)... But the corporate sector, either rightly or wrongly, receives far more blame than it possibly deserves all or is proportionately due to it. That is a different issue. However, we must make sure that in order to regulate handful of wrongdoers, we do not create such obstacles that would seriously not be in the interest of growth of industry and our economy.

I think we also need to pay a lot of attention – I think, somebody has mentioned it – in modernizing and acknowledging the role of the 21st Century trade unions. What role do they play? What is the place they have? What recognition they should get? And, what sort of modern bilateral negotiations should be done? What sort of conciliatory mechanism should be brought into it? That is also another important issue. That needs to be taken into consideration.

[Dr. Ashok S. Ganguly]

I don't want to talk about Corporate Social Responsibility, because, I believe, it an oxymoron. Either a corporation has social responsibility or it does not. It should be a belief that we can impose rules and regulations and that it will be followed. I think, it is something that we need to be tested. ...*(Interruptions)*... I am not going to comment on it. But, I must say that we are called 'law-makers.' And, when the rest of the public, including my own relatives and grandchildren, watch law-makers in action and we are trying to impose discipline on rest of the society, we must recognize that our credibility is hugely challenged. We cannot ignore the fact that we can behave anyway we want in the House and expect the rest of the society to be bound by rules that we create on their behalf. I am using this opportunity to share with you my deep anguish and am very hesitant to even pontificate on the Companies Act, because I ask myself – I don't ask anybody; I am not blaming anybody – have we still got the rights and responsibilities to preside over society's behaviour and should we not look into ourselves first before doing that...*(time-bell rings)*... I will take only one minute.

Finally, Sir, having passed the Act which I supported and having supporting this Bill which I am sure will go through, kindly let it not be an end point; kindly let it be a beginning point, so that we look at it, at least, once in two years in order to see whether all the provisions are still relevant or new provisions required or should we modernize them.

Thank you once again Mr. Deputy Chairman. I must thank you for the opportunity once again. Mr. Minister, thank you very much.

SHRI N.K. SINGH (Bihar): Sir, thank you Mr. Deputy Chairman.

I wish to compliment the hon. Minister for having taken the pains of what I consider to be a historic regulation to replace the Companies Act, 1956, in view of the altered economic and commercial milieu which now face India. ...*(Interruptions)*... Having said this, I have nine points to make for hon. Minister's consideration.

First, I want to make a point that the Parliamentary Standing Committee has recommended, based on the CAG's Report, that the Board of Directors should consider the implications of Government directives on the financial position of company. ...*(Interruptions)*... In my view, this is a very important suggestion which the CAG had made and which the Standing Committee has accepted. ...*(Interruptions)*... For instance, in the context of Government Directives for

disinvestment, unless the financial impact of Government's directives are really considered by the Board of Directors, this would be incomplete.

My second point really relates to the fact that the Bill provides Members of the existing Law Board must be made eligible to become Members of the NCLT. *...(Interruptions)...* However, the Parliamentary Standing Committee noted that the functioning of the CLB has been very unsatisfactory and, therefore, the Membership of the NCLT should be considered afresh.

My third concern is about the excessively delegated powers which are contained in this Bill. There are nearly over 100 matters on which rules have to be made and here the subordinate legislation becomes necessary. *...(Interruptions)...* The Standing Committee noted that, for instance, on rules to facilitate rotation of auditors, manner of selection of auditors, number of auditors and firms which can be undertaken, the definition of key management personnel, the qualification of Independent Directors, the contents of the prospectus should have been, Mr. Minister, included in the Bill instead of being left for subordinate legislation and rule-making.

My fourth point, Sir, is that the Bill does not have any provision of what may be called a Sun-Set Clause in terms of companies which have really structured themselves in accordance with the old regulation and when they transit to the requirements of the new law, the Bill should have provided or, at least, we should provide for a Sun-Set Clause to prevent dislocation or any transitional difficulties.

My fifth point relates to Corporate Social Responsibility. I must compliment the fact that this has now been made mandatory. This is a very satisfactory provision. *...(Interruptions)...* But, there is an escape Clause in this provision. For instance, it says, 'if company fails to meet the desired standards, it can provide reasons for it.' This really could be an escape clause for companies not meeting the necessary CSR requirements. Also, for instance, since the requirement of the CSR is based on the net-worth of turnover of a company, there is a risk that it could be reduced to an exercise of accounting. Also, for instance, since the requirement of the CSR is based on the net worth or the turnover of a company, there is a risk that it could be reduced to an exercise of accounting, or, for instance, that the net worth of a company may change from year to year. It is unclear how this will affect the responsibility to make the CSR spending, or, for instance, that the CSR Committee,

[Shri N.K. Singh]

which is mandatory now, does not have any provision for external auditing of the CSR Committee, which is to be appointed, since this is only advisory in nature to the company concerned.

Finally, I think on the CSR, the Minister might like to consider and clarify the tax treatment to CSR spending by companies whether it is to be treated as non-deductible income, since it is an allocation of profit, or, whether it is to be treated as an allowable expenditure under the Income-tax Act.

Sir, my sixth point is about regulatory overlaps and conflicts. There are several issues of regulatory overlaps and conflicts. For instance, on the prospectus of a company as prescribed under the Bill, Clause 26 says it is different from the listed requirements under SEBI (Issue of Capital and Disclosure Requirements) Regulations. There is also a difference in the interpretation and definition of what constitutes a "promoter".

So, I think there are several features, Sir, in which there are overlaps and there are discrepancies of what is contained in the Bill and what is contained in many other regulations, particularly, the SEBI Regulations.

Sir, my next point is on the impact of this Bill on Auditors. Whereas I welcome the fact that the limit of 20 has been imposed on the number of firms which an auditor or a partnership firm can undertake, nonetheless, Sir, issues like "investment advisory services", "investment banking services" and "management services" are not clearly defined and they impose limits on what an auditor firm can do.

My eighth point, Sir, is about the issue of Independent Directors. ...*(Interruptions)*... The Bill should consider aligning the definition of "Independent Director" in the Bill with the definition in the Listing Agreement under SEBI. Notably, Sir, the definition of an independent Director in the listing requirement also specifies a disqualification if a person has any material pecuniary relationships or transactions. On this issue, Sir, the definition, as contained in the SEBI is, perhaps, more rational and more comprehensive. ...*(Interruptions)*...

My next point, Sir, is about the consequences which will come on Directors of companies and on Independent Directors, namely, that the fiduciary function of a Director is not just to the company, but also to its employees, the shareholders and

the community or the environment as a whole. This, Sir, will be a serious handicap in companies being able to attract Independent Directors with this kind of debilitating restrictions and enlarging the fiduciary ambit of what Independent Directors should do.

Sir, my final point is about Clause 177, referred to as the whistleblower mechanism. It is pertinent for the Minister to note that the Whistleblowers Bill is on the anvil in the Parliament. How do we ensure that the provisions of the Whistleblowers Bill, which is to be enacted by Parliament, would be consistent with the Companies Law Bill which we are just about to consider and hopefully approve. ...*(Interruptions)*..

With these words, Sir, I would like to once again compliment the Minister for, particularly, the extent of diligence which he has shown and the extent of perseverance which he has shown in bringing this important, historic legislation. With these words, I support the contents of the Companies Bill, 2012, Sir.

SHRI RABINARAYAN MOHAPATRA (Odisha): Thank you, Sir, for giving me this opportunity to speak on the Companies Bill in this august House. Sir, at the outset, I would like to say that this is a very important period from national and international economic structure point of view when we are going to repeal the Companies Bill, 1956 and to enact a new legislation aiming at the changed national and international economic environment and to accelerate the economic growth of our country.

[THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA) in the Chair].

Sir, hon. Minister moved the Bill with 470 Clauses having 7 Schedules and introduced several new concepts like e-Governance to strengthen the corporate governance, making the concept of corporate social responsibility mandatory, enhanced accountability on the part of companies, audit accountability, empowering, Serious Fraud Investigation Office, including one woman director in the company, as pointed out in para-5 of the Statement of Objects and Reasons.

Sir, when our basic object is to accelerate the expansion and growth of our economy, in this context we should remember the words and idea of Gram Swarajaya of our beloved Mahatma Gandhi, the Father of the Nation. Our late Leader Shri Biju Patnaik's vision and conceptualization of Panchayat industries in 1960, a bird's eye

[Shri Rabinarayan Mohapatra]

view of relevant dimensions in India appears necessary. Sir, nations will prosper if villages prosper.

Sir, one of the new provisions of this Bill which has been proposed in Chapter-II, Sub-Section (c) of Section 3 is 'one person company' to recognize the essential role, which the knowledge industry will be playing in the future. But, the Bill does not take into consideration the profile of typical start-ups for developing country like India with a huge rural population; of which, by 2018, 50 per cent will be demanding jobs. The number of persons below 30 years, seeking jobs, will run into millions. So, the start-ups have to be created mainly from these job-seeking people in the rural areas. The country needs a definite answer. I hope, the hon. Minister will answer this and it should be contained in the Bill.

Sir, in my opinion, the answer lies in changing the provision of 'One Person Company' to one family or to one SHG entrepreneurship. Both categories will come under one generic category of 'micro Industries'.

Then, the Bill lays down the criteria for recognizing legally the individual entities taking care that paper work required is minimum as for illiterates; access to funding is provided through micro financing mechanism dedicated for each district of India without the need for collaterals; local resources and existing industrial possibilities at the village level, like food processing industries, khadi industries and mobile-based services, biotechnological products all these are sustained by the Government.

Sir, the objective of the Bill would be to create the necessary and sufficient conditions for rural employment and opportunities for the young knowledge entrepreneurs in the shortest possible time within the constraint of shortages and infrastructure inadequacies to counterbalance and involving private partnership is a must.

My second submission is to accept the recommendation of the Standing Committee regarding public sector undertakings. Nothing should be made public to protect the PSUs who are going through major turbulence, which has not been included and it should be included in the Bill.

The Companies Bill dilutes the progressive intent of the producer company. There is a need to involve farmers as stakeholders in growth process by giving them access to technology and market in a first growing economy.

THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA): Mr. Mohapatra, please conclude, your time is over.

SHRI RABINARAYAN MOHAPATRA: Sir, I would like to touch corporate social responsibility component. I congratulate the Minister as the CSR is being made mandatory for the first timers too. I would like to know the definite definition of the profit of a company. That differs from one company to another company.

Sir, I come from Odisha State where vast mineral treasures and immense industrial potentialities have established its identity in international arena.

THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA): Please conclude.

SHRI RABINARAYAN MOHAPATRA: Sir, I am concluding. The companies are mining here and establishing plants there. *...(Interruptions)...* But, instead of Odisha, they are doing their CSR activities in other States. *...(Interruptions)...*

THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA): Mr. Mohapatra, your time is over. *...(Interruptions)...*

SHRI RABINARAYAN MOHAPATRA: Sir, my next point is, 'implementation holds the key to its success'. For this purpose, the corporate and regulator would need to work together so as to tread a balance between freedom and regulation. I hope, the hon. Minister will clarify my above points. With this, I support the Bill. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA): Now, Shri D. Raja. *...(Interruptions)...*

DR. V. MAITREYAN: Sir, I think, I would request the Leader of the Opposition to make an appeal.

THE LEADER OF THE OPPOSITION (SHRI ARUN JAITLEY): Can we request the Government and if the Government is agreeable because our colleagues from the TDP have been agitated over some issues? Of three days, there is a weekend, on Monday, the issue of Telangana is already listed in the Business List; if, immediately after the Question Hour that subject is taken up, the Government can respond and, maybe, a satisfactory response comes.

SHRI RAJEEV SHUKLA: Sir, as the hon. Leader of the Opposition has urged the hon. Member to give up his stand right now, I would also appeal him to call it off right away.

THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA): It is three days now.

SHRI RAJEEV SHUKLA: On Monday, the issue of Telangana is already slotted, as no clarifications have been sought as yet, after the Home Minister's Statement. So, I would ensure that on Monday it is slotted in the Business, immediately after the Question Hour, maybe, as per the convenience of the Members. After that, definitely, I would request the Home Minister to make a statement by which, at least, the feelings can be addressed and assuaged.

THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA): That is fair enough. I request the hon. Member to go to his seat and resume his seat. ...*(Interruptions)*... Shri D. Raja.

SHRI D. RAJA (Tamil Nadu): Sir, the corporate sector has grown in our country. It has grown to the extent of dictating to the Government, influencing its policies. Shri Sachin Pilot is one of the young, articulate and talented Ministers in the Government. To face the corporate sector is a big challenge. I do not know whether his party will allow him to take up this challenge in the interest of the country. But he understands the emerging situation in the country. There is a need to regulate the corporate sector and discipline them in the interest of the nation. I hope the young Minister understands.

Sir, I would like to ask the Minister to clarify a few issues. Number one, what is the alignment between the Company Law Bill provisions and the Sebi Consultative Paper on Corporate Governance? While the Sebi Consultative Paper says that shareholder approval is needed for a company to divest its subsidiaries, I do not see there is any provision in the Company Law.

Number two, while there is a provision for appointing Minority Shareholder Director, there is no provision for workers' nominees on the Board. Such a practice is there in several countries. It has done good things in a country like Germany. What is the response of the Minister? Number three, Sir, the Nominee Directors of financial institutions are not considered to be Independent Directors under the Bill.

**4.00 P.M.**

If I am wrong, I stand to be corrected. They should be considered to be independent because they are not appointed by promoters. You can take the views from experts and you can clarify it. Sir, then I come to the question of Corporate Social Responsibility. It is good that the Government is proposing two per cent Corporate Social Responsibility Expenditure. But there is a problem as to how this is going to be monitored, how many corporate houses or companies will adhere to it, how they will spend this 2 per cent which has been mentioned in the Bill, what is the mechanism to monitor their budgets, etc. There, I think, not now, the Minister can revisit the issue of Social Corporate Responsibility. Now it is good that you are trying to make it part of the legislation and mandatory. But you can think of making it a cess payable to the Government because there is no real control over the Corporate Social Responsibility. I wish that should be controlled and the Government should think of this issue with all seriousness - not now, with an open mind whether it can be turned into a kind of cess payable to the Government. I am making this suggestion. Finally, Sir, there are some apprehensions with some non-banking financial institutions. Yes, there is a need to regulate many non-banking financial institutions. We have come across many incidents of cheating of our people. It does not confine itself to one State; maybe, it is there in several other States. At the same time, there are some apprehensions in the minds of these institutions. The Government will have to give some attention to their concern, if not now, in the coming days. So, I think the Minister understands the situation. I once again reiterate that the corporate sector needs to be disciplined and regulated because they have grown now. As I mentioned, they have grown to the extent of dictating to you, the Government are influencing your policies. These are all in public domain. ...(*Interruptions*)... These are all in public domain. ...(*Interruptions*)... These are all before the judiciary and there is nothing to hide. But how the Government is going to respond, whether this legislation alone is enough to control them, there the Minister will have to be very serious. I hope the young Minister, Mr. Sachin Pilot, who has brought the Bill in the House will be able to respond, take the House into confidence and clarify these issues. I am asking in the interest of the nation. That is all I wanted to say on this Bill. Thank you very much.

THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA): Shri Shantaram Naik – not present. Shri Piyush Goyal – not present. Shri Hishey Lachungpa.

SHRI HISHEY LACHUNGPA (Sikkim): Sir, with the permission of the Chair, I rise here to mention the serious objections which the State of Sikkim has to Section 1(ii) of the Companies Bill, 2012, extending the Act to the whole of India and, Section 465(1) repealing the Registration of Companies (Sikkim) Act, 1961, as these grossly infringe upon the special provisions contained in Clause (k) of Article 371F of the Constitution of India, which protects all laws in force in the State of Sikkim, at the time of its merger with the Union of India.

The necessity of consultation with the State Government, inherent under that Article, was not complied with nor views were sought for before the Bill was introduced.

Article 371F(k) reflects the solemn promises and assurances of the Union of India when Sikkim merged, by the will of the people, as its 22nd State. A repeal of a pre-merger law of Sikkim in this inconsiderate manner, without the State Government even being Consulted, is contrary to the solemn trust placed by the people of Sikkim when joining the Indian Union. Article 371F begins with a non-obstante clause: "Notwithstanding anything in this Constitution,- " . It follows that all other provisions of the constitution will yield to Article 371F to the extent to which they conflict with the Article.

In *State of Sikkim versus Surendra Prasad Sharma and Others* (1994) 5 SCC 282, the Hon'ble Supreme Court, while dealing with the spirit of Article 371F, has held as under, paragraph 23, "Effect must be given to the intendment of the said provision specially introduced in the Constitution to comply with the understanding on which Sikkim had agreed to merge with India...". Therefore, any action by the Centre or the Parliament, displacing the present circumstance, shall amount to gross infraction of the overriding provisions of Article 371F.

The proposed repeal of the Registration of Companies Act, 1961, has seriously been resented to by the people and this has the potential to disrupt the peaceful ambience prevailing in the State. Sikkim is a strategic Himalayan border State with three international borders where elements inimical to the Nation are constantly making efforts to create such a situation by fuelling discontent and resentment. All political parties in the State, both National and Regional, including the Ruling Party, are unanimous in their objections to it.

Additionally, apart from transgressing upon the federal structure of our

country, the provisions will also negate the very object of exempting the minuscule population of the 'Sikkimese' under Section 10 (26AAA) of the Income Tax Act, 1961, from its purview. For these reasons the Companies Act, 1956, has neither been extended nor been enforced in the State thus far.

The Sikkim Registration of Companies Act, 1961, was amended in 1989 to be "confined to the entries in List II (State List) of the Seventh Schedule to the Constitution of India". The legislative lists, in the Seventh Schedule, which allocate power to the Union and States exclusively, permit any State to have Corporate Laws for intra-State operations. It follows that the Union cannot repeal Sikkim's corporate legislation to the extent it operates within Sikkim. All local Companies in the State have so far been functioning under the local Act. This sudden change in the regulatory and legal framework will have an overwhelming impact on the existing businesses and will stifle the nascent-free enterprise in Sikkim. Article 371F cannot be read as divorced from the historical development before the merger, and a legislation which tries to cater to local needs is not *ipso facto* unreasonable. In *Saurabh Chaudri and Others versus Union of India and Others*: (2003) 11 SCC 146, the Supreme Court has held, paragraph 39, "Whereas larger interest of the country must be perceived, the lawmakers cannot shut their eyes to the local needs also. Such local needs must receive due consideration keeping in view the duties of the State contained in Articles 41 and 47 of the Constitution of India." I, therefore, strongly propose and request the hon. Minister that the Bill, in the larger interest of the Nation, the State and the Sikkimese people, and in direct (*Time-bell rings*) conflict with the spirit of article 371 F of the Constitution, be reconsidered and amended as below:

In clause 2 (67) (ix), on page 9, line 9 of the Bill "(ix) the Registration of Companies (Sikkim) Act, 1961;" be deleted. In clause 465(1), on page 231, lines 34 and 35, "...and the Registration of Companies (Sikkim) Act, 1961...." be deleted. In clause 465(3), on page 232, lines from 47 to 50, "The mention of particular matters in sub-section (2) shall not be held to prejudice the general application of Section 6 of the General Clauses Act, 1897, with regard to the effect of repeal of the repealed enactments as if the Registration of Companies (Sikkim) Act, 1961, were also a Central Act." be deleted.

I also propose that the consent of the State Government be taken into consideration. I also expect from the hon. Minister a specific reply in regard to the State of Sikkim. Thank you.



















enacted. I congratulate the Minister on this and his predecessors too for doing yeoman service. The Standing Committee had recommended around 193 recommendations and most of the recommendations have become part of this Bill. Over the past 50 years, many things have changed, including the way MNCs and companies have been formed. The country has progressed. A lot of development has taken place. The corporate freedom was needed. On that, checks and balances in the form of regulatory authorities and their responsibilities are also contained in this Bill. I would not go into the details of that. The Bill certainly is a very voluminous one. As Mr. Piyush Goyal has said, it needs to be simplified. If you look at the wordings and the jargons which have been used, it looks very complicated. It should be simplified. The terms which have been given like OPC, that is, One Person Company, the clarity needs to come out of that. Then, on the Key Managerial Personnel (KMP), more light needs to be thrown on that because it plays a vital role in the company affairs. Regarding the Auditors' appointment as well as Auditors responsibility is a very vital and a very major aspect of the Bill. It signifies the health of a company. It has ramifications in the society also. After all when the company is formed and the industry comes up, it is made up of the poor people, common people and wise workmen. It goes down to the society. The auditor's role is very important in spite of the restrictions or reforms that you may take up. Beyond that they play a very responsible role towards the society. That needs to be seen. *(Time-bell rings)* I really appreciate the provision for the Woman Director. It is a laudable thing.

MR. DEPUTY CHAIRMAN: That is all. Please conclude.

SHRI ANIL DESAI: Regarding Independent Directors, their expertise and their remuneration have been mentioned. These things are necessary. *...(Time-bell rings)...* Last point I will make. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: You took full time. You did not leave any time for him.

SHRI ANIL DESAI: Regarding CSR, two per cent of the expenditure is made compulsory and mandatory to be spent. The escape route and loophole are also given that if any company is not able to do that, then, in their financial report they can come out with a special statement specifying why they were not able to spend. I think this should be made compulsory. As my hon. colleague, Mr N.K. Singh, has said on the network..

MR. DEPUTY CHAIRMAN: Please conclude. Message from Lok Sabha. ...(*Interruptions*)... Nothing is going on record. Take your seat.

SHRI ANIL DESAI:\*

MR. DEPUTY CHAIRMAN: Mr. Anil, it is not going on record. You took four minutes instead of two minutes. You have given your name very late. If you wanted to speak for more time, you could have given your name in time. It is not possible to accommodate. I have to pass the Bill by 5.00 p.m. Sit down. Now, Message from Lok Sabha.

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#### MESSAGES FROM LOK SABHA

##### **The Securities and Exchange Board of India (Amendment) Bill, 2013**

SECRETARY-GENERAL: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:—

"I am directed to inform you that Lok Sabha, at its sitting held on Thursday, the 8th August, 2013, adopted the following motion in regard to the Securities and Exchange Board of India (Amendment) Bill, 2013, which was passed by Rajya Sabha on the 11th March, 2013 and laid on the Table of Lok Sabha on the 12th March, 2013:-

##### **Motion**

"That this House recommends to Rajya Sabha that Rajya Sabha do agree to leave being granted by this House to withdraw the Bill further to amend the Securities and Exchange Board of India Act, 1992, which was passed by Rajya Sabha on the 11th March, 2013 and laid on the Table of this House on the 12th March, 2013."

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#### GOVERNMENT BILLS

##### **The Companies Bill, 2012 - (Contd.)**

MR. DEPUTY CHAIRMAN: Dr. Prabha Thakur, you could have given your name before starting the discussion on the Bill. Now, it is not possible. Now, the Minister will reply.

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\*Not recorded.